

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA
WEDNESDAY, SEPTEMBER 9, 2009
1:43 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

--o0o--

HEARING

STATE CAPITOL

ROOM 3191

SACRAMENTO, CALIFORNIA

--o0o--

WEDNESDAY, SEPTEMBER 9, 2009

1:43 P.M.

--o0o--

Reported By: INA C. LeBLANC
Certified Shorthand Reporter
CSR No. 6713

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

MEMBERS PRESENT

SENATOR DARRELL STEINBERG, Chair
SENATOR GIL CEDILLO
SENATOR SAMUEL AANESTAD
SENATOR ROBERT DUTTON
SENATOR JENNY OROPEZA

STAFF PRESENT

GREG SCHMIDT, Executive Officer
JANE LEONARD BROWN, Committee Assistant
NETTIE SABELHAUS, Appointments Consultant
DAN SAVAGE, Assistant to SENATOR CEDILLO
BILL BAILEY, Assistant to SENATOR AANESTAD
CHRIS BURNS, Assistant to SENATOR DUTTON
BRENDAN HUGHES, Assistant to SENATOR OROPEZA

ALSO PRESENT

JEROME HORTON, Member, Board of Equalization
SCOTT M. KERNAN, Undersecretary, Department of
Corrections and Rehabilitation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

	<u>Page</u>
Proceedings	1
Governor's Nominee:	
JEROME HORTON, Member, Board of Equalization.....	1
INTRODUCTION BY SENATOR RODERICK WRIGHT	2
Questions by CHAIRMAN STEINBERG re:	
Timely completion of audits	8
Granting Superior Courts regional jurisdiction on complex cases ..	9
Proposal to consolidate Franchise Tax Board and Board of Equalization	11
Eradicating bias from the Tax Code	13
Repeal of DOMA	14
Providing resources and education to LGBT constituents	16
Question by SENATOR OROPEZA re:	
Benefit/downside to experience within BOE	18
STATEMENT BY SENATOR CEDILLO	20
STATEMENT BY SENATOR AANESTAD	38

1	<u>Witnesses in Support of JEROME HORTON:</u>	
2	PAULA TREAT, Pechanga Band of Luiseno	
3	Indians	21
4	ANGIE WEI, California Labor Federation	22
5	OLIN KING, Association of California	
6	State Supervisors	22
7	FRANK RUFFINO, Association of California	
8	State Supervisors	23
9	CHERYL BROWN, California Black Media	25
10	JAY HANSEN, State Building Trades	26
11	CHRISTY BOUMA, California Professional	
12	Firefighters	26
13	JOEY QUINTO, California Journal for Filipino	
14	Americans, et al.	27
15	DON ERNST, Consumer Attorneys of California .	28
16	FRED NOTEWARE, Silicon Valley Leadership	
17	Group	28
18	ALICE A. HUFFMAN, NAACP California	28
19	PAUL GLADFELTY, California Hispanic Chambers	
20	of Commerce	30
21	JASMYNE CANNICK, LGBT Community	30
22	BROOKS ELLISON, California Attorneys,	
23	Administrative Law Judges and Hearing	
24	Officers in State Employment	31
25	PHYLLIS MARSHALL, California Black Chamber	
	Of Commerce and California Association of	
	Black Lawyers	32
	BRUCE ALLEN, CPA	32
	JOSE MEJIA, California State Council of	
	Laborers	33
	PATRICK FINNEGAN, CPA	33

1	<u>Witnesses in Support of JEROME HORTON (cont.):</u>	
2	ANI BEDROSIAN ADAIMY, Armenian American Chamber of Commerce	34
3		
4	ALLEN DAVENPORT, SEIU	34
5	LARRY LEE, The Observer Newspapers, West Coast Black Publishers	35
6	SCOTT WETCH, California State Association of Electrical Workers, California State Pipe 7 Trades Council, Western States Council of 8 Sheet Metal Workers	36
9	STEVE SHEA, Board Member, 4th District	36
10	PAT CACCAMO, UAW	37
11	EDWIN LOMBARD, Black Business Association and Black Business Council	37
12		
13	--o0o--	
14	Governor's Appointee:	
15		
16	SCOTT M. KERNAN, Undersecretary, Department of Corrections and Rehabilitation	42
17	Questions by CHAIRMAN STEINBERG re:	
18	Furlough time of CDCR employees ..	45
19	Banked furlough hours	45
20	Division of Juvenile Justice	47
21	Questions by SENATOR DUTTON re:	
22		
23	Expenses/Stockton reentry facility	49
24	Litigation.....	50
25	Filling job positions of low-risk offenders	51

1	Questions by SENATOR DUTTON re:	
2	Staffing levels with reduced	
3	inmate population	52
4	Inmate population demographics ...	54
5	State audit	56
6	Overtime	59
7	Question by SENATOR AANESTAD re:	
8	Receiver/prison healthcare	
9	system	59
10	STATEMENT BY SENATOR STEINBERG	65
11	STATEMENT BY SENATOR OROPEZA	65
12		
13	<u>Witnesses in Support of SCOTT M. KERNAN:</u>	
14	CHRIS BROWN, Association of Black	
15	Correctional Workers	61
16	CHRIS GOLD, California Correctional	
17	Supervisors Organization	61
18	DAVID SKAGGS, Associated Chaplains in	
19	California State Service	62
20	MATT GRAY, Victims Foundation	63
21	DAVID WARREN, Taxpayers for Improving	
22	Public Safety	64
23		
24	---	
25	Subject To Confirmation But Not Required	
	To Appear:	
	STEPHEN E. JENSEN, Member, State Building	
	Standards Commission	68

1	RICHARD J. SAWHILL, III, Member, State Building Standards Commission	68
2		
3	REX S. HIME, Member, California Exposition and State Fair Board of Directors	68
4	RUBEN A. SMITH, Member, California Housing Finance Agency Board of Directors	68
5		
6	ERIC K. KAWAMURA, Member, California Housing Partnership Corporation Board of Directors .	68
7	JOHN ZEBROWSKI, Member, California Law Revision Commission	68
8		
9	C.C. YIN, Member, California State Lottery Commission	68
10	JORGE F. CARREON, M.D., Member, Medical Board of California	68
11		
12	SHARON L. LEVINE, M.D., Member, Medical Board of California	68
13	KNUTE M. MILLER, Member, Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun	68
14		
15	ERIC S. OSEN, Member, Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun	68
16		
17	DAVID I. WAINWRIGHT, Member, Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun	68
18		
19	GAEL H. TROUGHTON, Member, Rehabilitation Appeals Board	68
20		
21	HENRY J. FORMAN, Ph.D., Member, San Joaquin Valley Unified Air Pollution Control District Board	68
22		
23	GRANT E. DESTACHE, Member, Water Quality Control Board, San Diego Region	68

--o0o--

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Vote-Only Item Re Confirmation Of:

TAM M. DODUC, Member, State Water Resources Control Board	69
FRANCES S. WEBER, Member, State Water Resources Control Board	69
--o0o--	
Proceedings Adjourned	71
Certificate of Reporter	72
APPENDIX (Written Responses of Appointees) ..	73

1 member of the State Board of Equalization. And I think
2 he is here to be introduced by our colleague,
3 Senator Rod Wright.

4 And, of course, Mr. Horton is a former
5 colleague of many of us, and we welcome you to the Rules
6 Committee.

7 MR. HORTON: Thank you, Mr. Chair.

8 CHAIRMAN STEINBERG: Senator wright.

9 SENATOR WRIGHT: Mr. Chair and Members, it's an
10 honor to be here this afternoon to introduce my friend,
11 Jerome Horton. I too served with Jerome in the
12 Assembly, but Jerome is a graduate of Gardena High
13 School in the 25th Senate District. Jerome served with
14 distinction in the Assembly. But relative to this job,
15 Members, Jerome also served 20 years as a staff person
16 at the Board of Equalization.

17 This will be a historic appointment in that
18 we've never had someone from our community that has been
19 a part of the Board of Equalization. But more
20 importantly, you have someone who is qualified to do the
21 job, having served as both a legislator and having
22 served as a staff person there. I don't want to belabor
23 all the things that I can tell you about Jerome, his
24 business acumen, the support that he has from both
25 business and labor and a number of other groups.

1 I think Jerome will be a fine addition to the
2 board. I look forward to working with him. We
3 certainly have a number of small businesses that will be
4 now recognizing that they have an advocate at the Board
5 of Equalization, and I'm proud to be here to support
6 Jerome's appointment to the Board of Equalization.

7 CHAIRMAN STEINBERG: Thank you very much,
8 Senator Wright, for taking the time to introduce the
9 nominee.

10 Mr. Horton, it's the tradition of the Rules
11 Committee to allow a nominee to introduce any family or
12 special friends, and it looks like you have a lot of
13 special friends, but at least a member of your family,
14 or anybody that you want to introduce, please do so.

15 MR. HORTON: Mr. Chair, as you know, my wife is
16 the City Clerk in the City of Inglewood, and she had a
17 meeting today, so she wasn't able to make it. And my
18 son had to go to school, and my daughter had to go to
19 work. So here I am. Thank you, sir.

20 CHAIRMAN STEINBERG: Great answer. You're off
21 to a good start here.

22 Why don't we begin with an opening statement, a
23 brief opening statement, if you would, and then we have
24 a series of questions for you, and then we're going to
25 want to take the testimony from those in support and

1 those in opposition, and the Committee will deliberate.

2 SENATOR WRIGHT: I'm going to bail out of here.
3 It's nothing personal.

4 CHAIRMAN STEINBERG: Senator Wright, go vote,
5 will you? Especially my bills. Thank you.

6 SENATOR WRIGHT: Wright, aye.

7 MR. HORTON: First of all, Mr. Chairman and
8 Members, let me thank you for an opportunity to present
9 on my confirmation to the Board of Equalization. I,
10 indeed, am extremely humbled and privileged to be here
11 with you. I'm humbled by the support from so many
12 individuals and my colleagues, and folks from all over
13 the nation, actually, have called and offered their
14 support. It is a very humbling experience, and I want
15 to thank you for an opportunity just to be before you in
16 this regard.

17 I also want to thank the governor for taking
18 the affirmative action to appoint me to the Board of
19 Equalization. He provides me an opportunity to become
20 the first African-American to ever serve on the Board of
21 Equalization in its 120-year history. But more
22 importantly, he provides me an opportunity to be the
23 first individual to take this post with over 21 years of
24 experience at the Board of Equalization where I served
25 as an auditor, an inspector, supervisor, district

1 reviewer, district counsel for the board member in the
2 4th District, as well as business liaison. So I'm
3 extremely appreciative of his appointment and this
4 opportunity to be here before you.

5 Like many of you, I've spent over 33 years of
6 my life trying to improve the quality of life here in
7 California. I commit to you that I will do the same
8 type of work at the Board of Equalization. I also want
9 to offer to you that I will use all the fiber of my
10 knowledge and experience to help, to work with you and
11 to seek your guidance in improving the economic status
12 in the state of California to such a point that we can
13 begin again to provide quality education and take care
14 of every resident in the state of California. With your
15 guidance and support, I will enforce the law as it is
16 written.

17 I believe that we have an opportunity, Members,
18 based on an internal revenue study that says there's
19 25 to \$45 billion in uncollected taxes due to the
20 underground economy. I will use my investigative skills
21 and my background of 21 years at the Board of
22 Equalization and ten years in public policy to begin to
23 address that to bring those funds back into the coffers
24 of the State of California. I'll need your help in
25 order to be able to do that, Members. There's also a

1 report that there's about \$13 billion in uncollected
2 debt. I want to focus on that as well. For this, I'll
3 need your help.

4 So not only today do I come to ask for your
5 support of the confirmation, I also come to begin the
6 process of addressing some serious issues. I would ask
7 for a full complement for 100 to 250 investigators and
8 compliance individuals so we can begin to collect that
9 \$48 billion, begin to address the \$13 billion
10 outstanding debt that exists in the tax agency. We
11 would also seek to focus on bringing the use-tax
12 compliance into compliance in the state of California.

13 There's issues of nexus, commerce, and so
14 forth, but I believe with a little cooperative
15 willingness to work in a collective environment, that we
16 can address those issues in a way that is not punitive,
17 not aggressive, unduly aggressive, but also seeks to
18 bring the funds back into the coffers of the State of
19 California. Members, I'd also like to have your support
20 in bringing -- enhancing the subpoena authority of the
21 Board of Equalization. We'll need that to address many
22 of these problems, in addition to the additional staff.

23 I'm encouraged and I will seek to encourage the
24 staff at the Board of Equalization to modify the
25 culture, Members, to begin to solve problems at the

1 lowest level possible so that many of these issues do
2 not necessarily matriculate up to the Board of
3 Equalization, to the board members. I believe that we
4 ought to be able to address these issues early. We
5 ought to be able to work with the California taxpayers.
6 We ought to be able to develop a partnership, Members,
7 that enhances collections for the State of California,
8 that increases the revenue to the State of California,
9 the cash flow, if you will, at the earliest possible
10 point.

11 In order to do that, we've got to have an
12 organization that's willing to work with and extend and
13 create a partnership relationship. With that, we
14 enhance goodwill, we enhance the collection of revenue
15 and reduce the penalties and the fraud that exists in
16 the state of California, and that's healthy for all
17 taxpayers, because we need these funds. These are tough
18 times, Members. Unfortunately, California has not been
19 spared by the crisis that this nation faces. With your
20 support, with your guidance, I intend to use all these
21 skills and all this experience, and your knowledge as
22 well. I intend to tap into that.

23 Mr. Chairman and Members, with that I
24 respectfully close on this.

25 CHAIRMAN STEINBERG: Thank you very much,

1 Mr. Horton.

2 Let us begin with some questions and answers,
3 and I'd like to begin, if that's all right, with a
4 series of some focused questions.

5 In terms of -- We all have that same interest
6 that you expressed, and that is collecting the tax
7 dollar that is due the people of California. And we
8 always focus and specifically want to focus more on the
9 underground economy and how we attack the underground
10 economy.

11 It's true, is it not, that average audits can
12 take between two and three years. Would you support
13 changes for more timely completion of audits, such as a
14 timelier furnishing of records from business? How
15 aggressive would you be in that regard?

16 MR. HORTON: Mr. Chairman, I think there are a
17 couple things that we need to do relative to accelerate
18 the audit process. One, I would like to see an interim
19 audit where with new businesses, we go out early, not --
20 without the intent of assessing a penalty, but with the
21 intent of providing information and educating the
22 taxpayer on how to comply with the law. Oftentimes,
23 these mistakes are made totally unintentionally. I
24 would bring to mind to the Members of this body that
25 95 to 80 percent of the taxes in the state of California

1 are self-reported. What we're talking about
2 adjudicating is 2 to 5 percent. So accelerating the
3 audit oftentimes is not always the taxpayer's fault,
4 necessarily.

5 So specifically to answer your question, I
6 believe there are a number of things we can do to
7 accelerate it. I would be aggressively -- aggressive in
8 accelerating those audits to ensure that they are
9 completed in a timely manner, but also to ensure that
10 they're completed in accordance with the law and that
11 the rights of the taxpayers are protected as well.

12 CHAIRMAN STEINBERG: In the matter of the
13 Franchise Tax Board appealing cases decided by the BOE
14 to the Superior Court, do you believe that as a
15 legislature we ought to look at giving the Superior
16 Court jurisdiction -- regional jurisdiction over more
17 complex cases, or do you believe that the board -- the
18 board's jurisdiction is appropriately established here
19 to hear any and all kinds of cases?

20 The reason is one of -- call it judicial
21 economy. If complex cases are ending up in the Superior
22 Court anyway, should we consider having them start there
23 and thus avoid -- thus avoid the expense and cost and
24 time of an administrative agency making the initial
25 determination?

1 MR. HORTON: Well, Mr. Chair, much like the
2 legislature, the founding fathers saw the essence of
3 having represented form of government intervene in tax
4 matters, and the assessment, adjudication and
5 legislation of tax matters. I believe in that. I
6 believe that the public ought to have a voice in the
7 process and that their voice exists to the represented
8 form of government.

9 However, and relative to the cases that have
10 most recently gone to the Superior Court, to some extent
11 that's been because the Board of Equalization has been
12 simply wrong in their assessment. So I think there
13 needs to be some work in that area to make sure that
14 when we are adjudicating matters, we are carefully
15 reviewing the law to make sure we're right, to make sure
16 that we're actually interpreting the law and that we're
17 doing what the legislature has directed us to do by
18 virtue of their legislation and not creating legislation
19 ourselves. I don't believe this body should be in the
20 place of creating legislation indirectly or directly. I
21 believe our responsibility is basically to enforce law.

22 But I would defer to the wisdom of this
23 legislature in their adjudication and evaluation of the
24 more extremely complicated items and work with you to
25 try to identify those. But I would say this

1 organization has been in existence for 120 years, and
2 it's been working prior to some of the political
3 interventions.

4 CHAIRMAN STEINBERG: What was the last comment?
5 Prior to what?

6 MR. HORTON: It's been working, and it may need
7 some additional intervention.

8 CHAIRMAN STEINBERG: Okay. I'll leave it at
9 that. A couple more questions, and then I'll turn it
10 over to my colleagues.

11 For years there have been proposals to
12 consolidate the Franchise Tax Board and the Board of
13 Equalization under what's been called a Department of
14 Revenue headed by a gubernatorial appointee, a cabinet
15 secretary. I want to get your assessment of the
16 strengths and weaknesses of such a consolidation
17 proposal.

18 MR. HORTON: Mr. Chair, we -- as you know, I
19 introduced legislation to study this, and we took a good
20 look at it, and it was somewhat cost prohibitive. In
21 order to consolidate these two organizations, we found
22 that they actually have two different institutional
23 systemic systems that had to be meshed together, if you
24 will, from the computer as well as the training and so
25 forth.

1 The other problem that we saw is the auditors
2 that audit for sales tax and those who audit for income
3 tax, even though their skill base is basically the same,
4 their training, they need additional training in order
5 to cross-work in that particular area.

6 So I believe, again, that the legislature
7 should study this, and I think that there are some areas
8 relative to the underground economy where we should have
9 consolidation, where we should be working together, at a
10 minimum, in the collection area. Each of these agencies
11 seek to collect their own liabilities. I believe there
12 should be some consolidation. They should work
13 together. That may be a means of accelerating the
14 collection of the \$13 billion.

15 On the investigation end, when it comes
16 relative to investigation and fraud -- well, fraud is
17 fraud. Intent to evade is the intent to evade.
18 Enforcing -- Aggressively enforcing the law is what most
19 individuals who are trained and have the professional
20 skills to do that, they can do it irrespective of
21 whether they're EDD, or whether they're Board of
22 Equalization or Franchise Tax Board.

23 So there are areas that we can consolidate and
24 be more efficient; but consolidating the entire agency,
25 I think we have to look at the constitutionality of

1 being able to do that and the will of this prestigious
2 body.

3 CHAIRMAN STEINBERG: The will of this body.
4 Okay.

5 One more series of questions, and then I will
6 turn it over. You stated your goal is to eradicate the
7 Tax Code of all biases towards race, religion, and
8 sexual orientation. In what ways would you specifically
9 work towards that goal?

10 MR. HORTON: Members, as you know, the rule
11 462.042, I'm very supportive of that.

12 CHAIRMAN STEINBERG: What is that?

13 MR. HORTON: What that does is it provides that
14 individuals -- same-sex-marriage individuals have an
15 opportunity to arrange their finances in a way that if
16 one member happens to die, that the benefits transfer
17 over to the other member. I believe in that.

18 CHAIRMAN STEINBERG: That's 462.040, if my
19 memory serves me correctly.

20 MR. HORTON: I think that's what I said, sir,
21 but I stand corrected if I didn't. I believe that ought
22 to apply. I believe it ought to apply to -- in other
23 areas as well.

24 I also believe that we need to have parity at
25 the Board of Equalization from the entry level all the

1 way up to the top from an employment perspective. We
2 will certainly seek to outreach and work in that area as
3 well.

4 CHAIRMAN STEINBERG: There are -- Go ahead.
5 Finish. Finish. Sorry.

6 MR. HORTON: There are some complexities in the
7 law. I recognized those in 1996, '97, '98, authored the
8 Taxpayer's Bill of Rights and sought to create under
9 Matt Fong, at the time who was a board member for the
10 State Board of Equalization in L.A., to create an
11 outreach program that reached out to every constituency
12 regardless of their race, sexual orientation. The goal
13 was to make sure that everyone had the best knowledge to
14 comply with California state law and to avoid penalties
15 and the unnecessary rigorous process of the appeals
16 process.

17 CHAIRMAN STEINBERG: Let me ask you a couple
18 more questions on the same line. You answered the
19 question about 462.040, the joint tenancy issue as it
20 applies to same-sex partners. It's also true that the
21 federal Defense of Marriage Act precludes the IRS from
22 treating married same-sex couples and registered
23 domestic partners as spouses for federal income tax
24 purposes, and this often results in increased tax
25 liability for same-sex families and complicated

1 tax-filing procedures.

2 Would you support the repeal of DOMA, the
3 federal Defense of Marriage Act, that would eliminate
4 this situation that I just described?

5 MR. HORTON: Mr. Chair, as you know, DOMA is
6 not a matter that's generally considered by the Board of
7 Equalization. I would say that I support comity, and I
8 believe that's important. For example, I think it's
9 important for a driver's license to be recognized in
10 Nevada as well as California, and I think that's the
11 essence of the question.

12 I also believe that states should have certain
13 prerogatives to -- and support their right to make
14 decisions, and that the federal government should not be
15 overseeing that state by state.

16 CHAIRMAN STEINBERG: So --

17 MR. HORTON: If I may. If I may, Mr. Chair.

18 Relative to DOMA, although I'm -- I've got a
19 pretty good handle on the law itself as it relates to
20 taxes, the rest of it I'm a little vague, and I have to
21 admit to that. But it is my understanding that the
22 Democratic legislature and the President has taken that
23 under consideration at this time, and they have not yet
24 to repeal it. Quite honestly, Members, Mr. Chair, I
25 would hesitate to criticize our President relative to

1 this issue, or take a position, without learning more
2 about it. At this time, I'm not really equipped to --
3 not from a knowledge-based perspective -- to be able to
4 say one way or the other.

5 Fundamentally, I believe in comity, I believe
6 the states ought to have those rights, and I believe
7 that there are some constitutional questions relative to
8 DOMA.

9 CHAIRMAN STEINBERG: So let's take it one step
10 farther. If you, after your study, believed that DOMA
11 was, in fact, an infringement on the State's right to
12 determine the laws around marriage, would you support
13 the repeal of DOMA, if your study determined that?

14 MR. HORTON: If I studied those and I thought
15 it was unconstitutional and it impeached the rights of a
16 state, yes.

17 CHAIRMAN STEINBERG: Okay. One more.

18 Due to conflicting income tax treatment at the
19 state and federal level, same-sex couples often confront
20 complicated tax issues in filing their yearly returns.
21 As the BOE member representing major portions of
22 Los Angeles County with some of the highest
23 concentrations of same-sex households in the state, what
24 would you do to provide resources and education to your
25 constituents, especially your LGBT constituents, during

1 tax season?

2 MR. HORTON: Well, Mr. Chair, I don't believe
3 that -- that there is a distinction --

4 Well, first let me say I believe that every
5 constituency in the state of California deserves to have
6 access to all of the information available to the Board
7 of Equalization. They ought to be able to use those
8 resources, and we should make them available to them.

9 The reason I passed -- I worked on and helped
10 draft the Taxpayers Bill of Rights to the Board of
11 Equalization, outreach at the Board of Equalization, was
12 because of that fundamental philosophy that education
13 improves compliance with the law. Education minimizes
14 fraud, it minimizes penalties, it minimizes the
15 unnecessary appeals process that is very costly to the
16 state of California.

17 The lesbian and gay community, I will continue
18 to reach out to them, as I have always done, continue to
19 work with them, as I've always done, and continue to
20 provide them with the resources that the Board of
21 Equalization has, but not only that, but with the
22 personal resources that I have as well.

23 It's a very complex issue in their case. You
24 have a group that is treated one way under California
25 law, and as a result of Proposition 8, that is a group

1 that has changed, and that has an impact on the law as
2 well. So all of these things -- Then you have DOMA, as
3 you mentioned. Depending on the outcome of that, it can
4 have a serious impact. And we want to work with this
5 community to make sure that they have these resources to
6 have the knowledge and that they're comfortable enough
7 to come to the Board of Equalization and work with the
8 members and the staff at the Board of Equalization.

9 It is not only one member, as you know,
10 Mr. Pro Tem. It is your ability to change the culture
11 of an organization that enhances the overall efficiency
12 and responsiveness of that organization, and I intend to
13 work in that direction.

14 CHAIRMAN STEINBERG: Thank you. Let me turn it
15 over to other Members for questions, to Senators Dutton
16 and Aanestad at this point. Senator Oropeza?

17 SENATOR OROPEZA: Thank you.

18 Welcome, Mr. Horton. It's great to see you
19 again.

20 MR. HORTON: How are you doing, Senator?

21 SENATOR OROPEZA: I just have sort of an
22 overarching question that relates to the entirety of
23 your experience, but specifically your BOE experience.

24 You know, my -- Because I don't know the ins
25 and outs of the BOE, I know more of the outs than the

1 ins; but nonetheless, I wonder if you could share with
2 us how you view the benefits and perhaps the downsides,
3 if there are any, to the fact that you have these years
4 of experience as a staff member and now moving into a
5 governance role in the institution. Can you share with
6 us how you view that?

7 MR. HORTON: Madam Senator, I think there are
8 those who would believe that with 21 years of experience
9 at the Board of Equalization, every level from the audit
10 level to the highest level, that I bring not only the
11 credentials but also the credibility.

12 I've worked with the staff members there. I've
13 been intimately engaged in the struggles at the staff
14 levels, at the audit level, which is perceived to be the
15 lowest level, and those at the highest level. I've
16 taken on issues of discrimination; I've taken on issues
17 of equal rights for employees, and so forth. I've taken
18 on other issues on behalf of those employees.

19 So of the enormous amount of employees at the
20 Board of Equalization, I am proud to say that the
21 majority of them I count as friends and have a deep
22 relationship with them. I think that relationship will
23 give me a little bit of edge, a little bit of insight
24 into the issues that we face, and the credibility to
25 begin to alter the culture of the organization, or to

1 enhance it, depending on the legislative authority
2 provided by this body.

3 SENATOR OROPEZA: Okay. In addition to that, I
4 want to say that I appreciate the time we spent. We
5 spent some good quality time together talking, meeting
6 earlier last week -- the weeks blend together -- and in
7 those conversations I expressed to you my deep hope
8 that -- that as you serve in this position, which I
9 believe you will be at least sent forward by this body,
10 I think, that you are -- you are -- I'll pick my words
11 carefully here -- cognizant of the responsibilities
12 which you have as a person that does indeed represent
13 every person in the state of California, not just one or
14 the other point of view, and you gave me great comfort
15 and assurances about that. I know you as an honorable
16 man, and I trust you, and I'm very happy to support your
17 nomination.

18 MR. HORTON: Thank you. Thank you, Senator.

19 CHAIRMAN STEINBERG: Senator Cedillo, did you
20 have any questions?

21 SENATOR CEDILLO: No. I'm just pleased to see
22 the candidate here with us today.

23 Let me say as the chair of the Latino Caucus,
24 we had a meeting this morning. We didn't have quorum,
25 although we were very close, but what we did have is

1 consensus for those who were there early in the morning
2 in support of your record here.

3 Many people acknowledge your leadership and how
4 you reflect your district while you were a legislator.
5 I personally know of your rich history prior to coming
6 to the legislature and the work you've done for working
7 men and women in every circumstance that you've been.

8 So we are happy to have the candidate before
9 us, and this is one that we applaud the governor for his
10 thoughtfulness. And your qualifications speak for
11 themselves, and they are abundant for this job, and so I
12 move the nomination.

13 CHAIRMAN STEINBERG: The nomination has been
14 moved, but of course we want to hear from members of the
15 public before we take a vote. So would those witnesses
16 in support of the nominee come up.

17 Now I'm going to ask since there are a lot of
18 people, and I think that in and of itself is a strong
19 showing, but I'm going to ask the witnesses to be brief,
20 all right, and to state who you are, your organization,
21 support, maybe a very brief reason why.

22 MS. TREAT: Mr. Chairman, Members of the
23 Committee, Paula Treat on behalf of the Pechanga Band of
24 Luiseno Mission Indians. We care very much that
25 Mr. Horton has a background at BOE. A lot of groups,

1 including tribes, have been generally misunderstood on
2 how they actually work, and I think that his background
3 in both working with tribes in the past, sometimes good,
4 sometimes bad, and his knowledge of the BOE, will be an
5 asset to everybody.

6 CHAIRMAN STEINBERG: Thank you very much.

7 MS. WEI: Thank you, Mr. Chair and Members.
8 Angie Wei on behalf of the California Labor Federation.
9 Our board voted earlier this month to support Mr. Horton
10 to this important position. We think he'll be a keen
11 overseer of the taxpayers' dollars, and that he will
12 have a strong and forceful hand to crack down on the
13 underground economy. For these reasons, we support him.

14 CHAIRMAN STEINBERG: Thank you, Ms. Wei.

15 MR. KING: Mr. Chairman, Members of the
16 Committee, I appear on behalf of ACSS, the Association
17 of California State Supervisors. We represent
18 management employees who work for the state. Those are
19 the managers, supervisors --

20 CHAIRMAN STEINBERG: Can you repeat your name
21 again just for the record.

22 MR. KING: My name is Olin King, O-l-i-n, last
23 name is King, and I appear on behalf of ACSS,
24 Association of California State Supervisors. We
25 represent the management team for the state. We

1 represent managers, supervisors, and confidential
2 employees, and we are an affiliate of the California
3 State Employees Association.

4 I am very pleased to appear here today before
5 you to urge that you support this nomination for the
6 Board of Equalization. I know that never before has
7 someone been so uniquely qualified for this position as
8 Jerome Horton.

9 As you heard earlier, Jerome has been working
10 for the BOE before in different capacities, and he has
11 also been very active in other kinds of agencies and
12 bodies. He's a member of the Workforce Enforcement
13 Board -- Workforce Investment Board, which is a part of
14 the Workforce Investment Act that was passed in 1996 by
15 the federal government. So he's very multitalented,
16 multifaceted. He has demonstrated his fidelity to the
17 rule of law, and I am sure that he will bring great
18 transparency and fairness to the process. I
19 respectfully urge your support of his nomination. Thank
20 you.

21 CHAIRMAN STEINBERG: Thank you very much,
22 Mr. King. We really appreciate it.

23 MR. RUFFINO: Good afternoon, Mr. Chair. My
24 name is Frank Ruffino, and I'm also here representing
25 the Association of California State Supervisors.

1 As we said, we urge you to confirm the
2 appointment of former Assemblymember Jerome Horton to
3 the Board of Equalization. Mr. Horton is uniquely
4 qualified through both his employment experience and his
5 political career to serve on the BOE. He worked for the
6 board for 21 years as a supervisor and business tax
7 advisor. He also served for six years in the
8 legislature, nearly four years on the Inglewood City
9 Council, and as a member of the California Workforce
10 Investment Board and the Culture Endowment Board. He is
11 now the president of Horton & Associates and serves on
12 the board of two nonprofit organizations, Great
13 Beginning for Black Babies and United Job Creation
14 Coalition.

15 As a legislator, Mr. Horton created the BOE
16 tobacco tax evasion unit to control the illegal
17 smuggling of tobacco products. This unit has recaptured
18 more than 700 million in taxes and significantly reduced
19 the illegal sales of cigarettes.

20 He also established State Employees
21 Appreciation Month to educate California citizens about
22 the important role state employees play in our everyday
23 lives.

24 CHAIRMAN STEINBERG: Why is State Employees
25 Appreciation Month only one month?

1 MR. RUFFINO: It should be throughout the year,
2 Mr. Chair.

3 MR. HORTON: Do I hear a bill?

4 MR. RUFFINO: So Mr. Horton has the skills
5 necessary to bring fairness and efficiency to the
6 California tax policy, and he's well known as an
7 advocate for programs to help California taxpayers.

8 CHAIRMAN STEINBERG: Thank you, Mr. Ruffino.
9 Appreciate it very much.

10 MR. RUFFINO: Thank you, sir.

11 CHAIRMAN STEINBERG: Appreciate it.

12 MS. BROWN: My name is Cheryl Brown, and I
13 publish, with my husband, *The Black Voice*.

14 The California Black Media supports the
15 appointment of Jerome Horton not only because of his
16 impeccable credentials, but because once out of the
17 budget process, he gave us access to how it works. He
18 facilitated several meetings for us to learn about the
19 budget and how to become more engaged not just as media,
20 but as business owners who do business throughout the
21 state through advertising. We advertise important
22 programs that are available to our community, as well as
23 our service community through the state agencies. And
24 he taught us as small businesses the rights and
25 responsibilities of our tax structure.

1 We've been able to use that information to
2 better engage our communities with various state
3 agencies. We confidently support his appointment to the
4 Board of Equalization, and we know that he will do a
5 great job for all Californians. We thank you so much.

6 CHAIRMAN STEINBERG: Thank you for coming to
7 testify. We appreciate it.

8 MR. HANSEN: Mr. Chair and Members, Jay Hansen
9 of the State Building Construction Trades Council. I
10 stand here in strong support of Jerome Horton for this
11 position. We've worked with him for many years, look
12 forward to working with him again, particularly as we
13 work to figure out a way to add more investigators to go
14 after the underground economy. We think there's an
15 ability to do that, and we have every confidence that
16 his skills are going to serve the State of California
17 well. Thank you.

18 CHAIRMAN STEINBERG: Thank you.

19 MS. BOUMA: Mr. Chair and Members, Christy
20 Bouma representing the California Professional
21 Firefighters, long-time friends, early and frequent
22 supporters of Mr. Horton. We appreciate the experience
23 he brings, and we're pleased to support his
24 confirmation.

25 CHAIRMAN STEINBERG: Thank you very much.

1 MR. QUINTO: Good afternoon Mr. Chair and
2 Members. I'm Joey Quinto, J-o-e-y, Q-u-i-n-t-o. I'm
3 the publisher of *California Journal for Filipino*
4 *Americans*. We support the confirmation of former
5 Assemblymember Jerome Horton to the Board of
6 Equalization, because he is qualified and champions the
7 board. He has championed the causes of Filipino
8 Americans and all Californians.

9 The Filipino American organizations support the
10 confirmation of former Assemblymember Jerome Horton,
11 such as the Mabuhay Alliance, the Philippine
12 Independence Day Foundation, International Society of
13 Young Filipino Americans, the Filipino Accountants,
14 urged to involve Filipino Americans, the Philippine
15 American Bar Association, the California Journal for
16 Filipino Americans.

17 His commitment to civil rights and inclusion
18 practices will make him successful representative of the
19 diverse communities of California. Millions of Filipino
20 Americans and Californians will appreciate your yes vote
21 to the confirmation of Jerome Horton to the Board of
22 Equalization. Thank you very much.

23 CHAIRMAN STEINBERG: Thank you very much. We
24 appreciate it.

25 Mr. Ernst.

1 MR. ERNST: Good afternoon, Mr. President Pro
2 Tem and Members of the Committee. My name is Don Ernst.
3 I'm the immediate past president of Consumer Attorneys
4 of California, and I come here to strongly urge the
5 confirmation of Jerome Horton. He has a history in the
6 Assembly of understanding consumers and a sense of
7 justice. He has a history and experience that I think
8 this state needs that will provide balance,
9 transparency, understanding, and, most importantly,
10 heart that I think that the people of the state of
11 California need. The Consumer Attorneys of California
12 strongly support Jerome Horton.

13 CHAIRMAN STEINBERG: Thank you very much.
14 Mr. Noteware.

15 MR. NOTEWARE: Good afternoon, Mr Chair and
16 Members. My name is Fred Noteware. I represent the
17 Silicon Valley Leadership Group. We are here to support
18 Mr. Horton's confirmation for a variety of reasons
19 already mentioned, but I think fairness and equity are
20 the principal reasons.

21 CHAIRMAN STEINBERG: Thank you, Mr. Noteware.
22 Ms. Huffman.

23 MS. HUFFMAN: Thank you, Mr. Chairman and
24 Members. I take great pleasure --

25 CHAIRMAN STEINBERG: Name.

1 MS. HUFFMAN: Alice Huffman.

2 CHAIRMAN STEINBERG: Even though we all know
3 you. Even though we all know you.

4 MS. HUFFMAN: Alice Huffman, state president of
5 the California NAACP, and I take great pleasure being
6 here this afternoon. It is not often that a candidate
7 comes along that's really, really qualified. And when
8 Mr. Horton came to us, I think we were probably one of
9 the first organizations he talked to. We were very
10 enthusiastic.

11 We formed a coalition with the California Black
12 Chamber, with *The California Observer*, representing the
13 black media, and with the Urban League, and asked for a
14 meeting with the governor, and low and behold the
15 governor responded by appointing Mr. Horton. So we
16 take, you know, some credit for that.

17 CHAIRMAN STEINBERG: Sometimes the process
18 works.

19 MS. HUFFMAN: Who knows what gets in the
20 governor's head. But, anyway, he did it. And we are
21 absolutely thrilled to have an opportunity after so many
22 years not having an African-American on the Board of
23 Equalization to have one that is truly qualified and one
24 that the entire African-American community is backing.
25 And we do not believe that when he gets there that he's

1 going to represent us only, because California is too
2 diverse for that, and we believe wholeheartedly he will
3 represent all the people.

4 And you know the NAACP is a very strong
5 advocate for the gay and lesbian community, and we would
6 not back a candidate that we did not think would be fair
7 to that community, and we will also be holding his feet
8 to the fire for the gay and lesbian community. So you
9 don't have to worry, Mr. Chairman. You've got a lot of
10 people that will have his back for you.

11 So thank you very much, and we ask you to
12 confirm him.

13 CHAIRMAN STEINBERG: Thank you.

14 MR. GLADFELTY: Mr. Chair and Members, Paul
15 Gladfelty representing the California Hispanic Chambers
16 of Commerce, and we strongly support Mr. Horton's
17 appointment.

18 In the interest of time -- I know that it's a
19 busy schedule -- there are many, many wonderful things
20 that you could say about Mr. Horton, and they're all
21 true. So he's qualified, honest, thoughtful, and will
22 make an excellent Board of Equalization member.

23 CHAIRMAN STEINBERG: Thank you very much,
24 Mr. Gladfelty.

25 MS. CANNICK: Good afternoon. My name is

1 Jasmyne Cannick, and I am here in support of Jerome
2 Horton.

3 I first met Mr. Horton when I served as the
4 press secretary for Assemblymember Mervyn Dymally and
5 the Legislative Black Caucus. Outside of those duties,
6 I'm also one of the cofounders of the National Black
7 Justice Coalition, which is the nation's
8 African-American gay and lesbian Civil Rights
9 organization. Although I'm no longer on the board, I'm
10 still very active in the community down in Southern
11 California on the LGBT issues.

12 And I would just like echo everything that was
13 so eloquently stated by Alice Huffman and to also say
14 that the LGBT community does include African-Americans,
15 and we will be also holding his feet to the fire and
16 also making sure that he doesn't represent just
17 African-Americans, but the entire diverse constituency
18 of California.

19 And I just wanted to reiterate that there is
20 support for this nominee within the LGBT community. I
21 am one of those persons. There are many in Southern
22 California and throughout the state that support
23 Mr. Horton, and I encourage you and ask you to support
24 his nomination. Thank you.

25 MR. ELLISON: Thank you, Mr. Chairman and

1 Members. Brooks Ellison on behalf of CASE, California
2 Attorneys, Administrative Law Judges and Hearing
3 Officers in State Employment in strong support.
4 Experience and commitment make a big difference, and we
5 would echo a lot of what the previous people said.
6 Thank you.

7 MS. MARSHALL: Good afternoon, Mr. Chair and
8 Members of the Committee. My name is Phyllis Marshall
9 on behalf of the California Black Chamber of Commerce
10 and the California Association of Black Lawyers. We
11 strongly support Assemblymember Jerome Horton to the
12 Board of Equalization.

13 I would like to reiterate a comment that was
14 made by Senator Oropeza. I've had the pleasure of
15 working with Assemblyman Horton over the years, and
16 indeed he is a man of honor, and he will serve well in
17 this position. Thank you.

18 MR. ALLEN: I know the Chair has left.
19 Members, I'm Bruce Allen representing the California
20 Society of Certified Public Accountants. We're a
21 32,000-member organization in California. And not to
22 repeat everything that was said, we believe that
23 Jerome will make an excellent appointment to the
24 Board of Equalization. He's got the experience, and we
25 believe our members can see him supporting them and the

1 taxpayers of the state, so we urge you to confirm his
2 nomination. Thank you very much.

3 SENATOR AANESTAD: Next.

4 MR. MEJIA: Members, Jose Mejia, California
5 State Council of Laborers, proudly being here in support
6 of Jerome Horton. He will be -- As said earlier several
7 times, he will be a major asset to be able to combat the
8 issues that we face every day in light of the underlying
9 economy. For these reasons and many, many others, and
10 to respect the Chair's request to be brief on this, I
11 respectfully request that you consider his nomination to
12 BOE. Thank you.

13 SENATOR AANESTAD: Sir.

14 MR. FINNEGAN: Members, my name is Patrick
15 Finnegan. I'm a certified public accountant. I had the
16 pleasure of working with Jerome Horton for 20 years at
17 the Board of Equalization. During those 20 years, I
18 also spent 15 years as labor steward for SEIU 1000.

19 One other thing that Jerome did not mention is
20 that he was an instructor of tax law during his career
21 at the Board of Equalization. He instructed the
22 majority of our senior staff on tax law, statistical
23 sampling, and the operations of the tax laws and
24 regulations. As such, we definitely support
25 Jerome Horton for the Board of Equalization. Thank you.

1 SENATOR AANESTAD: Ma'am.

2 MS. ADAIMY: Yes. Hello. Good afternoon,
3 Mr. Chairman and Honorable Members of the Committee. My
4 name is Ani Bedrosian Adaimy, and I am the president of
5 the Armenian American Chamber of Commerce. I am here
6 today on my own behalf and the behalf of the Armenian
7 members, Chamber officers and board members, who signed
8 a letter in enthusiastic support of the confirmation of
9 the Honorable Jerome Horton to the California State
10 Board of Equalization.

11 On this historic day, the Armenian community is
12 proud of our good friend, Jerome Horton, as he has been
13 with us throughout the years on the many and varied
14 issues that are important to our community. We look
15 forward to seeing Mr. Horton build on the great work he
16 has done while on the board staff as an Inglewood City
17 Councilman and a legislator. He is uniquely qualified
18 for this important position, and the historic nature of
19 his confirmation is of great confidence to all of us
20 Americans. Based on the foregoing, we wholeheartedly
21 urge Jerome Horton's speedy confirmation to the board.
22 Thank you.

23 CHAIRMAN STEINBERG: Thank you very much.

24 MR. DAVENPORT: Mr. Chairman, Allen Davenport
25 with the Service Employees International Union. You've

1 heard Jerome's career in state government which preceded
2 him into this job. I'm here to say that during the six
3 years in the Assembly, and I was a lobbyist representing
4 SEIU, I had occasion to have many extensive
5 conversations with Jerome Horton. He's a listener as
6 well as a talker. He takes everything into
7 consideration, and I'm genuinely pleased with the way he
8 thinks about things and how he comes to reach his
9 decision. He takes everything into consideration.

10 Our janitors support him, our security officers
11 support him. He's good for our organizing campaigns,
12 not just because he understands us and our issues, but
13 because he understands management and their issues.
14 He's negotiated -- helped us negotiate agreements and
15 mediate disputes that no one else could do. We're very
16 pleased to endorse him.

17 CHAIRMAN STEINBERG: Very good. Thank you very
18 much, Mr. Davenport.

19 Mr. Lee.

20 MR. LEE: Mr. Chair, I see you picked up the
21 gavel, so I'll be quick.

22 I'm Larry Lee with *The Sacramento Observer*
23 newspaper and representing the West Coast Black
24 Publishers Association and the National Newspaper
25 Publishers Association, and we stand here unified in

1 support of Mr. Horton. We think that a yes vote for him
2 would be a yes vote for decency and fiscal
3 responsibility, so we're proud to support him.

4 CHAIRMAN STEINBERG: The Lee family, a great
5 family of Sacramento.

6 MR. LEE: Thank you very much.

7 MR. WETCH: Mr. Chair and Members, Scott Wetch
8 on behalf of the California State Association of
9 Electrical Workers, the California State Pipe Trades
10 Council, the Western States Council of Sheet Metal
11 Workers, proudly in support of this confirmation.
12 Thank you.

13 CHAIRMAN STEINBERG: Thank you very much,
14 Mr. Wetch.

15 MR. SHEA: Mr. Chairman, Steve Shea serving as
16 acting board member from the 4th District. I want to
17 pledge my support for Mr. Horton and let him know that I
18 stand ready to work with him to ensure a smooth
19 transition with the board hearings coming up in the next
20 couple months.

21 Thank you.

22 CHAIRMAN STEINBERG: Let me just take the
23 opportunity to thank you, Mr. Shea, for stepping in, for
24 your public service, and I hope continued public service
25 with the board. You bring a great deal of expertise to

1 all the work that you do.

2 Steve was on my appropriations staff when I was
3 Chair of Assembly Appropriations Committee and was a
4 fine individual.

5 Thank you.

6 MR. SHEA: Thank you.

7 MS. CACCAMO: Pat Caccamo with the UAW.

8 Everything that's been said --

9 CHAIRMAN STEINBERG: Say it again. Say it
10 again. All right.

11 MS. CACCAMO: He's a great friend, he'd do a
12 wonderful job, and definitely a great support.

13 CHAIRMAN STEINBERG: Thank you very much. Nice
14 to see you.

15 MR. LOMBARD: Mr. Chairman, Edwin Lombard.
16 I'm an advocate for minority small businesses throughout
17 the state of California. Today I'm here representing
18 the Black Business Association and the Black Business
19 Council, and we strongly recommend Jerome Horton for the
20 State Board of Equalization, and we ditto everything
21 that's been said prior to our being here.

22 CHAIRMAN STEINBERG: Thank you very much,
23 Mr. Lombard. Appreciate it.

24 Are there witnesses in opposition to
25 Mr. Horton? No witnesses in opposition. All right.

1 Senator Cedillo.

2 A question from Senator Aanestad.

3 SENATOR AANESTAD: I just wanted to join the
4 crowd. I know about his experience, and I know about
5 who he is, and, you know -- but I've had a chance over
6 the last six years to also see his heart. And this man
7 is not only well-educated and experienced and qualified
8 for the job, he's the kind of person you want to be your
9 next-door neighbor who is going to decide your fate in
10 tax court. I'm happy to second his nomination.

11 MR. HORTON: Thank you very much.

12 CHAIRMAN STEINBERG: Very good. Bipartisan
13 support. Senator Cedillo made the motion. Would you
14 like to --

15 SENATOR CEDILLO: I want to thank you for your
16 questions in vetting this out. There were some
17 positions, and we take those concerns seriously, but we
18 also -- you, through your leadership, addressed them and
19 made sure we brought them forward in the full airing of
20 the hearing.

21 CHAIRMAN STEINBERG: Thank you very much.

22 I'm pleased to support your nomination as well.

23 MR. HORTON: Thank you very much.

24 CHAIRMAN STEINBERG: We talked in my office
25 about this, and some of it came up today. You know,

1 when you take a position of high authority, which you're
2 about to take -- and I agree with everyone. I think
3 you'll do a fine job. You know the area, 21 years. You
4 know the legislative process. Everything ought to be
5 about looking forward, just looking forward and working
6 with every constituency, and I know you will do that.
7 You were a hard-working member of the Assembly, and I
8 know you'll apply equal dedication to being the first
9 African-American member of the State Board of
10 Equalization, and we're proud to support your
11 nomination.

12 MR. HORTON: Thank you, sir. Thank you.

13 CHAIRMAN STEINBERG: Let's call the roll,
14 please.

15 MS. BROWN: Senator Cedillo.

16 SENATOR CEDILLO: Aye.

17 MS. BROWN: Cedillo aye.

18 Dutton.

19 SENATOR DUTTON: Aye.

20 MS. BROWN: Dutton aye.

21 Oropeza.

22 SENATOR OROPEZA: Aye.

23 MS. BROWN: Oropeza aye.

24 Aanestad.

25 SENATOR AANESTAD: Aye.

1 MS. BROWN: Aanestad aye.

2 Steinberg.

3 CHAIRMAN STEINBERG: Aye.

4 MS. BROWN: Steinberg aye.

5 CHAIRMAN STEINBERG: This will go to the floor,
6 Mr. Horton, and we will take up your nomination
7 certainly before Friday, and maybe as early as this --
8 I've got to ask Nettie. Do you think I make these
9 decisions? -- as early as today or tomorrow.

10 MR. HORTON: Thank you, Mr. Chair and Members.

11 CHAIRMAN STEINBERG: Thank you very much.

12 MR. HORTON: Appreciate it.

13 (Applause.)

14 CHAIRMAN STEINBERG: Thank you very much.

15 We have a special announcement to make before
16 we move on to the next nominee before the Committee. We
17 want to bring forward, under the bright and stern lights
18 of this Committee, Jackie Forbes. Is she here?

19 SENATOR OROPEZA: She's coming that way.

20 Nettie went to go get her.

21 (Pause.)

22 CHAIRMAN STEINBERG: We want to summon
23 Jackie Forbes before this Committee here for some very
24 important business.

25 Jackie, the Committee, the Members and the

1 staff in the entire Senate want to thank you for your
2 40 years of service to the Senate.

3 MS. FORBES: Why did you have to say that?

4 CHAIRMAN STEINBERG: Sorry.

5 (Applause.)

6 CHAIRMAN STEINBERG: Jackie is our deputy
7 director of appointments in the Rules Committee. She
8 began in 1969. She's been part of the appointments unit
9 since Senator Roberti created it in 1982, and, you know,
10 the confirmation process, as all of you have been part
11 of, is difficult, challenging, and I hope you all
12 realize the amount of preparation that goes into each of
13 these hearings.

14 SENATOR AANESTAD: Right here.

15 CHAIRMAN STEINBERG: Jackie has participated in
16 literally thousands of confirmations over your tenure,
17 and we can't thank you enough for devoting your -- much
18 of your adult life to helping the people in the state of
19 California. And here is a very small token of our
20 appreciation.

21 (Applause.)

22 CHAIRMAN STEINBERG: We're going to take a
23 brief break, and maybe we can take some pictures here.
24 All right. Brief break.

25 (Recess taken.)

1 CHAIRMAN STEINBERG: The Committee will come
2 back to order, and I would like to ask Scott Kernan, who
3 is the nominee for undersecretary of the California
4 Department of Corrections and Rehabilitation, to come
5 up.

6 Mr. Kernan, welcome to you, sir.

7 MR. KERNAN: Thank you.

8 CHAIRMAN STEINBERG: I'd like to give you the
9 opportunity -- I would like to give -- don't do that.
10 Okay.

11 I would like to give you the opportunity to
12 introduce any member of your family who might be here
13 today.

14 MR. KERNAN: My wife and daughter couldn't be
15 here, but I was fortunate enough to have my sister,
16 Darby Kernan, attend.

17 CHAIRMAN STEINBERG: We know Darby. Welcome.
18 Very good reference. That's good. Okay. All right.
19 We'll move the nomination, then. Way to go.

20 SENATOR OROPEZA: Did you say something that I
21 would be proud of?

22 CHAIRMAN STEINBERG: It was a joke. It was all
23 right.

24 SENATOR OROPEZA: Just checking.

25 CHAIRMAN STEINBERG: Okay. Let me make an

1 opening comment, then I'll ask you to make an opening
2 comment.

3 To say you have a difficult job is an
4 understatement. We know, because we've been intimately
5 involved. You have the job, in part, of implementing a
6 \$1.2 billion budget reduction, and more cuts may be
7 needed depending upon the final budget resolution around
8 the trailer bills. We know -- We all witnessed, it got
9 international attention, the Chino riot and what that
10 says about our overcrowding situation. We know that
11 we're still grappling with the relationship, if you
12 will, between the department and the federal courts.
13 We'd love it to end sooner rather than later, but it has
14 not. And we know that CDCR still does not have a
15 contract, collective bargaining contract, with its
16 largest group of employees.

17 I just want to acknowledge the difficulty of
18 the challenge that you face, to thank you for your
19 public service, and to ask you again if you would make a
20 brief opening statement.

21 MR. KERNAN: Thank you, Mr. Chair and Members.

22 I think you said that -- a significant amount
23 of the challenges we're facing. I bring to you 20 years
24 of dedicated service in a variety of assignments, and
25 probably more than anything, the extraordinary

1 department and its staff. It's been an honor to be in a
2 number of leadership positions with this department.
3 Sixty-seven thousand employees, over 3,000 inmates and
4 parolees, and every day something goes wrong in our
5 prisons (verbatim).

6 I'm proud that the organization is growing, and
7 I feel that under Secretary Tilton and now under
8 Secretary Cate, this department has done more to address
9 problems as they arise head-on.

10 I think that I must also say I similarly hope
11 to be judged how I react to personal errors. I made a
12 personal mistake and was arrested for a DUI several
13 months ago. It was poor judgment, and I have no
14 excuses. I want to thank the administration for
15 believing in me, especially Secretary Cate, and thank
16 you for considering my confirmation. Like our
17 organization, I have learned from the mistake and it
18 won't happen again.

19 Nowhere in history has this department faced
20 such challenges. You mentioned some of them. We need
21 strong, consistent leadership more than ever. If
22 confirmed, I promise to provide that leadership. And
23 I'd be happy to answer any questions.

24 CHAIRMAN STEINBERG: Hold on one second.

25 (Pause.)

1 CHAIRMAN STEINBERG: Okay. Thank you. Thank
2 you very much.

3 I do have a few questions to ask you about some
4 of the challenges that I mentioned in my opening
5 statement. And the first question really is about -- to
6 understand the furlough effect on CDCR and on the
7 budget.

8 Your employees are being allowed to bank their
9 furlough time, correct?

10 MR. KERNAN: In the institutions, yes.

11 CHAIRMAN STEINBERG: Right.

12 And your staff -- Some members of your staff
13 have told the Senate Office of Oversight and Outcome
14 that every banked furlough hour is worth about \$34.90.
15 And as we did the basic math, this means that from
16 February to July alone, 1.35 million furlough hours are
17 being banked by corrections personnel, totaling
18 \$47 million.

19 Are you calculating -- Do you agree, first of
20 all, with the estimate; and, secondly, are you
21 calculating these costs into your budget projections?
22 And what does that mean for us together as we continue
23 to grapple with the difficult economy and our
24 responsibility to balance the budget?

25 MR. KERNAN: Clearly, Senator, it's a long-term

1 liability for the department, the furloughs. The staff
2 are working posted positions. The inmates must be fed.
3 They must be taken to medical. So we cannot grant them
4 the furlough days. In fact, they don't have sufficient
5 time now to take all the leave, so it is definitely a
6 liability into the future.

7 What it does do in today's dollars is it
8 provides savings to this department today. And so,
9 really, it's deferring a liability into the future and
10 giving us dollars today while the economy is in the
11 situation it's in.

12 CHAIRMAN STEINBERG: When is the -- So do you
13 have a projection as to when this liability, the
14 47 million, which will grow, obviously, because we're
15 now into the month of September, when that gets paid off
16 and what we can expect in terms of additional budget
17 problem for, say, 2009-10, 2010-'11, '11-'12, and
18 beyond?

19 MR. KERNAN: My understanding is if in fact the
20 staff that work our prisons are required to take that
21 leave before it expires, two years out, three years out,
22 that's when the debt will come due. If that's permitted
23 to go out over -- through their retirement and they're
24 permitted to take the time, it would be sequentially out
25 over 20, 30 years.

1 CHAIRMAN STEINBERG: Okay. I want to ask you
2 about the Division of Juvenile Justice, which we talked
3 about in my office as well, and this is a continuing
4 theme of my concerns, and I know the Rules Committee
5 concerns, about what we consider to be, frankly, a part
6 of your operation that does not get sufficient
7 attention.

8 And I want to read just briefly from the latest
9 report from court experts on juvenile mental health in
10 the system. They say that "The mental health court
11 experts have identified the implementation of effective
12 treatment program for suicidal and self-harming behavior
13 as one of DJJ's highest priorities." Inexplicable.

14 "Three years after a proposal for implementing
15 treatment for suicidal and self-harming behavior, youth
16 are denied effective treatment. Meanwhile, DJJ's de
17 facto approach is highly destructive, consisting of
18 isolative confinement, physical force, and chemical
19 agents."

20 One more excerpt. "During this round of site
21 visits, the mental health experts have regularly
22 observed the absence of organized rehabilitation and
23 treatment programs. Each mental health professional
24 uses a unique approach which results in idiosyncratic
25 and disjointed treatments."

1 Now, you know that in my public service I've
2 spent a lot of time working on issues relating to mental
3 health and trying to build effective mental health
4 treatment, and I must say this bothers me, and it ought
5 to bother every Californian.

6 And, you know, we intend and I intend to
7 support your nomination today, and so you will move
8 beyond confirmation. And we think you're an excellent
9 correctional administrator and professional, but what
10 are you going to do about this? I mean, this is
11 unacceptable. It's unacceptable.

12 MR. KERNAN: It is unacceptable, and I guess
13 what I would say is that the expert's opinion regarding
14 our shortcomings is something that, as I said in my
15 opening statement, we have to address, embrace, fix.

16 The secretary's made a clear decision that we
17 are going to continue to run DJJ. Great strides have
18 been made in the *Farrell* compliance, and I believe that
19 we're making significant progress even in the mental
20 health areas. But that's not to sound like an
21 apologist. The expert's opinions regarding that work I
22 don't think say the whole story. I think DJJ staff has
23 done some significant progress. There hasn't been a
24 suicide in DJJ for four years.

25 It's a difficult population. It's the most

1 serious population of juveniles. As you know, the less
2 serious are being handled by the county. But that's not
3 to say that we don't have significant progress in this
4 area.

5 CHAIRMAN STEINBERG: Well, here's what we're
6 going to insist on. Over the fall, I'm going to ask the
7 Public Safety Chair, Senator Leno, and our Budget
8 Subcommittee Chair, Senator DeSaulnier, to hold interim
9 hearings on this specific issue and to work with you to
10 establish -- again, we use this so often, especially
11 when it comes to corrections, benchmarks and timetables
12 so that we see these issues addressed in a much more
13 aggressive way. And we will bring you back and back and
14 back again until we can say together that this isn't --
15 that this isn't occurring anymore.

16 MR. KERNAN: I look forward to the opportunity,
17 as I know the secretary does, of telling our story.

18 CHAIRMAN STEINBERG: Thank you. Thank you very
19 much.

20 Questions?

21 SENATOR DUTTON: Oh, sure.

22 CHAIRMAN STEINBERG: Senator Dutton.

23 SENATOR DUTTON: Yeah. I want to thank you for
24 being here today. And maybe you can help shed some
25 light on some things that we're trying to grab on, to

1 get our hands around.

2 I'm taking a look at the operations for
3 corrections and so forth. I'm having a real hard time
4 trying to really get a firm grasp on numbers on
5 expenses. I'm getting a feeling that there's nobody
6 that really knows. Maybe you can help shed some light
7 on what's going on, because obviously the numbers that
8 we're talking about are mind boggling. But I've dealt
9 with this. I've been on the sub floor. I remember when
10 Senator Machado was -- we were working on the reentry
11 facility, the Stockton facility. That four years ago
12 that we actually gave approvals and so forth, and my
13 understanding is we're still not open yet with that
14 facility, and it's run into some roadblocks.

15 Can you kind of explain to me what's going on?

16 MR. KERNAN: All of the progress for AB 900 and
17 the construction, it's been challenged in the courts,
18 and those challenges have just recently been resolved.
19 The funding that's impacted in all of California, and
20 the bond market has been impacted, it hasn't given us
21 the money to go forward with the construction necessary
22 to convert that facility to reentry.

23 SENATOR DUTTON: Now, my understanding is the
24 lawsuit was filed down there, though. Was the CEQA
25 challenged?

1 MR. KERNAN: I believe there's a series of
2 lawsuits, including the whole constitutional issue
3 related to TIPS lawsuit on bonds for the use of
4 construction.

5 SENATOR DUTTON: Okay. And so I understood
6 that there was some environmental issues that it was
7 challenged on.

8 MR. KERNAN: I believe there is some
9 litigation.

10 SENATOR DUTTON: There wasn't a full-blown
11 environmental impact report done or something, and that
12 was filed by the guards, I understand.

13 MR. KERNAN: That's my understanding as well.

14 SENATOR DUTTON: And yet they're the ones that
15 keep telling me, "We're overcrowded too, and we need
16 more facilities."

17 MR. KERNAN: Yes, sir.

18 SENATOR DUTTON: I just want to make sure that
19 I had that right. But that's been four years in the
20 process, right?

21 I think we're also trying to get a handle on --
22 you're talking about early release of low-risk
23 offenders, you know, turning them loose. Now within the
24 prison system, though, your low-risk offenders are the
25 ones that also do a lot of things around the prisons.

1 They work in the kitchens, they do other kinds of yards,
2 because they're low risk and they can be able to help
3 maintain things and actually learn trades in some cases
4 and so forth.

5 Now, if we let them all out, now you're going
6 to have to replace it with something. I don't think
7 you're going to replace them with the high risk. So are
8 we going to contract out, or hire out? Do we have to
9 hire people, and has that been taken a look at as being
10 an option?

11 MR. KERNAN: There's no contemplation of hiring
12 contractors. If anything is true, the department is
13 going to have to adjust to try to address the
14 significant crisis. A \$1.2 billion cut in our
15 operations is going to have a huge impact, literally to
16 the bone in this department. So the only way you can do
17 that safely is to reduce population.

18 So there will be a number of operational
19 challenges that this department will face, you know,
20 face every day to try to address how we're going to
21 maintain our prisons. But I'm confident that the
22 reduction of nonserious, nonviolent, non-sex offenders,
23 and the dollars that go with that, is the only sensible,
24 good public safety quality decision.

25 SENATOR DUTTON: Let me ask you a question.

1 You still have the same amount of facilities to
2 maintain, and that's the same regardless if you've got
3 one inmate or 1,000 inmates. You still have a facility
4 that needs to be maintained.

5 How does -- I don't understand where the cost
6 savings is. Just because you reduce the prison
7 population, I don't see you telling me that -- Are you
8 going to tell me you need less guards?

9 MR. KERNAN: We're going to need less staff.

10 SENATOR DUTTON: Less staff.

11 MR. KERNAN: Truly 70 percent of our budget is
12 in staff salaries. And so as you reduce population,
13 you'd need less staff, less cooks, less maintenance
14 staff.

15 SENATOR DUTTON: Are we fully staffed now?

16 MR. KERNAN: Yes.

17 SENATOR DUTTON: So we don't have a staffing
18 problem. We have plenty guards --

19 MR. KERNAN: They staff at a base level, and as
20 we add inmates, we get additional staff. It's those
21 additional staff, as we get back to a base level, that
22 we will be able to reduce to save money.

23 SENATOR DUTTON: So if you're fully staffed
24 now, that means if we let inmates out, we are going to
25 also lay off guards and other personnel?

1 MR. KERNAN: The firm reality of our
2 environment today with, again, the 1.2 billion reduction
3 is that there's going to be a reduction of staff. We
4 haven't built a prison in a decade and a half. In
5 California, the populations increased. AB 900 hopefully
6 will provide construction into the future, several years
7 into the future, that we would be able to use these
8 staff. But there are going to be some very painful
9 situations as we try to grapple with this huge budget
10 cut.

11 SENATOR DUTTON: Let's talk a little bit about
12 the makeup of our inmate population. I've been trying
13 to get a grasp on exactly what makes up the inmate
14 population, what age brackets, because people keep
15 talking about 80-year-old inmates and things like that,
16 but I can't find that person. Nobody seems to really
17 know.

18 The closest number I came up with is --
19 somebody indicated about 3 percent of the population is
20 60 and older, and I don't remember who gave me that
21 number. I'll get it to you in a minute. But when you
22 take a look at 60 and older, that means you have
23 probably less than 5,000 inmates that are above 60.
24 When you start taking a look at that, I don't know where
25 all these

1 low-risk offenders are coming from, but I'm not so
2 sure -- I'm having a hard time grappling.

3 The other thing -- We also took a look at
4 trying to get some information, so I figured, well,
5 let's take a look at what's in our hospitals or in our
6 medical care, the inmates that are in some type of
7 incapacitation through our medical. I couldn't get that
8 either, but then the thought dawned on me I can get
9 ahold of the receiver, because certainly you're paying
10 him plenty of dollars. He should know who they are.
11 And we've got, like, 28 of those, and that's 28
12 individual bodies. But even under that scenario, the
13 serious offenders are nine, and you've got 19
14 nonserious/nonviolent offenders. We're still a far cry
15 from 27,000.

16 So I'm having a hard time getting a grasp of
17 what that true makeup is. And the only thing I've been
18 able to come up with so far is there was a *Sac Bee*
19 article that kind of broke them down as to what the
20 makeup would be, but I haven't been able to get any kind
21 of analysis on other proposals that I know are out
22 there. Can you maybe shed some light.

23 MR. KERNAN: Senator, I certainly think we can
24 give you the demographics of the population. Certainly,
25 in a population of about 168,000, I'm not sure where the

1 receiver would come up with 19 inmates that are
2 medically infirm. I evaluate compassionate releases on
3 a regular basis for the department, and almost every
4 week a couple come through my desk.

5 There's a lot of inmates sitting in prison beds
6 in hospitals, in our hospital prisons, throughout the
7 system. But I think the infirm and the elderly and the
8 nonserious, nonviolent, non-sex would require us to do a
9 thorough review to make sure that they're meeting that
10 criteria both medically and custodially.

11 SENATOR DUTTON: Well, I'd be more than happy
12 to share with you the information that they furnished
13 us. You can tell me -- That's my problem. I'm having
14 trouble grasping the numbers when the numbers I'm being
15 given --

16 It kind of makes you wonder. We must have a
17 horrendous outpatient situation. Every inmate in the
18 entire system must be going to some doctor someplace at
19 all times in order to reach the kind of dollars that
20 we're currently spending. So that's the reason I'm
21 having a hard time grabbling with that particular
22 number.

23 You're familiar with the audit -- the state
24 audit that was just done with the CDCR?

25 MR. KERNAN: Yes, sir.

1 SENATOR DUTTON: That was released just a
2 couple days ago. It indicates in here that while
3 corrections expenditures have increased by almost
4 32 percent in the last three years, the inmate
5 population has actually decreased by 1 percent during
6 that same period of time. So we've seen a 32 percent
7 increase and a 1 percent decrease. Is that all medical?

8 MR. KERNAN: I -- In my opinion, it is
9 95 percent medical.

10 SENATOR DUTTON: So we have a declining
11 enrollment, more or less, happening in our state prison
12 system just like we do in our education system right
13 now. Is that how it's happening or --

14 MR. KERNAN: We've taken a number of steps to
15 reduce population, both administratively, evaluating
16 parole discharges, and ensuring better participation in
17 education programs where inmates are getting day for
18 day, and that has resulted in a slight decrease of
19 population on the short term.

20 SENATOR DUTTON: Earlier question I had, I was
21 having trouble equating how the releasing of inmates
22 actually would give us a huge dollar savings, given the
23 current situation.

24 Apparently, the state auditor had the same kind
25 of question that came up, because it indicated here out

1 of the report that "Corrections' ability to determine
2 the influence that factors such as overcrowding, vacant
3 positions, escalating overtime costs, and aging inmates
4 have on cost of operations is limited because of a lack
5 of information."

6 So once again, this is a state auditor. It was
7 a lack of information, so why should I have confidence
8 in numbers that you might give me as they equate to
9 trying to achieve that billion-dollar savings?

10 MR. KERNAN: That's a fair question, Senator.
11 I know that the State of California has invested in the
12 infrastructure to provide us the tools at our prisons to
13 do an analysis.

14 We have recently implemented a computer, an
15 IT solution, called BEDS and we have SOMS coming on.
16 That would give us the ability to give more credible
17 information on a regular basis. But the department --
18 The State of California hasn't invested in that
19 infrastructure, so we do have struggles trying to get
20 the analysis and information that leaders in the
21 legislature and elsewhere feel comfortable with.

22 That's not to say it's not without. We provide
23 regular reports to the legislature on our expenditures,
24 and so I think we do have a good tracking of where our
25 money is going. But it is always -- The state auditor

1 would like to get further -- deeper into that analysis.
2 And vacant positions and changing environment out there,
3 especially in the prisons, occurs every day. So it is a
4 difficult thing to grapple with and get our hands around
5 for sure.

6 SENATOR DUTTON: Well, that's what makes it
7 tough for me. I'm kind of a bean counter by trade
8 myself, so when I try to come up with workout plans,
9 things like this, I got to kind of get a grip on the
10 reality, the financial reality, so I can come up with a
11 plan of action to improve things. Otherwise, I'm
12 starting to feel like I'm just spinning my wheels here,
13 so I'm concerned.

14 Overtime was also something that was noted in
15 there. There was almost 28,000 correctional officers
16 paid in fiscal year '07-'08. That's -- More than 8,400
17 of them earned pay in excess of the top pay rate for
18 officers to rank. So if you do the early release, we
19 don't have an overtime problem anymore. Is that what --

20 MR. KERNAN: Certainly, overtime release -- a
21 lot of that overtime is related to medical guarding,
22 vacant positions, and med-evac or sick leave. Steps
23 have been taken to curtail the use of sick leave, and,
24 actually, overtime has been greatly reduced in that
25 particular area. But there's no doubt that the federal

1 receivership and the increased medical emphasis in our
2 prisons has resulted in significant medical guarding and
3 transportation costs that have increased overtime.

4 SENATOR DUTTON: Okay. All righty. Done.

5 CHAIRMAN STEINBERG: Thank you very much,
6 Senator Dutton.

7 More questions? Senator Aanestad.

8 SENATOR AANESTAD: Just one. Is it time to
9 take back ownership of the state prison healthcare
10 system? Has not the receiver done his job, and it's
11 time for him to leave?

12 MR. KERNAN: I think I would respond that the
13 secretary and the receivership -- There's been a renewed
14 relationship. It's been much more cooperative as we
15 have worked through issues.

16 When the prior receiver came in, it was pretty
17 hard-knocks. Perhaps, rightfully so. He came in and
18 dictated to the department and set us back some. This
19 new receiver is working with the secretary very
20 cooperatively to try to address the issue, and I think
21 responsibly.

22 There's certainly some significant debate about
23 how we're going to fix the medical department, medical
24 and dental, for that matter, but I think that the
25 relationship has improved drastically in the last few

1 months.

2 SENATOR AANESTAD: But you didn't answer my
3 question. Is it time to end the relationship and let's
4 take back ownership and our problem?

5 MR. KERNAN: I guess from my operational
6 perspective. We have 21, I believe it is, class action
7 lawsuits that dictate to us every aspect of our
8 business. So from my very humble perspective, we should
9 not have the courts dictating to us how to run our
10 business. So the direct answer to your question is yes.

11 Is everything fixed as it relates to medical
12 and dental services out there? I don't think so at this
13 point. And we're working to hopefully get the receiver
14 out of our business at some time in the near future.

15 SENATOR AANESTAD: Thank you.

16 CHAIRMAN STEINBERG: All right.

17 Witnesses in support of the nominee, please
18 come up.

19 MR. BROWN: Mr. Chair and Members of the
20 Committee, my name is Chris Brown. I'm the legislative
21 liaison for the Association of Black Correctional
22 Workers, and we are in complete support of Mr. Kernan's
23 appointment to the position of undersecretary for the
24 California Department of Corrections and Rehabilitation.

25 MR. GOLD: Good afternoon. Thank you. My name

1 is Chris Gold. I'm a correctional lieutenant here with
2 CCSO, the California Correctional Supervisors
3 Organization. I appreciate the time to come here and
4 speak before you.

5 I did have a speech, but I'll keep it brief.
6 Again, I can't say any more how much we appreciate and
7 need Scott Kernan. His leadership, his ethics, his
8 morale. He has a great ability to lead staff and hold
9 staff accountable.

10 You know, again, on behalf of CCSO and on a
11 personal note, I think Scott is certainly the right
12 person for this job. So thank you. Thank you.

13 SENATOR AANESTAD: Thank you.

14 Next.

15 SENATOR OROPEZA: You can fill the chairs.

16 SENATOR AANESTAD: There's two or three
17 microphones, so come on up and get ready to speak.

18 MR. SKAGGS: My name is Dave Skaggs. I am the
19 president of the Associated Chaplains in California
20 State Service, and we're here to support Mr. Kernan's
21 confirmation.

22 Scott is no stranger to chaplains. In the last
23 three years, he has made himself available to address
24 our members, and he has spoken on a number of
25 departmental issues, fielded an awful lot of difficult

1 questions presented to him, and he has thanked the
2 chaplains on a number of occasions for the difficult
3 service. And he has earned their support and their
4 respect, and they have appreciated his honesty. And
5 many times the information that he has shared with the
6 chaplains, not exactly what we wanted to hear, but we
7 always felt that he spoke to us the truth, and yet he
8 stood beside us and let us know that he was there on our
9 side.

10 I have had occasion to be with a number of
11 diverse groups, including legislators, departmental
12 personnel, union leaders. I've been amazed at the
13 amount of people who have a great deal of respect for
14 Mr. Kernan. He has earned that respect from them.
15 ACCSS would really encourage this Committee to confirm,
16 and we thank you for the opportunity to speak.

17 CHAIRMAN STEINBERG: Thank you very much.

18 MR. GRAY: Thank you, Mr. Chair and Members.
19 Matt Gray on behalf of Victims Foundation. I have had
20 the pleasure of knowing Mr. Kernan since he was about
21 that tall, sitting down, for many years. And, actually,
22 he has always brought a level of candor that is always
23 appreciated and a level of integrity to his profession
24 that is also appreciated. And there are so many good
25 things to say about him more than we have time for

1 today. It would be a tragic mistake not to confirm him.

2 As this body proceeds, perhaps it's not under
3 the purview of -- it is under the purview of what Scott
4 does, but I think it's out of his control at this point.
5 If you consider in these discussions that you are going
6 to lay off correctional officers with less than
7 15 months on the job, those are the lowest-paid
8 correctional officers, which will undoubtedly result in
9 overtime for the other end of the spectrum of
10 correctional officers, those who are paid the most, and
11 it would be very costly. So at least as those
12 discussions proceed, maybe we could have a little bit
13 more thought and consideration of the layoffs of the
14 other correctional officers. But thank you for your
15 support.

16 CHAIRMAN STEINBERG: Thank you.

17 MR. WARREN: My name is David Warren. I'm
18 appearing on behalf of Taxpayers for Improving Public
19 Safety, who Mr. Kernan attacked a few moments ago, but
20 we're very good friends anyway.

21 We're here to strongly support the nomination.
22 Mr. Kernan has demonstrated over and over again his
23 willingness to listen to divergent views. He supports
24 our interest in trying to improve prison conditions for
25 family members of inmates, and it would be a tragic loss

1 if he was not confirmed. Thank you.

2 CHAIRMAN STEINBERG: Thank you, Mr. Warren.

3 Are there any witnesses in opposition?

4 I will take a motion.

5 SENATOR AANESTAD: So moved.

6 CHAIRMAN STEINBERG: So moved by Senator
7 Aanestad.

8 And just -- Mr. Kernan, I'm going to ask you to
9 continue to work hard and continue to focus on program
10 and rehabilitation as well, even though we are cutting
11 program as part of our budget, and the corrections
12 reform package is still sort of up in the air. Make
13 sure that as much as you focus on custody and security
14 and all the things that you must focus on, that you also
15 focus on programming, please.

16 SENATOR OROPEZA: In that vein, I'd like to
17 also make a remark about the women's prisons. And I
18 know -- I'm sure that you're aware that we have had
19 lengthy conversations in this Committee about our
20 concerns about the women's prisons, and looking at
21 alternatives to parole, just traditional parole, the
22 seeking of treatment for women and how great they do in
23 many, many cases when they have the opportunity to have
24 that treatment, et cetera.

25 And so while -- as the Chair said, we are --

1 I'm not telling you to make -- make -- well, make bread
2 out of whatever --

3 CHAIRMAN STEINBERG: Lemonade out of lemons.

4 SENATOR OROPEZA: Lemonade out of lemons.

5 Well, I hope he can do a little lemonade out of lemons.

6 CHAIRMAN STEINBERG: That's right.

7 SENATOR OROPEZA: But I really hope that -- but
8 I know we can't make a lot out of nothing with no money.
9 I hope that as we move along here, you continue to think
10 creatively on how to do as much with the little that we
11 do have, and also keep in touch and have the good strong
12 lines of communication so that there can be some
13 followup. And as we, God willing, have better times, we
14 can infuse the dollars that are necessary with the plans
15 already in place for what to use those dollars on in
16 terms of the women's prisons and women inmates.

17 MR. KERNAN: Yes.

18 SENATOR OROPEZA: Thank you.

19 CHAIRMAN STEINBERG: Thank you very much. We
20 look forward to continuing to work with you on
21 everything that we've talked about. And thank you.

22 Let's call the roll.

23 MS. BROWN: Senator Cedillo.

24 Dutton.

25 SENATOR DUTTON: Aye.

1 MS. BROWN: Dutton aye.
2 Oropeza.
3 SENATOR OROPEZA: Aye.
4 MS. BROWN: Oropeza aye.
5 Aanestad.
6 SENATOR AANESTAD: Aye.
7 MS. BROWN: Aanestad aye.
8 Steinberg.
9 CHAIRMAN STEINBERG: Aye.
10 MS. BROWN: Steinberg aye.
11 CHAIRMAN STEINBERG: We can keep it open for
12 Senator Cedillo, if he can get back, and we're going to
13 wrap up in just a moment.
14 Your nomination will go to the floor.
15 MR. KERNAN: Thank you very much.
16 CHAIRMAN STEINBERG: Thank you.
17 (Applause.)
18 CHAIRMAN STEINBERG: Very good. Let us move
19 through the remainder of the agenda.
20 (Discussion off the record.)
21 CHAIRMAN STEINBERG: Two, 6, 7 --
22 SENATOR DUTTON: Seven, I'm opposed to.
23 CHAIRMAN STEINBERG: Okay. Two, 6, 8, 9, 10,
24 11, 12, 13, 14, 15, 16, 17.
25 MR. SCHMIDT: They're going to hold off on 8

1 and 9.

2 CHAIRMAN STEINBERG: You're holding off on 8
3 and 9. Okay.

4 Two, 6, and 10 through 17.

5 Is there a motion?

6 SENATOR DUTTON: No. Twelve and 13, you need
7 to take them off.

8 CHAIRMAN STEINBERG: Two, 6, 10, 11, 14, 15,
9 16, and 17.

10 SENATOR OROPEZA: I'll move it, whatever you
11 want.

12 CHAIRMAN STEINBERG: Is that all right?

13 SENATOR DUTTON: Um-hmm.

14 CHAIRMAN STEINBERG: Please call the roll.

15 MS. BROWN: Senator Cedillo.

16 Dutton.

17 SENATOR DUTTON: Aye.

18 MS. BROWN: Dutton aye.

19 Oropeza.

20 SENATOR OROPEZA: Aye.

21 MS. BROWN: Oropeza aye.

22 Aanestad.

23 SENATOR AANESTAD: Aye.

24 MS. BROWN: Aanestad aye.

25 Steinberg.

1 CHAIRMAN STEINBERG: Aye.

2 MS. BROWN: Steinberg aye.

3 CHAIRMAN STEINBERG: Can we take the others
4 together?

5 SENATOR DUTTON: Yes.

6 CHAIRMAN STEINBERG: So that would leave --
7 Let's just see if we can --
8 How about 7, 8, 9, 12, and 13. 12 and 13.
9 Is that right?

10 Seven, 8, 9, 12, and 13 moved by Senator
11 Oropeza.

12 SENATOR OROPEZA: Yes, sir. I do move.

13 CHAIRMAN STEINBERG: Okay.

14 MS. BROWN: Senator Cedillo.
15 Dutton.

16 SENATOR DUTTON: No.

17 MS. BROWN: Dutton no.
18 Oropeza.

19 SENATOR OROPEZA: Aye.

20 MS. BROWN: Oropeza aye.
21 Aanestad.

22 SENATOR AANESTAD: No.

23 MS. BROWN: Aanestad no.
24 Steinberg.

25 CHAIRMAN STEINBERG: Aye.

1 MS. BROWN: Steinberg aye.

2 CHAIRMAN STEINBERG: It's on call. We're going
3 to need Senator Cedillo.

4 We have some walk-ons.

5 (Discussion off the record.)

6 MS. BROWN: Appointee Kernan. Current vote is
7 4-0. Senator Cedillo.

8 SENATOR CEDILLO: Aye.

9 MS. BROWN: Cedillo aye. Five-zero. That's
10 out.

11 Reference of bills. Current vote is 4-0.

12 Senator Cedillo.

13 SENATOR CEDILLO: Aye.

14 MS. BROWN: Cedillo aye.

15 Item number 2, 6, 10, 11, 14 and 17. Current
16 vote is 4-0.

17 Cedillo.

18 SENATOR CEDILLO: Aye.

19 MS. BROWN: Cedillo aye.

20 Item 7, 8, 9, 12, 13. Current vote is 2-2.

21 Senator Cedillo.

22 SENATOR CEDILLO: Voting with the Chair.

23 MS. BROWN: Cedillo aye.

24 (Discussion off the record.)

25 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Thereupon, the Senate Rules Committee hearing
adjourned at 3:28 p.m.)

--o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

--o0o--

I, INA C. LeBLANC, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, INA C. LeBLANC, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2009.

INA C. LeBLANC
CSR No. 6713

--o0o--

APPENDIX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SEP 08 2009

California State Senate

Appointments

Hon. Jerome Horton
Responses

RULES COMMITTEE - BOARD OF EQUALIZATION QUESTIONNAIRE

APPOINTEE FORMER ASSEMBLYMAN JEROME E. HORTON

1. What were your major accomplishments (i.e. Legislation) as a California Assembly Member that will affect your role as a BOE member? What have the outcomes of those accomplishments been?

AB71 (HORTON) RECAPTURED \$700 MILLION IN UNREPORTED TAXES AND LAID THE FOUNDATION FOR COLLECTION OF BILLIONS FROM CORPORATE TAX CHEATS. It imposes additional civil and criminal penalties on individuals and businesses that violate tobacco-related, anti-contraband laws and laws prohibiting tobacco-related sales to minors and created 51 investigators to prosecute Corporate Tax Cheats. This Legislation established the methodology/foundation for the prosecution of corporate tax cheats and the collection of over \$45 billion dollars currently lost to the underground economy.

AB1418 (HORTON) RECAPTURES \$28 MILLION FROM CORPORATE TAX EVADERS. Required the public disclosure of the top 250 tax evaders and comprehensive collection activity: setting in motion policies and procedures to aggressively collect the 3.5 billion in corporate taxes, accounts receivables.

AB 1026 (HORTON) ENHANCED ACCOUNTABILITY AND TRANSPARENCY IN AUDITING LARGE CORPORATION

AB 1027 (HORTON) ESTABLISHED PROCEDURE TO ENHANCE THE COLLECTION OF BILLIONS IN PAYROLL TAXES. Due to the misclassification of workers as independent contractors and tax evasion in the construction industry California is losing billions in unreported payroll taxes, workers comp violations and business taxes

AB1936 (Horton) Encourage the use of electronic media in filing returns for the Special Taxes Programs administered by the State Board of Equalization. Laid the foundation for subsequent electronic filing.

AB964 (HORTON) ENHANCES THE COLLECTION OF MILLIONS IN PROPERTY TAXES; set up collection, settlement, and enforcement measures that empowered property tax assessors to collect property taxes.

AB 1029 HORTON BOARD OF EQUALIZATION DISCLOSURE REFORM ELIMINATING EX PARTE COMMUNICATIONS sought to increase transparency and make the tax administration and adjudication process more transparent

AB1032 CONTROLLED UNDER-GROUND LEGISLATION and prohibited state agencies from adopting emergency regulations without authority.

AB1276 TO INCREASE COLLECTIONS UNDER THE TOBACCO MASTER SETTLEMENT AGREEMENTS (MSA.) It enhanced the powers of the Attorney General to prosecute corporations not in compliance with tax law and the MSA agreement

AB964 RECAPTURE MILLIONS IN PROPERTY TAXES. Facilitate property tax settlements with the airlines; eliminated wasteful law suits and established a fair method of reporting millions in property taxes.

AB (KORETZ/HORTON) EXTENDED THE SUNSET DATE FOR THE "JOINT ENFORCEMENT STRIKE FORCE" which focuses on prosecuting tax evaders. Horton's investigations as a Supervisor with the BOE lead to the creation of the JEST

SB 1064 (BURTON) HORTON HELPED DRAFT THE LEGISLATION TO ELIMINATE THE MIC-IN-LIEU CREDITS. The state legal advisors and Horton agreed that legislation was required to eliminate MIC tax credits taken by corporation paying zero taxes. Horton helps pass the legislation that closed the loophole in the MIC.

AB 577 (HORTON) Improved State Employee rights to reinstatement rights when laid off.

AB 2314 (HORTON) Enhances State Employees rights during adverse actions or a hearing.

AB 2268 (HORTON) Protected State Employees from unfair dismissal or denial of promotion.

AB 2892 (HORTON) Permits state employees to pursue both civil service rights and common law tort claims.

AB 2968 (HORTON) Improved State employees rights against discrimination.

AB 18 (HORTON) Sought to increases the state Supplemental Security Income State Supplemental Security Income (SSIS/SSP) rate for recipients living in non-medical out-of-home facilities to \$1,448 a month.

AB1889 (HORTON) Increase state employees access to transcriptions of a hearing before a hearing officer or personnel officer.

AB 1890 (HORTON) Empowered employees in the civil service process by requiring that half of the members of a civil service commission must be nominated by the employee organization, while the other half is appointed by the city council.

ACR51 (HORTON) Established State Employee Appreciation Month

Partial Listing

2. Given your track record in the Assembly, can you commit to voting on every matter that comes before the Board?

I am very proud of my voting record and that I voted my conscience while serving in the Assembly; for which I was consistently re-elected and received several prestigious outstanding legislator of the year awards.

I believe the premise of this question was a 2004 article in the Los Angeles Times which inaccurately inferred that I abstained 60% of the time when I actually vote on 99% of the 5,162 bills considered by the Assembly.

Although this occurred over five years ago, it warrants a response.

The inaccurate inference was based on a study of 60 bills that died in the Assembly. The study showed that I abstained on 36 or 60% of these failed bills. Equally misleading the study failed to indicate that I eventually voted for several of these bills and help them gain passage.

In 2004 my policy was never to vote NO on a bill that warranted an opportunity for consensus and passage. This policy, led to one of my colleagues calling me "Mr. 41", because as a courtesy to my colleagues I would generally be the 39th, 40th or 41st vote with a commitment to continue public debate and create consensus legislation that would pass the legislature on its own merit.

In 2005 and 2006 I changed this policy and simply voted Yes or No; only abstaining when I was neutral on the matter or at the request of a colleague who wanted to minimize the number

of NO votes or wanted an opportunity to work the bill. Then in 2007 while serving on CMAC I voted yes or no on every matter except when there was a conflict of interest.

I commit that I will continue this policy while serving on the Board of Equalization.

3. What is your view about enterprise zones? What is your understanding about the purpose of the EZs? Do you think they work?

In economically depressed areas enterprise zones, used in conjunction with other programs such as redevelopment, work force investment, and various federal stimulus programs have helped to generate and retain employment opportunities, stimulate additional tax increments, eliminate blight and reduce crime.

However, in some cases it has not been productive and/or used properly. For example, Toyota Motors left the City of Carson and the State of California, partially because they were not aware of the benefits of the EZ and various other programs; by the time local and state officials presented a comprehensive package of credits it was too late.

This experience taught me that EZ in and off themselves do not work without a conscious and aggressive effort on the part of the State and the targeted area to recruit, retain, and develop new opportunities.

With this in mind, I believe that every tax credit including the Enterprise Zone must be evaluated for productivity and efficiency. Such an evaluation must include a need base assessment that measures social and economic benefit to the targeted area and the state of California.

I understand that our tax expenditure for the Enterprise Zone program is now roughly \$400 million per year. I am also aware that the LAO has concluded "the weight of research" suggest that the benefits of EZ(s) are "small in general" and "may result in revenues losses that are significant relative to the benefits received."

I believe that the problem with the EZ program is it has expanded greatly since it was first proposed in 1983 without sufficient and measurable oversight and accountability. When it works its great but when it does not work it is wasteful and simply shifts benefit from one area to another.

However, I can personally attest that without the benefits of various stimulus including the EZ program blight, crime, and unemployment in economically deprived communities would be far more costly to the State.

Further I think that there is no one silver bullet to revitalizing our economy. We must assemble a team of experts to develop a comprehensive plan to retain and create new opportunities in California. Then we must audit, evaluate, modify, reassess and adjust the plan until we get it right. I believe, tax credits that truly generate good jobs and help revitalize our economy are good for California.

4. What are your views on Ready Return/Cal File? What level of service do you think the FTB and BOE should provide with regard to simplifying tax filing? What specific ways could FTB and BOE make tax filing easier?

Noteworthy I authored AB1936 (Horton) which provided for the use of electronic media in filing returns for the Special Taxes Programs administered by the State Board of Equalization.

My understanding is both of the Ready Return/Cal File systems are working relatively well from a technical and service perspective.

With the enhanced educational outreach this system will further increase access to a wealth of information, improve compliance, accelerate cash flow to the state and reduce the incidence of failure to file penalties and interest.

I served on the VITA -- Volunteer Income Tax Assistance -- program for years and found it rewarding to help folk comply with the laws. I think these two programs should work in concert.

I also would recommend interim audits that make recommendations pending a subsequent formal audit. This will provide the taxpayers an opportunity to learn how to comply with the current laws, policies and procedures without the formality, penalty and interest of a formal audit. It will also increase compliance, reduce under-reporting and minimize exhaustive unwarranted appeals.

5. What fundamental ways will serving as a Board Member differ from your service as a BOE auditor? And as a State Assembly Member?

I believe my collective experiences, diverse skills, and accumulated historical knowledge provides me a unique insight of the challenges faced by staff, administration, California taxpayers and my legislative colleagues; that will enhance my ability to be responsive, deliberative, fair, and objective as a Member of the Board of Equalization.

Noteworthy, prior to being elected to the California State Assembly I also served as a Tax Law Instructor and Chief Business Tax Advisor/ Legislative Director to the District 3 Board Members.

6. What are your views on tax agency reforms? For example, should the FTB be able to appeal BOE decisions? Should there be political reform and restricted contributions before decisions are made?

Question: What are your views on tax agency reforms?

Answer: I think the separation of powers between the various tax agencies is, by and large, appropriate, and it strengthens California's system of checks and balances.

However, where productive and efficient we should look for ways to combine functions that are redundant, counter productive and costly to the State. We should also consider consolidating a portion of our investigative and collection efforts as they relate to prosecute tax cheats and attack the problem of the underground economy. I think tax collections and investigation functions are two areas where this should work.

Question: Should the FTB be able to appeal BOE decision.

Answer: I believe someone has to be in charge of making the final administrative decision. I support the concept of having public input, via a representative form of government, in the administration, adjudication and legislation of tax matters.

Noteworthy, two of the three members of the FTB are also members of the BOE: the Chair of the BOE, and the State Controller.

Allowing the FTB to appeal the decision of the five member BOE would in affect give two member of the BOE the final say; eliminate the separations of powers, impede the constitutionally provided representative government and call into question the checks and balances of the administrative and adjudication process.

Further, if the FTB was allowed to appeal the BOE's decisions that would shift the power of adjudication tax matters to the courts, increase the cost of operation, and further burden California taxpayers with a potentially long and arduous process.

Thus in the interests of fairness and due process, critical to promoting self-assessment, I do not think it would be wise to subject California taxpayers to further appeals after the matter has been adjudicated by the people via a representative form of government.

The system we have now provides for an administrative review of FTB staff decisions by the elected Board of Equalization. It is a good system, and it has worked reasonably well for the last fifty years.

Question: Should there be political reform and restricted contributions before decisions are made?

Answer: I support campaign finance reform that assures fairness and equity in the election process. I also supported Proposition 34 limitations. However, I do not believe contributions dictate how elected officials vote.

I personally believe that the voters in ones district, the media, labor, endorsements, the internet, the party, personal relationship, and various other organizations have a greater influence over decisions.

Noteworthy: I presume the question is referencing the Kopp Act which has an interesting history and origin in and of itself. With that said, in my humble opinion, the problem with the Kopp act is it allows Board Members to create a conflict by accepting contributions and then "Kopp Out" of voting. The Kopp Act has thus become a means to take political cover.

To eliminate this problem, campaign finance reform that allows the candidates to get their message out without the influence of contributions and the other stimulus that inspire voters would help. Another alternative would be to apply the same laws that govern other elected officials to the Members of the Board of Equalization, thus eliminating the ability to Kopp Out. Lastly, one could establish the Board of Equalization as an administrative body and allow all appeals to be adjudicated by a tax court.

We should bear in mind that although the BOE members do decide tax disputes, for the most part they are not "judges" -- BOE members perform a great many other duties involved in setting policy and controlling regulatory and administrative actions.

7. What would you do to ensure greater compliance with e-commerce and use tax collections? Can you think of any law changes the Legislature should pursue in that regard?

In 2004 I recommended that we require all businesses to file a use that return. This was finally adopted in the 2009 budget, and the BOE should move quickly to enforce the new law requiring all businesses to file an annual Use Tax Return.

Failure to collect and pay use tax is tax evasion and illegal. We have some of the most talented staff in this business and if we give them the resources and support they will get the job done.

I will ask the Legislature to provide the BOE with 250 more investigators and collectors and empower them to establish an aggressive program that goes after illegal operators who under-reported their California taxes and compete unfairly with California businesses. *(Note my experience with AB 71, which created 51 more investigators for cigarette tax evasion and is responsible for the collection of an addition \$700 million dollars. I would apply this same concept to the sales and use tax.)*

I plan to establish a consumer use tax collection program that will reach out to out-of-state companies to notify them that it is our intent to investigate their consumers if we cannot negotiate a mutual agreement for them to collect the tax on their California sales.

I will work with the Multi-State Tax commission to increase audits of out of state companies selling to California consumers.

We should put a listing of all known unregistered out of state retailers whose customers may be subject to fraud investigation on the web. This proved very effective under AB 1418 (Horton) which generated an addition \$28 million through an aggressive collection process.

We should use Section 7055 of the Revenue and Taxation code to force out of state companies to serve as "6015" retailers responsible to account for California transactions.

We should ask the Legislature to expand the BOE's subpoena powers under Section 7055 of the Revenue and Taxation code to facilitate our enforcement actions.

We should expand the Board's business education outreach programs to include the discussion of nexus, particularly under Sections 6487 and 6203 of the Revenue and Taxation Code.

8. Do you support split roll form property tax assessment? Why or why not?

In the current economic environment, I believe every revenue enhancement should be on the table for consideration including "split roll." However given the urgency of our challenges, we must focus on obtainable consensus solutions based on the current economic and political environment.

Given that the "split roll" takes a constitutional amendment, a vote of the people and greater public trust to modify I question its political viability. Further, there are various versions of the "split roll" under consideration that lack supporting data and would harm minority-owned and small businesses which in the end would be counter productive.

To help increase revenue to the state I commit to use my collective experience, knowledge, and skills to collect all outstanding taxes including the \$13 Billion in accounts receivable and the estimated 25 – 48 Billion in unreported taxes from the underground economy.

9. Do you support furloughs and/or layoffs of BOE employees? Why/why not? Do you support them for FTB employees? How do you view their impact on revenue to the state?

I oppose furloughs and layoffs of BOE and FTB employees because it is counter productive and has a negative impact on the state budget.

As a 21 year state employee I am also keenly aware of the sacrifices people make, over the years, as public servants, in exchange for stability, continuity, and other quality of life benefits. State employees are generally paid less than private employees performing the same functions and in the

case of the BOE and FTB state employees are far more productive. If you take away the reliability, honor, dignity, and respect of public service you reduce the productivity, morale, increase turnover and negatively impact the benefits of historical knowledge. Recently elected officials have begun to experience these challenges personally.

As an Assemblyman, I sponsored legislation that increased the number of BOE investigators and collectors and they are directly responsible for generating over \$700 million in additional revenues.

With this in mind, I have proposed to the Governor and Legislative leaders that they authorize the employment of an additional 250 investigators and collectors to aggressively collect the outstanding \$13 billion in accounts receivables and the \$45 billion in unreported taxes by businesses operating underground. These investigators and collectors would also focus on enforcing labor laws; to combat the corresponding negative impact on payroll taxes, worker compensation benefits and other related tax increments (*estimates based on an IRS and independent study*)

10. Did you support the prior Board's grant of the MIC refunds in the two dozen or so appeals in 2004 and 2005? Why or why not?

The BOE Members voted 4-0, with 2 Democrats and 2 Republicans, voting yes and one Democrat abstention, to allow those refunds in 2004 and 2005. I helped craft and pass legislation that closed this loophole. This legislation was supported by 75 members of the Assembly, without a single "No" vote.

Noteworthy, the analysis in favor of allowing the above mentioned refunds has been described as "compelling" by the BOE's Chief Counsel. I share this information to point out that most of the legal minds agreed that the refunds were allowable and that the proper fix was legislation to close this loophole. They also concurred that the courts would ultimately rule against the state, after spending millions is legal and administrative cost.

11. How would you propose to restructure California's tax structure? Specifically, what advice would you give to the Commission on the 21st Century Economy about proposals it is currently considering? How would you advise them on the incidence of tax decisions on specific industries? On wealthy individuals? On low-income individuals?

We need the flexibility to stimulate economic growth, control fraud and waste, eliminate unproductive tax credits, and increase revenue when proven necessary.

However, we must first regain public trust in government before they will approve a process that allows for the flexibility to strike a delicate balance between progressive and regressive taxation and protect us from overcompensation during poor economic times and under-compensation when the economy is good.

In general, the tax code must respect and retain the rights of all regardless of the sexual orientation, race, color, sex, religion, national origin, age, disability, marital status or political affiliation and it must reflect our responsibility to strengthen the weakest among us. Under the current structure, which requires consensus negotiation with all the stakeholders, and has limited public trust, it is virtually impossible to restructure California's tax codes.

However, from the Board of Equalization perspective, if the Governor and Legislature allow the Board to employ additional staff and give them the legislative authority and tools to enforce the existing laws, the Board can help generate billions in additional revenue. **It is important to note that over 95 % of the taxes collected by the Board of Equalization are self-reported and**

Californians are generally honest and not intentionally trying to evade paying their fair share of taxes. With this in mind I would recommend that the Commission on the 21st Century Economy consider changes that:

- Improve the educational out reach to legitimate California companies, streamline the filing process, eliminate unwarranted impediments to generating quality livable good jobs and help California taxpayers comply with the law.
- Enhance the collection of the estimated \$45 billion in unreported underground economy related taxes; and
- Empower the taxing agencies to collect the current \$13 billion in accounts receivable from tax-dodgers;
- Enhance the education of California taxpayers on tax compliance; and
- Enhance the transparency and legal creditability in the administration and adjudication of the tax code.
- Reevaluate the treatment of use tax transactions and consider the following:
 - a. Evaluate the following cases and make sure every employee is thoroughly trained on what constitutes nexus. A cost benefit analysis should support the employment of additional staff to focus on under reporting in this area.
 - The BOE, with the assistance of the State Attorney General, won in Borders Online, Inc. v. State Board of Equalization (2005) 129 Cal.App.4th 1179, requiring Borders to collect sales tax from their remote site. However the BOE lost a similar case to Barnes and Noble in 2007;
 - In the Quill Case the U.S. Supreme Court ruled that states can not collect sales and use tax unless there is significant physical presence in the state; and
 - In the Scripto Carson case the U.S. Supreme Court ruled an out of state company was liable for the collection of the tax because they had an agent in state.
 - b. We should ask Congress to overturn the Quill case and modify the Scripto Case to allow states to enforce their tax laws on companies who have significant economic nexus and use the law to intentionally evade paying the taxes.
 - c. In 2004 I recommended that we require all businesses file a use that return. Now that this was adopted in the 2009 budget, the BOE should move quickly to enforce the new law requiring all businesses to file an annual Use Tax Return.
 - d. Ask the Legislature to provide the BOE with 250 more investigators and collectors and empower them to establish an aggressive program that goes after unreported California taxes in a variety of areas. *Note, AB 71 (Horton) which created 51 more investigators for cigarette tax evasion and is responsible for the collection of an addition \$700 million dollars; this type of effort applied to sales and use taxes should be equally successful.*

- e. I will work with the Multi-State Tax commission to increase audits of out of state companies selling to California consumers.
- f. We should put a listing of all known unregistered out of state retailers whose customers may be subject to fraud investigation on the web. This technique proved very effective in the past -- AB 1418 (Horton) generated an additional \$28 million and an aggressive collection process.
- g. We should ask the Legislature to expand our subpoena powers under Section 7055 of the Revenue and Taxation Code to facilitate our enforcement actions.

We should expand the Board's business education outreach programs to include the discussion of nexus, particularly under Sections 6487 and 6203 of the Revenue and Taxation Code.

I would also caution the commission on permanently modifying the balance of progressive and regressive taxes based on the current economic climate and encourage them to give the legislature the flexibility to adjust the balance when absolutely necessary.

I would also encourage them to devise a system that allows us to invest in schools and universities, job training, employment, infrastructure and other needed services which provide the foundation to harness and stimulate the innovation, creativity, and genius that ultimately inspires the development of businesses that creates jobs. Lastly, I would advise them that a balanced approach that stimulates and economic growth should be part of any comprehensive plan to create and retain quality livable jobs in California.

12. What is your position on tax agency consolidation?

Consolidation of the tax agencies has been determined to be cost prohibitive and politically challenging.

In general, if we can preserve existing positions, create a more efficient department and the cost of consolidation or redirection of resources does not exceed the benefit I would support partial consolidation. Board Member Yee currently serves on a committee to evaluate the consolidation of various functions of the tax agencies and I also support her efforts. The collections of the outstanding \$13 Billion in accounts receivable and prosecution of tax dodgers are two activities I would consider consolidating. I authored legislation to study this matter and recommend to the legislature how best to make the taxing agencies more efficient, and redirect redundant resources without reducing staffing levels. I believe the results will indicate that additional staffing is needed and that many of the executive functions of the agency should be preserved and redirected.

13. Do you believe that the Franchise Tax Board has the legal authority to audit enterprise zone tax credits, as was posed to the board in the Appeal of the Deluxe Corporation, where tax credit consultants argued that the Government Code prohibits the FTB from auditing these credits?

Yes, based on the 2006 decision by the BOE in the Deluxe case, where the BOE ruled the FTB had that authority. As a former BOE auditor, I think the FTB auditors should be allowed to audit any item on a tax return that is questionable; and I respect the BOE's precedents. I understand this issue is now pending before the California Supreme Court in the Dicon v FTB litigation, after the FTB lost in the court of appeal.

14. Do you believe that the law allows employers to claim retroactive enterprise zone hiring credits for wages paid to employees before the zone expanded to include the employer? Taxpayers are claiming in the Appeal of Rosendin Electric that the firm may retroactively claim hiring credits for wages paid to employees before the zone expanded to include the company.

I am extremely reluctant to pre-judge this matter, since I may be called on to vote on the issue if confirmed. I would not want to inadvertently conflict out myself or prejudice my ruling by making a judgment call prior to reviewing the legal analysis of the FTB and the taxpayer, and evaluating the staff work of the BOE.

Senate Confirmation
Scott Kernan
Undersecretary
Responses to Senate Rules Committee Questions
August 19, 2009

Statement of Goals

Under the direction of the Secretary, the undersecretary of Operations plans, organizes, and directs all department functions for adult and juvenile offenders and parolees. The department also now has two other undersecretaries. Based on these additions, your position is responsible for overseeing the two chief deputy secretaries of Adult Operations and Juvenile Justice; another undersecretary is responsible for programs, and a third for administration. In addition, you oversee the parole division and have some oversight responsibility for the executive officer of the Board of Parole Hearings (adult) and the general manager of the Prison Industry Authority.

With more than 60,000 employees, CDCR is the largest single department of state government. It is responsible for incarcerating about 170,000 adults in 33 institutions and 40 fire camps and other facilities, and 1,800 juveniles in 8 facilities and 2 camps. The department manages another 126,000 adult parolees and approximately 3,000 juvenile parolees. The stated mission of the department is to improve public safety through evidence-based crime prevention and recidivism-reduction strategies.

- 1. Please provide us with a brief statement of your current goals as undersecretary. How have they changed and/or broadened since you were confirmed last year as chief deputy secretary? What do you hope to accomplish during your tenure as undersecretary of the department? What is the time line for meeting your goals?**

Similar to my role as Chief Deputy Secretary, my overall goal as the Undersecretary of Operations is to provide consistent, common sense, and competent leadership to this critical public safety organization. The fiscal crisis facing the nation and State have only emphasized the need for strong leadership to an organization with multi-faceted goals that intersect and often conflict with other State government priorities.

The challenges of overcrowding, rehabilitative programming, court compliance, fiscal accountability, and general operations have only grown more severe with the advent of significantly diminished resources. With approximately 300,000 adult and juvenile offenders in institutions and on parole, 67,000 employees, an approximately \$10 billion budget, and ever growing expectations from the legislature, stakeholders, and the public, the enormity and importance of the organization and its leadership is not only magnified, it is essential for public safety.

I am proud of the achievements this organization has made on many levels and am cognizant that many more challenges, emphasized by fiscal reality, are on the horizon. Given the unstable fiscal environment, and as staff receives compensation reductions

Senate Rules Committee

JUL 29 2009

Appointments

with increased expectations, the absolute necessity for consistent, fair minded, and forward-thinking leadership is even more critical. In spite of the current crisis, the organization must strategically establish goals that will advance this Department into the future. Therefore, while I have very specific goals for the divisions under my charge, my overarching goal is to provide this organization with competent, common sense leadership that recognizes the operational realities, limitations, and potential of this extraordinary organization and its remarkable staff.

As to your question regarding as to what I expect to achieve during my tenure in this fast changing and volatile environment, I believe the job will demand demonstrating flexibility and humility. My expectations center on operational effectiveness, population management, parole reform, and organizational harmony and efficiency. While significant accomplishments in areas such as a reduction in overcrowding through policy changes including out-of-state offender transfers, and cooperative relationships within the organization have occurred, much of the reality of today's circumstances demands alteration and action.

In today's environment, and incorporating real budget reform, I would like to accomplish the following goals:

- Maintaining previous visions of safe prisons.
- Providing effective evidence-based programs that recognizes the specific needs of the offender and is tailored for the individual (i.e., gender, age, employment, housing) thereby enhancing opportunities to reduce recidivism.
- Construction of capacity that addresses the State's needs into the future.
- Effective juvenile justice reform.
- Resolution of major class action court cases.
- Implementation of constitutional medical/mental health care of offenders.
- Renewing relationships with labor organizations.
- Implementing information technology that increases staff access to information and increases efficiencies for years to come.
- Effective parole reform.
- Proactively addressing violence and gang issues.
- Stemming contraband introduction into facilities.
- Changing the established cultures inside prisons and juvenile facilities.
- Creating and implementing reentry programs that prepare offenders for reintegration into society.
- Repairing perceptions by internal and external stakeholders and placing this Department as a national leader in the corrections field.

I acknowledge that such goals must be accomplished under crisis level budget reductions, and further acknowledge that flexibility may be needed and could lead to reduced expectation. However, I remain resolute that advances in all the above areas

are achievable during my tenure as Undersecretary of Operations for California Department of Corrections and Rehabilitation (CDCR).

- 2. As you were confirmed last year as chief deputy secretary, you told the Rules Committee that your primary goal was “ensuring sound correctional policies that keep offenders secure and productive during their incarceration, and effectively supervised during parole and keeping my staff and the public safe.” Please share with the committee the yardsticks you use to measure progress toward your goals. Where do you believe you have succeeded and what more remains to be done?**

My primary goal, along with being the Department’s primary goal, continues to be ensuring the development and adherence to sound correctional policies that keep offenders secure and productive during their incarceration, and effectively supervised during parole while keeping staff and the public safe. The metrics to which I measure this success is varied and tangible.

I believe most corrections experts would agree that a strong and reflective audit of operational adherence to policies is crucial. The Department has employed a strong self-auditing process that is supplemented with effective review from the Office of Audits and Compliance. External reviews from the Office of the Inspector General, Bureau of State Audits, and other control/oversight agencies provide an excellent metric to operational compliance. Furthermore, I think the manner in which the agency responds to critical analysis from all sources has changed remarkably and enhanced organizational effectiveness.

Both Secretary Cate and previous Secretary Tilton invite transparent departmental reviews, even if publicly embarrassing at times, and judge our response not to the criticism, but how we proactively approach addressing the problems. In my opinion, this style of leadership has enhanced the Department’s ability to address anticipated deficiencies and provides an excellent measure to our success.

In addition, COMPSTAT provides a comprehensive statistical analysis that has evolved and provided metrics to literally hundreds of objectives. This review has allowed staff down to the line level to focus attention on areas that might not otherwise have been identified as a priority to the field. High- and mid- level managers, including wardens, are held accountable to respond to identified deficiencies and are acknowledged for real accomplishments. The entire process is transparent, but provides an excellent measure of progress while ensuring policy is more consistently applied.

Lastly, I believe the organizational culture itself provides a metric to ensure policy compliance. A more communicative and open environment between the field and headquarters permits problems to be identified and addressed at a lower level in the organization than might have been previously realized. I meet with executives and field

managers on a regular basis. This two-way communication identifies problems and solutions, and I believe is critical to monitor consistent policy implementation throughout the organization.

Furthermore, external communication with local law enforcement, legislative staff, city and county leaders, media, victim advocacy groups, inmate family advocates, and the public provide an invaluable measure to policy compliance. While I can point to many organizational successes in this area, there is still more work to be done. Upon my confirmation as Undersecretary of Operations, I will continue to steadfastly pursue these goals and maintain the organizational growth I have seen in the last year.

Reorganization and Coordination of Responsibilities

On July 1, 2005, the Youth and Adult Correctional Agency was reorganized pursuant to Senate Bill 737 (Romero), Chapter 10, Statutes of 2005, into the Department of Corrections and Rehabilitation. The intention of the reorganization was to improve the effectiveness and efficiency of the departments and boards that made up the former Youth and Adult Correctional Agency.

- 3. The reorganization of 2005 placed the work "rehabilitation" in the name of CDCR as a way to emphasize inmate and ward rehabilitation. If we were to visit a state prison today, what evidence would there be of a rehabilitation emphasis that had not existed prior to the reorganization? What evidence would exist at a juvenile facility? What evidence would we find in the parole division? How does the Governor's proposed \$700 million cut to programs comport with this?***

From an organizational perspective, the reorganization elevated rehabilitative programming to its own division and emphasized its equal importance to that of operations and administration. With its own organizational structure, budget and dedicated executives, rehabilitative programming has been a priority for both then Secretary Tilton and now Secretary Cate. Progress has been made, albeit slow, in the implementation of assessment tools and program implementation within the prisons and parole. Executive turnover has changed the direction of program development/implementation, and has been further complicated by the significant budget issues facing the Department. Further, operationally there has been tangible progress in incorporating offender programming into the culture of the organization. Also, there has been an increased emphasis at the line-level to mitigate impact to programming. Warden's are much more cognizant of the programming priority and as an example have done a much better job getting offenders to the classrooms during disturbance situations. Warden's have requested resources to expand programming throughout the organization and for the first time in my tenure as a manager, programming is at the forefront of prison operational concerns. Program participation

and achievement is tracked via COMPSTAT with specific metrics for the monitoring of each prison's operation.

A visit to a State adult prison today would see the phased implementation of the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) in our reception centers. While there is still work to do in integrating this tool into the classification process, these assessments provide a more scientific approach to identifying individual offender programming needs and are meeting a major recommendation of the expert panel. One would also see the implementation of the Community Partnership Managers (CPM) position at each institution. This position provides a dedicated resource to coordinate collaborative relationships with community stakeholders, oversees prison programming including leisure time activities and faith based programming, and provides a liaison with program and operations at the field and headquarters' levels.

At California State Prison, Solano, one would see the development of a pilot program, Pathways to Rehabilitation (previously names the Proof Project), that employs risk-need assessments specific to the offender with increased programming and the use of certified inmate mentors to enhance programming opportunities. In all of our prisons one would see increased evidence of academic, vocational, Prison Industry Authority programming, and examples of other creative program concepts such as college, arts in corrections, and self help and religious programs. In our female programs, one would see more gender-responsive training of staff and an expansion of programming that is trauma informed. There is increased female community programming in the expansion of our Female Residential Multi-Service Centers (FRMSC) and Female Rehabilitative Correctional Community Centers (FRCCC). Any visit to these programs would provide evidence of increased emphasis on rehabilitative programs specific to female offenders.

While the response above is not intended as an exhaustive list of program enhancements, it is evidence of progress. To be clear, these successes are a result of a team effort by my program colleagues, the role of the appointing powers in the field, and my role of support for the removal of operational barriers. There is much more progress to be accomplished in this area, and the current fiscal environment will have a negative impact on progress. I firmly believe that a cultural change founded on a solid base has occurred. This will permit incremental progress in rehabilitative programming that can be expanded on. Additionally, the Secretary is contemplating organizational change that will simplify the structure and reduce the silo impact mentioned above. In my view, the addition of Elizabeth Siggins as Chief Deputy Secretary (A), Adult Programs, will provide common sense leadership that will better solidify coordination between organizational arms and lead to increased progress in rehabilitative programming throughout the organization.

A visit to a Division of Juvenile Justice (DJJ) facility today would show significant changes in the rehabilitative process as evidenced with the now substantial compliance (over 70 per cent) with the *Farrell* court order. In 2006, DJJ entered into six specific remedial plans covering health care, mental health, education, safety and welfare, sex behavior treatment, and youth with disabilities. Crucial changes included significant progress in the delivery of youth health care and vast improvements in the education programming with an emphasis on special education needs of the youth committed to DJJ. An actuarial risk-needs assessment instrument has been implemented. Within the next year, evidence-based treatment interventions such as "Girls Moving On" and Counterpoint will be implemented for the youth. Additionally, the DJJ has actively trained staff in numerous reform related curriculums such as Motivational Interviewing, Cognitive Behavior Primer, Risk-Needs Assessment, Case Planning, Crisis Intervention, Safe Crisis Management, and Understanding Mental Health and Preventing Suicide. Challenges continue related to effectively programming wards who are involved in gang or racial activities. Our commitment to progress remains steadfast.

Progress in rehabilitative programming is also evident within the Division of Adult Parole Operations (DAPO). The establishing of the Parole Planning Program (PPP), in conjunction with external academic entities, has seen the implementation of preparole risk-needs assessments. Again, more work is necessary to integrate this information into the culture of the agents, but a strong base of individual offender information has been automated and will be used to channel offenders into programs intended to enhance rehabilitation. Expansion of parole programs, while limited by budget, has been realized and directly leads to parolee diversion to program in lieu of incarceration. A significant aspect of this progress, not seen prior to the reorganization, is the implementation of the Parole Violation Decision Making Instrument (PVDMI). This tool provides policy direction to agents, based on the offenders individual risks and needs, and provides a scientific aspect to violation decisions intended to provide consistency throughout the organization and emphasizes utilization of programs. This effort has resulted in tangible compliance with the *Valdivia* parole class action settlement, and is a relevant example of the emphasis on rehabilitative and "smart on crime" parole policy.

All CDCR programs have been negatively impacted by the State's budget crisis. In order to meet this challenge, fiscal resources have been redirected from preapproved projects to cover basic operational needs. The program areas that have suffered the greatest impact include plant operations and institution maintenance, inmate self-help and leisure time activity groups, and staff training and professional development.

4. In prior CDCR confirmation hearings, appointees described a sometimes confusing relationship between custody and program functions. For instance, who determines that more A.A. or N.A. programs are needed at a prison? Is it the warden under your jurisdiction or the community partnership people under the Undersecretary for Programs' supervision? Who recruits them and ensures they are on the job?

The 2005 reorganization elevated Programs Division to equal status with Operations Division and Administration within the CDCR organizational structure. The restructuring of programs within the hierarchy was a crucial step towards ensuring rehabilitative programs and staff were recognized as a critical component of the organization, and a priority for the Department. With this necessary reprioritization, there was bound to be some confusion in this large and fast changing organization.

However, to answer the question, the warden's are responsible for self-help programming such as Alcoholic's Anonymous and Narcotic Anonymous. Through each institution's Community Program Manager (CPM) and within budgetary limits, volunteers are recruited and staff supervision is provided for these important activities. The CPM's report within the prison organizational structure and take direction from CDCR headquarters' Programs Division staff in a collaborative effort with the wardens.

From both the headquarters and institutional perspective, I suspect that at times there is confusion over the proper reporting chain to use when dealing with issues. This confusion could be potentially exacerbated when there is staff turnover. I believe these types of problems in a matrix organization are common. I also believe it is management's responsibility to expeditiously and proactively address issues with clear and unambiguous direction. For example, the recruitment and hiring of the CPM position is a joint effort with Programs Division and the prison. After the hiring of a CPM, the position reports within the warden's chain of command directly, and indirectly reports to the Office of Community Partnerships within the Programs Division. This is obviously not without occasional problems, but is vital in recognizing the importance of programs to the agency and to maintaining safe prisons. I am confident that both sides of the singular organization can quickly correct confusion and work together to get these productive programs operational within our prisons.

5. One of the earliest concerns of the Legislature about the reorganization was that juvenile justice issues would be lost among adult operational issues. How much of your time do you estimate is spent on juvenile issues?

The challenges of spending "enough" time on each of the major divisions under my charge is always of concern. The DJJ is relatively small compared to the Division of Adult Institutions and the Division of Adult Parole Operations. However, the importance of each individual entity within this organization to the entire criminal justice system is

immense. The 2005 reorganization created a Chief Deputy Secretary for DJJ that is commensurate with its counterparts in both Operations and Program.

I depend on the DJJ Chief Deputy Secretary to provide the leadership and guidance to this critical organizational component, to ensure that DJJ issues do not get lost among adult operational issues, and to bring issues to my attention. The Secretary similarly depends on both myself and the Chief Deputy Secretary to raise issues and be responsive to the hard working and dedicated staff in this arm of the organization. We conduct weekly, and daily if necessary, briefings on DJJ issues. Chief Deputy Secretary Bernard Warner has established himself as a national leader in the field of Juvenile Justice, and we have come to depend upon his guidance on DJJ issues.

Given the many challenges of this Department, I believe it would be a fair criticism to say other critical issues sometimes distract me from always being as responsive as I would like to be on DJJ issues. However, the elevation of the DJJ Chief Deputy Secretary with his extensive experience and management of juvenile issues, and his team, has provided me and the organization with tangible progress within DJJ. I believe that I spend sufficient time to ensure that DJJ issues are not lost in the larger organization and that DJJ's importance is recognized within the management structure of CDCR.

6. Given your many daily challenges, how do you keep yourself abreast of the relevant issues in each area? How often are you able to visit adult and juvenile facilities or parole offices? How often do you meet with wardens, superintendents, parole administrators, family council, or other advisory groups?

The ability to keep abreast of all issues within the Department is challenging, if not impossible, in such a large and complex organization. I depend on a strong chain of command with proven leaders. I believe I have created a responsive and proactive approach to address issues identified by these leaders. I meet weekly with my managers and monitor progress on hundreds of issues. However, I depend on my team to elevate issues of concern, policy decisions, and issues of importance as they arise.

The complexity of our business relies on layers of management positions to provide daily responses and to assist with prioritizing those issues raised for executive response. I am very proud of the teams of executives within the organization and believe that our level of communication and response to departmental needs has improved in the last year and will improve further as we move forward.

The time permitted to visit the field is difficult given the departmental challenges. I have made a point of visiting DJJ, parole, and adult institutions facilities as time permits, but admittedly, it is never enough. Again, I must depend on the strong team of dedicated executives and their respective chains of command to provide much more regular visits

to field operations. The Chief Deputy Secretaries, Directors, Associate Directors, and Assistant Secretaries/Executive Officers are truly the eyes and ears for me in many instances. I have tried to ensure that such regular visits, even in times of great fiscal uncertainty, are a priority for my team.

One of the more productive areas of the reorganization was the establishment of high-level managers with responsibility over much smaller geographical areas. This management hierarchy has resulted in improved direct contact between staff in the field and headquarters, and has benefited operational effectiveness. Making time to visit the field and see for oneself is both positive for the organization and certainly beneficial for me. I will continue, as time permits, to visit the field and see for myself that our field operations are operating consistent with departmental expectations.

During these times of fiscal crisis, the travel necessary to meet with wardens, superintendents, parole administrators is challenging. While some critical events have been rescheduled, reduced, and even eliminated on occasion, it has been my priority to continue these meetings as normal as possible. Staying connected to the field-level management team, understanding their challenges, and expressing my expectations is critical for such a large organization. The high-level managers who report to me directly have also prioritized these important meetings, and continue to meet on a regular basis with field-level managers.

Again, I depend on a strong team of executives to meet regularly with field staff to improve communications and outcomes. My team has regularly scheduled meetings with other stakeholders such as the family council and other advisory groups. I attend such events when invited on specific issues and on an as necessary basis. Delegating such responsibilities is necessary, and I believe is an effective tool in resolving issues. I maintain an open door policy for all stakeholders and this provides me the ability to verify proactive response by subordinate staff is occurring on a consistent basis. I think my "trust but verify" approach has enhanced communication within my office and especially with external stakeholders such as the family council to ensure they are receiving timely and appropriate response from the Department.

Operational Issues

Last year, Mr. Runnels, said COMPSTAT, which stands for computer statistics, allowed CDCR's executive team to review adult, juvenile, and parole operations to identify systemic issues that need to be addressed. COMPSTAT was developed by then New York City Police Commissioner William Bratton, now Los Angeles chief of police, partly to hold managers accountable for their performance as measured by these data. In New York and Los Angeles, the statistics are publicly posted on the department Web sites on a regular, sometimes weekly, basis.

7. Please explain how COMPSTAT has improved your operations and improved internal security, as well as public safety? How are managers held accountable if they fail to reach your goals? How are managers rewarded when they meet or exceed your expectations?

Most correctional leaders I tend to think would agree that one of the biggest threats to institutional security is compliancy. Managing the complexities of the prison environment and keeping large work forces focused on custodial basics is an ongoing challenge. COMPSTAT as a tool has permitted the Department to provide important metrics to the organization and focus the entire field on what executive leadership believes is important. The mission specific evaluations provide a level of healthy competitiveness that focuses field managers on very specific problems and permits executive leadership to monitor that problem to resolution. Enhanced accountability is achieved very naturally by the wardens and their staff being forced to engage in these metrics and it very logically combats compliancy that went unnoticed before COMPSTAT was implemented. The chain of command infrastructure is equally held accountable to ensure metric progress is being achieved within their areas of control.

In my participation of the COMPSTAT meetings, I have seen marked progress in individual leader competency levels. Often this reveals itself just in the appointing powers ability to address such basic questions in areas such as enrollment data for their education program, fiscal accountability, fluctuations in inmate appeals or disciplinary reports, population management, community program participation. I have also seen the Associate Directors and directorate(s) much more informed about the issues at a particular prison, facility, or parole region and proactively engaged with the appointing powers in problem solving. COMPSTAT has also held accountable the headquarters' executives charged with supporting the field and I think allows a greater level of understanding of field challenges. I believe that this process has elevated organizational effectiveness markedly while I acknowledge there is still much more upward progress the organization can achieve by focusing on the effective statistical analysis that COMPSTAT represents.

8. What benchmarks in COMPSTAT or otherwise do you review on a regular basis to determine whether individual adult and juvenile facilities and parole officers are operating safely and promoting the department's mission? What red flags do you look for on a regular basis?

One of the significant benefits of COMPSTAT is that it allows measurements for executive leadership to focus on a particular aspect of operations, a mission, a management team, or the overall effectiveness of an appointing power. In the June 2, 2009, COMPSTAT meeting involving the General Population Level III/IV prisons I could readily identify prisons that were making progress in benchmarks such as inmate programming, use of force, overdue inmate appeals, and their budget. I could similarly see prisons that were having challenges in such important aspects as classification,

administrative segregation lengths of stay, and lockdowns for example. I engaged the wardens and the headquarters' chain of command on these issues and communicated my expectation of continued progress.

To answer the question specifically, there is no one set of benchmarks that I review specifically to identify red flags. As a warden, I focused on all of the measurements at my prison, as a director my focus was more mission specific, as a Chief Deputy Secretary I focused globally, and as the Undersecretary I focus at a very high level with interests in organizational categories such as inmate participation in programs, fiscal health, and population management as examples. The value of COMPSTAT permits all of us as a team to slice the analysis to our individual responsibilities, but also evaluate the inherent intersection of the organization. The Undersecretary of Programs focused on programming aspects of the analysis, but also evaluate more operational metrics such as lockdown information and its impact on program and question the appointing power about what he or she is doing to improve their end results. As Undersecretary I clearly understand the value of COMPSTAT as a management tool. I will continue to use all of the measurements to engage the field and headquarters with compliance expectations, and I believe this will continue to elevate the overall organizational effectiveness.

9. As you study COMPSTAT figures, what emerging trends stand out over the past year from your analysis? Where are you making progress? In what areas do you need to make improvements? Have you considered following the examples of Los Angeles and New York and posting the figures publicly?

As mentioned in the previous questions I have seen a significant improvement in overall leadership development, more detailed understanding of operational effectiveness (both in the field and headquarters), and a more focused improvement in key metrics. Lockdowns and the impact on programming for example has led to better decision-making by wardens on the impact of lockdowns on programming. I believe this focus in the COMPSTAT process has resulted in wardens making better decisions on how lockdowns are handled, and for what duration, as the executive emphasis has been on increased program participation of inmates. Another emphasis has been population management for the Department due to severely overcrowded conditions. The COMPSTAT reviews show the field is paying attention in areas executive priority and budgetary concern, such as lengths of stay in administrative segregation, out-of-level populations, and administrative segregation overflows.

There continues to be a wide array of areas that need to be improved. These areas of improvement evolve as the Department changes. Examples include budget management, staff sick leave usage, overtime usage, and compliance with the various aspects of federal court settlements such as *Plata*, *Coleman*, *Perez*, etc. The use of COMPSTAT has allowed the department to address these trends, good and bad, and provide a much more timely and proactive response. I know that COMPSTAT has

elevated my understanding of the Department in many areas and I believe that growth is felt by all staff involved in this effective organizational tool. While I would not be opposed to public display of some information, there may be further analysis necessary to ensure prison security and confidentiality is not compromised with portions of the details contained within the analysis. I have asked the Deputy Chief of Staff, with whom COMPSTAT reports, to evaluate if public display is reasonable and we will provide the Public Safety Committee with that information directly.

Overtime continues to be a major driver of costs. The Legislative Analyst's Office (LAO), in its review of the 2009-10 Budget, said that even though additional resources to hire staff were provided, excessive spending on overtime continues. The overtime bill in 2007-08 was \$656 million for all classifications of employees. Of that, about 84 percent was for security-related staff. LAO reported that correctional officers and other rank and file security staff make an average of about \$16,000 per year in overtime pay.

10. Historically, your vacancy rate was seen as a major driver of overtime costs, but the vacancy rate has been cut from 11 percent in 2005-06 to 6 percent in 2007-08, according to LAO. What are the factors contributing to overtime, and what are you doing to try to control these costs?

For the institutions, the four major overtime categories are as follows:

- Medical Guarding and Transportation (MGT)
- Sick Leave Relief
- Vacant Position Relief
- Miscellaneous Overtime

MGT

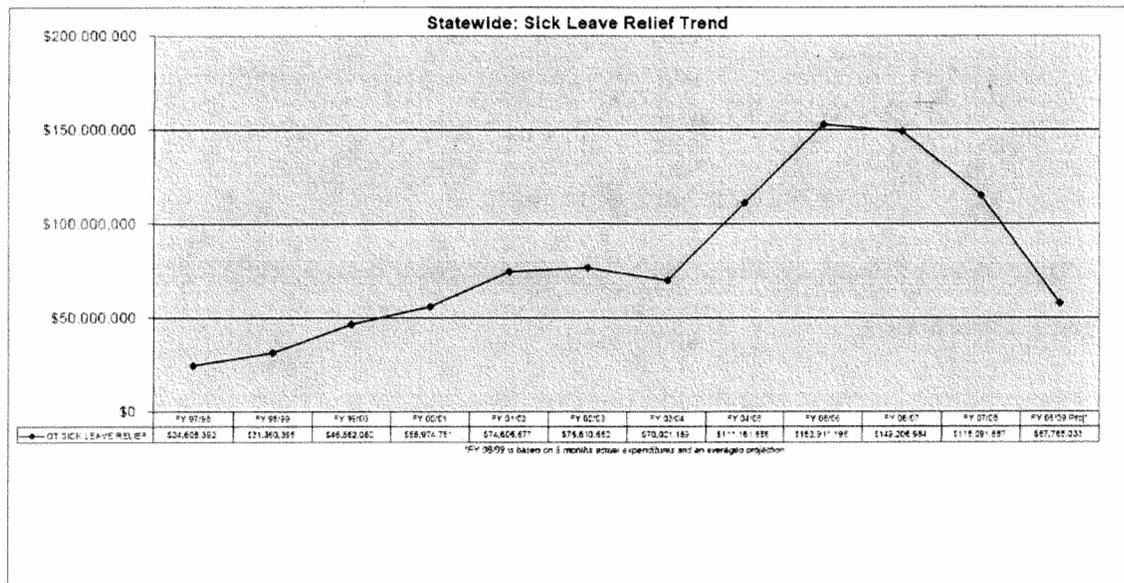
The largest driver of overtime for fiscal year (FY) 08/09 is MGT. MGT costs are controlled by the Receiver and at this point there is little the Department can do to reduce those expenditures. MGT is projected to be approximately \$165 million for FY 08/09, an increase of approximately \$35 million from FY 07/08. The Division of Adult Institutions (DAI) is currently conducting a review of the Access to Care Units established by the Receiver to determine if staffs allocated are adequate.

Sick Leave Relief

Sick leave relief has been a major driver of overtime in the past. A contributing factor has been the lack of an enforceable sick leave policy. However, since the Bargaining Unit 6 contract expired, the Department has had the opportunity to implement an enforceable sick leave policy as part of the Implemented Terms. The sick leave policy has been in affect for approximately nine months and the use of sick leave has been

noticeably reduced from prior years. As an example, in March 2008, 367,932 hours of sick leave were used as compared to 289,186 hours for March of 2009, a decrease of 21 percent. This new policy along with the Administration's policy to disallow sick leave to calculate total hours worked for overtime purposes has markedly reduced overtime behind sick leave.

The chart below shows sick leave overtime has been reduced to 2001 levels and in the last year, overtime has decreased from \$115 million to \$57 million, which is a reduction of 50 percent.

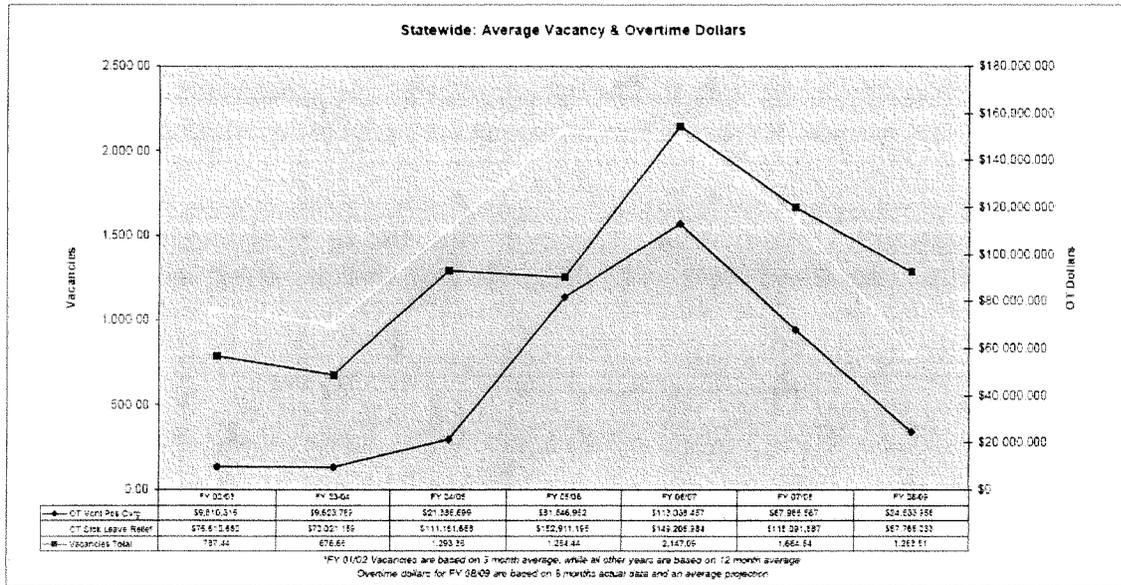


Printed: 8/14/2009

FOCUS Data
 MultiYear Trend Overtime.XLS

Vacant Position Relief

Overtime behind vacant positions has been a major factor for the past five years. The overtime climbed from \$21 million in 04/05 to a high of \$113 million in FY 06/07. The projected overtime for vacant positions for FY 08/09 is approximately \$24 million. The Department has worked to increase capacity at the Basic Correctional Officer Academy and has filled most of the custody vacancies. As can be seen by the Statewide Average Vacancy and Overtime Dollars chart below, as vacancies have been filled, overtime has been reduced. Vacancies not only drive overtime behind vacant positions but also drive sick leave overtime as staffs are forced to work overtime to cover vacancies. It is imperative that the Department continue to keep pace with filling vacancies. The Department continues to have vacancies and as these are filled the overtime should continue to decline.



Printed: 6/4/2009

FOCUS and WIRS Data
 MainYear Trend Overtime.XLS

Miscellaneous Overtime

Miscellaneous overtime is overtime that is needed to operate a prison on a daily basis. As an example, administrative segregation unit (ASU) overflow, fire camps, workers' compensation, emergencies, escapes, lockdowns, and other incidents are included in this category. Overtime to address these events will always be necessary and in many cases it is the most efficient and cost effective manner to address these needs.

ASU

One of the largest single categories within the Miscellaneous Overtime category is ASU overflow. In an effort to address ASU overflow, DAI is in the process of conducting bed utilization audits at various institutions. These audits provide management a tool to ensure the efficient use of ASU beds, which should reduce overtime behind ASU overflow.

Business Information System Project

The Department is working to implement a comprehensive automated information system that includes standardizing the daily hiring process at the institutions, which allow for more a more efficient operation.

Leadership Training

11. *Is it your responsibility to track who among those you supervise has received management and/or leadership training? If so, how is it done? If not, whose responsibility is it?*

Secretary Cate is ultimately responsible for leadership development within the organization. Every leader, from cabinet level to line managers and supervisors, is expected to model exemplary leadership practices and challenge each other to seek ways to change, grow, and innovate. Additionally, every manager is required to mentor and develop leadership talents in their staff.

Human Resources is responsible for coordinating CDCR's leadership training programs and collaborates with executive level managers of line programs and affiliated administrative programs in the development of policy and strategy for our training programs. The goal is to ensure CDCR's workforce is aligned with workforce availability and the critical and evolving needs of our mission. This includes identification of core competencies at all levels: identification of workforce demographics, gaps, changing program requirements, employee development needs and associated solutions (such as a possible management intern program and other necessary classification changes), associated mentoring programs, knowledge transfer programs, and employee retention strategies.

Overall, I am pleased with the quality of the programs we have available to CDCR employees for leadership and management training. We provide two major training courses for management and leadership development; Management Skills and the Leadership Development Program (more detail in the question below.) Evaluations completed by participants over the last two years consistently give high ratings to the course material as well as the instructors.

I am satisfied with the quality of our offerings, but I am not satisfied with the quantity of available classes. Our biggest obstacle to delivering this training to CDCR employees is the lack of dedicated funding for these programs. As a consequence, we usually cannot schedule enough classes to meet the development needs of staff who make up our existing management team, nor can we provide sufficient numbers of classes to address the group of middle managers who will eventually be required to step into these leadership positions. I plan to pursue permanent funding for these programs as the fiscal climate improves.

12. *You came up through the ranks as a correctional officer. What management training do you believe would be useful to those who follow in your footsteps? What training can we afford in this time of budget crisis?*

The Department has employed a number of effective leadership courses over the years that I believe has benefited my development as an executive. I have been fortunate to attend leadership training courses at both California State University, Chico, and California State University, Sacramento. Both of these courses were not geared towards corrections, but business leadership in a broader sense. These courses allowed me to take a step back from the crisis management that is so prevalent in CDCR to a more thoughtful review of organizational leadership. I feel the organizational leadership from a business standpoint is a positive step that prepares individuals for the increased responsibility that comes in management and is valuable training for the future leaders of this Department.

The enormity of the current fiscal crisis mandates prioritization of shrinking resources and training opportunities. Despite the overall importance, this is an area that is viewed as less essential to funding basic needs within the system. In an environment of program elimination, lay-offs, and furloughs, the Department is faced with extreme decisions that defy organizational health at least temporarily. Current leadership training has been significantly reduced due to the fiscal crisis, but I believe remains a logical long-term priority for the Department. In the interim, organizational leaders will be required to mentor and prepare individuals without the benefit of external training. It is in this time that individual leaders, such as myself, have to focus on succession training and look for cost effective ways to prepare future leaders until the budget crisis is diverted. While this is not an optimum situation in any sense, organizationally the strong leadership that currently exists within the Department will step up to the challenge. Future leaders will benefit from the challenges of this dire situation. In the long term, I am committed to emphasizing the importance of leadership training throughout the organization, and will continue to offer these training(s) throughout the organization when fiscally able to do so.

Role of Wardens

In the past, you expressed that much of the decision making and policy implementation responsibility rests with individual wardens at the state's 33 prisons. As chief deputy secretary, wardens were more directly under your chain of command.

13. How do you hold wardens accountable for ensuring that statewide policies are followed?

I still believe that the warden, superintendent, and parole administrator's play the most critical role in policy implementation to the field. The 2005 reorganization greatly enhanced the oversight of the adult prison wardens with the creation of associate director positions. This mission based oversight permits much more focused supervision of the wardens and allows better checks and balances to ensure policy implementation throughout our large organization. An experienced team of associate

director's with strong dedication to the organization has permitted, perhaps more than at any time in my headquarters' career, for meaningful accountability of our field leadership.

The administrative infrastructure of the DAI (deputy director, director and chief deputy secretary) and the quality leaders currently in these positions only enhance this oversight and provides me with direct information on warden performance. This structure has proven much more effective than the previous regional structure and the tangible evidence is shown in the productivity and accountability. I am able to verify this perception through a variety of ways including internal and external audits (Office of the Inspector General, Bureau of States Audit, and other control agency reviews), communications with labor organizations, communication with families and advocacy groups, COMPSTAT, and direct communication with our executive team.

Admittedly, there are problems that arise with individual compliance of policy, but overall I am confident that the organization has enhanced consistency through this leadership structure and can more proactively respond when deficiencies are identified. The Department's field leadership is held much more accountable today than at any other time in my career.

Assembly Bill 900

In 2007 the Legislature approved AB 900 (Solorio and Aghazarian), Chapter 7, Statutes of 2007, the Public Safety and Offender Rehabilitation Services Act of 2007. This act is intended to finance construction of space for thousands of state inmates and create a broad range of performance measures that the department must meet. It is also supposed to expand a number of existing programs under your jurisdiction. Even before the passage of AB 900, you were placed on special assignment to develop a plan to address overcrowding. Your group recommended the fast-tracked expansion of capacity at several prisons. Based on March 2009 figures and subject to further modification, AB 900 first phase construction plans call for the creation of space for 2,630 to 4,800 inmates at a cost of \$1.2 billion.

14. What are your responsibilities for implementation of AB 900? Which are under the supervision of the other undersecretaries? How do you coordinate with other undersecretaries? What role do you play in monitoring implementation?

There are many aspects of this historic legislation that I remain both directly and indirectly responsible for in a support capacity. The legislation authorized the transfer of inmates out of state on a temporary basis to reduce overcrowding in the CDCR system. Under my direction, staff was responsible for negotiating private vendor contracts to allow for the housing of 8,000 level II and III offenders in these out of state facilities. This required the development of a unit to provide extensive monitoring and adherence

to CDCR regulations for these offenders. When Assembly Bill (AB) 900 was signed into law, there were 19,600 inmates living in nontraditional beds which presented a very dangerous overcrowding situation. Today there are about 10,500 inmates living in such conditions. The important milestone of housing 8,000 inmates by June of 2009 was very close to being realized as the population is now over 7,900.

The various courts and their bed/space needs have challenged the Department to find new ways to construct capacity to address their needs. Similarly, CDCR is finding ways to increase the right capacity for our needs into the future. I remain directly involved in the policy planning for the construction of capacity, to include both design of facilities and the fluid discussion of what is to be built. These negotiations remain ongoing.

I have also been directly and indirectly involved in the development of Reentry facilities, again from the design of prototypes from an operational perspective to meeting with community officials for the establishing of these facilities. In my capacity as a board member with the Corrections Standards Authority (CSA), I have been directly involved in the process of awarding jail construction money to counties meeting state requirements for AB 900 funding of new jail beds which are so needed in our criminal justice system. The mandates of additional rehabilitative programming both in prison and in the community remain an integral part of my involvement. The establishment of 2,000 additional drug treatment beds within the prison was a collaborative effort between Programs and my staff for the planning and implementation.

I would respond directly to the question that all three major departmental offices: Operations, Administration, and Programs, are exhaustively involved in all aspects of the legislation. Generally, the Undersecretary for Administration, Ms. Mary Fernandez, is responsible for construction, the Undersecretary for Programs (the position is currently vacant) is responsible for program development and expansion, and I am responsible for the operation and security aspects of all these mandates. Where all three intersect, and they do, my colleagues, our staff, and I work collectively to advance the various aspects of AB 900.

15. Under AB 900, the department is required to assess inmate needs for education, mental health, and substance abuse treatment services and to expand the availability of these services. Please describe your role in developing this plan and monitoring its implementation. Please identify key milestones and expected time frames. How will this be achieved with the Governor's proposed \$700 million cut to programs?

As indicated earlier, I believe programming opportunities contribute to public safety, not only by reducing recidivism but also by helping to increase the safety within our prisons. As a Department, we have made significant progress in meeting AB 900 program expectations.

With respect to inmate assessments, in February 2009 CDCR began using the COMPAS tool to assess the criminogenic needs of all new commitments and parole violators serving a new term. The only inmates who are not being assessed through COMPAS at the reception centers are those reentering as Parole Violators-Returned to Custody (PV-RTC). PV-RTC's are not given COMPAS because they are usually returned to prison (average of four months) without adequate time to participate in a full program.

In addition to COMPAS, the Department assesses all inmates as part of the reception center process. This process reviews an inmate's status concerning: medical and dental requirements or limitations; results of a psychiatric or psychological referral; work experiences and skills; narcotic drugs and alcohol use; escapes; arson offenses; sex-related offenses; academic and vocational needs or interests; necessary casework follow up; the counselor's evaluation of the inmate reentry plans if the inmate has six months or less to release; classification score and custody designation suffix; community correctional facility eligibility; and recommended facility placement. This information, which is used in classification committee, is part of the determinants for program assignment.

Where COMPAS information is available, CDCR uses the criminogenic factors for placement as well. For example in February 2008 the DAI issued instructions to Classification Staff Representatives (CSR's) at reception centers to use COMPAS assessment data (if available) in conjunction with the ISRS or the Reception Center Readmission Summary when endorsing an inmate for transfer from a reception center to a prison. The instructions direct CSR's to match the level of treatment services to the risk level of the offender to house inmates at facilities that offer the custody level and program services suggested by the COMPAS assessment. Since all prisons offer educational services, these instructions mostly impact inmates with a substance abuse need. The instructions direct CSR's to refer an inmate with an identified need for substance abuse treatment to an institution with a substance abuse program.

With respect to your questions regarding increases in substance abuse treatment, the Department has significantly increased substance abuse treatment programming capacity. For example, in April 2007 there were approximately 9,500 in-prison substance abuse programming slots. By December 2008, CDCR brought the capacity to over 12,000. We anticipate the new slots will be at full utilization by the end of this fiscal year. The Department also increased continuing care capacity from approximately 2,500 in April 2007 to over 5,000 in June 2009.

With respect to increased participation in educational and vocational programs, CDCR's attention on increasing program participation, together with teacher hiring and changes in the school calendar year, has resulted in greater utilization of existing programs (i.e., an increase in the actual hours of participation). Between April 2007 and April 2008 utilization of academic programs has increased from 50 percent to 67 percent, and for

vocational programs from 42 percent to 61 percent. As a result, the Department has met the benchmark in AB 900 with respect to increasing participation in education and vocational programs.

My role with respect to program reform is to facilitate implementation of key components of AB 900 rehabilitative programming in the institutions and parole regions and to work in active partnership to develop the most workable and effective programs for the correctional environment. In this role, I partner with the Undersecretaries of Administration and Programs who are responsible for other components of AB 900, e.g., facility construction and program design and development. I have assigned key management staff at the associate director level to work closely with Adult Programs leadership in the development and implementation of the reform model. Associate Director Richard Subia is my day-to-day liaison on the California State Prison, Solano (SOL) Proof Project. I am briefed at least monthly on our progress and actively participate in Cabinet-level discussions and decision-making meetings regarding the reform efforts.

We have a number of activities underway at the SOL site. Associate Director Subia, along with the SOL Warden, institution staff, and program reform staff meet once a week to discuss progress and resolve barriers. Among our joint accomplishments are a 500-bed substance abuse treatment expansion, implementation of new core programs and increased programming.

In terms of the impact of the \$700 million cut to CDCR's budget, we are in the process of determining its effect on all areas of the Department. We are making these decisions as a Cabinet. As I have indicated throughout my responses, we will have to make a number of very difficult decisions. Ultimately, our goal is to make fiscally responsible decisions that are consistent with the Governor's commitment to AB 900 and adding the "R" back into CDCR.

Female Offenders

California has developed a plan tailored to the needs of female inmates, which recognizes the unique treatment requirements of women and the importance of family ties. With that goal in mind, California has stitched together at least seven different options, some new and some existing, for placing female offenders when released from prison. CDCR has taken a number of steps toward implementing a sweeping reform plan, but still has far to go toward full implementation. The plan for female offenders, envisioned as a seamless continuum of care from entry to exit, remains unrealized. The position of Associate Director for Female Programs has been vacant since last fall.

16. What are CDCR's top priorities in 2009 for implementing the Master Plan for Female Offender Reform?

The master plan for Female Offender Reform includes sweeping reforms that address gender specific issues in the prisons. Included within this reform is gender specific training for all staff that recognizes the very different needs of this population, and the creation of reentry facilities and programs to provide transition from prison to the community.

Many of the specific goals of the master plan have been implemented, or are in the process of being implemented. For example, the CDCR property regulations were modified to permit latitude in allowable property for female offenders that were not permitted in previous regulations. Additionally, specific posts within the female prisons were identified as gender specific, and only female staff will be permitted to assume these posts.

Also, a 75-bed FRCCC has been opened in Bakersfield. This facility includes trauma informed programming and wraparound services that include a full array of offender needs. FRMSC's have been expanded as an alternative to incarceration for parole violations. The FRMSC's also include a full array of programming specific to the individual. While this is not an exhaustive list of our progress; I do agree that we have much more to do in this area.

In the current year budget, CDCR received an 80 million dollar reduction and a 300-400 million reduction in the budget year (BY) beginning July 1, 2009. The 2009 May Revise reflects approximately 750 million dollar BY reduction. The reduction of approximately 1 billion to an organization with an 8 billion budget (discounting Receiver's budget) is catastrophic and will require a complete modification of all CDCR plans, including that of the Female Master Plan. While these reductions are still conceptual, CDCR would be remiss if it did not evaluate every expenditure in its planning. A reduction of this magnitude requires some level of population reduction and will likely impact those offenders that are nonserious, violent, or sex offenders. A disproportionate number of female offenders met this criteria and would likely be impacted by such a population reduction. As a side note, the three judge panel, looking at overcrowding issues, issued a tentative ruling that would also directly impact this population. With the uncertainty and enormity of this budget crisis, it would be fiscally irresponsible to obligate the State to the long-term leases and support costs these community beds would require.

CDCR will continue to push forward with those reforms that make fiscal sense in this crisis. I suspect hard decisions will have to be made which could suspend many of the previous Female Master Plan visions that are currently fiscally prohibitive. The State and CDCR fiscal crisis remains extremely fluid, and I believe the Department will be best served to move forward with these more costly reforms when the economy stabilizes.

17. Will CDCR seek to expand community reentry programs and develop a continuum of services for women prisoners and parolees? What is the status of this effort?

The extent of the fiscal crisis will prevent expansion of community reentry efforts for female offenders in the short term; as well as possibly resulting in the curtailment of existing programs to some degree. As previously noted, progress has been made in the implementation of female offender reentry programs and alternative to custody parole programs. Mother-infant programs, FRCCC's and FRMSC's provide an effective model for female offender community reentry efforts into the future.

Expansion and/or suspension of existing reentry programming in response to the fiscal crisis will not deter our ability to pursue these models when fiscal stability is realized. In the short term these difficult decisions are unavoidable but will not impact our ability to pursue the female master plan when economic times are better.

Juvenile Justice Reform

In 2004 the administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. The Division of Juvenile Justice (DJJ) is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety.

In February 2008, however, lawyers representing juveniles urged a judge to name a receiver to run the system they said remained broken. And last October, an Alameda County judge stated the state was "in gross violation" of court orders by taking too long to reform its juvenile prison system. But he delayed appointment of a receiver to allow CDCR time to speed up improvements. In addition, the Little Hoover Commission recently recommended that the state eliminate its juvenile justice operations by 2011. The cost per ward at DJJ is now estimated to exceed \$250,000 annually. The Little Hoover Commission also recommended consolidating programs and services into a single office in the administration and to develop a strategy for a comprehensive, statewide juvenile justice system.

18. Are you satisfied with the amount of attention you are able to devote to the juvenile side of CDCR? Why or why not?

As stated in a previous answer, one of my challenges as Undersecretary of Operations is spending "enough" time on each of the major departmental offices I oversee. I believe it is a fair criticism to say critical departmental issues outside the parameters of DJJ occasionally distract me from being as responsive to DJJ issues as I would like to be. Having said this, I believe I spend adequate time ensuring DJJ issues are heard

and addressed—just as I would for any other departmental office under the Undersecretary of Operation's purview.

Within the CDCR reorganization in 2005 was the creation of a DJJ Chief Deputy Secretary position. I depend on the DJJ Chief Deputy Secretary to raise issues and be responsive to the hard working staff within this Division. Chief Deputy Secretary Bernard Warner is recognized as a national leader in the Juvenile Justice field, and I depend on his extensive experience and management background for guidance of the DJJ. We conduct regular weekly meetings, and discuss issues on an almost daily basis. I believe DJJ's importance is managed appropriately within the CDCR management structure.

19. Please describe your assessment of progress in juvenile institutions and what you intend to accomplish in the coming year, as well as in the long term, to address the court's concerns. What is your role in monitoring the implementation of the juvenile justice reform efforts required by the court in the Farrell lawsuit? Specifically, how do you track progress?

There has been significant increase in progress in the implementation of the *Farrell* remedial plans especially during the last six months. Compliance with the plans has been increasing significantly on a consistent basis throughout the last round of audits by the court experts, with a statewide compliance rating for substantial compliance of **77 percent** across all 6 plans at all facilities (an increase of 11 percent from July 2008). High achievement service areas include education, health care, youth with disabilities, and more recently safety and welfare. The most promising changes are seen in the changes to the environment of the facilities. Violence has diminished, youth are more active and involved in constructive and rehabilitative services, the atmosphere is less punitive and more encouraging of change to appropriate behavior, and families and outside community resources are more involved in the lives of their children and the facility staff. The change is a reflection of the integrated and youth centered approach the DJJ is adopting and promoting.

In the coming year well thought out and concentrated efforts will be focused on the remedial plans that have made some strides, but will require more coordinated efforts to make the kind of progress that is needed to reach substantial compliance. The plans addressing special services to youth - safety and welfare, mental health and sexual behavior treatment - will require much more coordinated efforts, particularly with the high risk populations they service. The DJJ is working directly with the *Farrell* experts in the development of services and programs for these youth, as well as with national experts in areas such as gangs, violent offenders, sexual offender treatment, classification and orientation. The development and conceptualization of the Integrated Behavior Treatment Model is a high priority project that will assist the stakeholders and staff to visualize and implement a system that is youth centered and community focused. Additionally, development of a viable Project Management schedule, as well

as a supportive compliance and auditing process, will be essential to effecting change at the scope expected by the *Farrell* consent decree.

At the direction of the Chief Deputy Secretary of DJJ, the newly established Court Compliance Unit, is the predominant venue for oversight of the remedial plan implementation and long term sustainability. A multi-disciplinary task force of internal and external stakeholders has been established since January and they meet on a weekly basis to address ongoing implementation progress and problems. In addition, I am provided monthly updates as to all remedial plans through dashboards, audit summaries, and face-to-face discussions regarding the successes and challenges at DJJ. Significant staffing and coordination has taken place over the past six months. The addition of dedicated compliance resources, refining of development, implementation and compliance processes and strategy along with a more concerted effort to consult with experts in a collaborative fashion have shown significant results. Moreover, the existing *Farrell* Litigation Coordinator continues to be responsible for the general management of audits by the experts, setting up audit tours, gathering and formatting results, documenting reports of compliance ratings, sending documentation out to plaintiffs, Office of the Special Master, experts, the court, etc. I am regularly briefed on the progress and challenges at DJJ.

20. *What specific changes are you initiating to reduce costs at DJJ and what is your time frame for achieving these changes? What are your specific plans and goals with respect to continuing the operation of DJJ facilities?*

DJJ is moving forward with the implementation of the Business Plan/Staffing model and a facility closure which will assist in the reduction of costs for DJJ. The steps for the Business Plan/Staffing model and facility closure will be a bifurcated process. The Business Plan/Staffing model is a statewide staffing analysis which will provide an actual number of established positions and vacancies to provide the estimated savings and impact for the layoff process.

The plan and goal to continue the operation of DJJ encompasses the reform toward a youth centered environment and at the same time prepare the youth and the public for reentry into the community safely.

The delivery of program services in all areas of education, medical, mental health, social skills, and how to interact with others is critical to the operation of the juvenile justice system. Currently, DJJ is training all staff to ensure the consistency of motivation and interaction with the youth. Although there are specific skills for each classification in DJJ, all have the goal to ensure the youth are prepared to the best of the youth's ability to be able to integrate with the community.

DJJ continues to work with respective community leaders, law enforcement, advocate groups, internal stakeholders, as well as political leadership. All of these individuals have an interest in the success of the juvenile justice system as each youth returns to their respective community as law abiding citizens.

The Secretary has committed to continuing the positive work being done within DJJ to house the State's more serious juvenile offenders, and to significantly reduce the costs associated with this housing. The "right sizing" of DJJ has begun in various aspects including; down-sizing of headquarters' operations, facility closures, and standardized staffing model throughout the organization. Significant progress is being realized with *Farrell* court compliance at the same time these comprehensive fiscal reforms are being implemented. As an example, the DJJ FY 08/09 appropriation (less parole) was \$447 million. DJJ reduced costs in the current FY 09/10 to \$399 million, or a 10 percent reduction. The staffing "right sizing" is anticipated to further reduce costs to \$361 million, or a 20 percent reduction over the current appropriation, and reduce per ward costs to approximately \$210,000. DJJ has reduced headquarters' positions by 100 positions, or a 27 percent reduction. When the staffing model is fully implemented, field management will be reduced by approximately 40 percent. DJJ has reduced overall staff from 4,300 in 2007 to about 2800 today. DJJ has closed two facilities and reduced statewide living units by 20 percent. The additional facility closures and "right sizing" is anticipated to reduce total living units by 45 percent over where we were three years ago. All of these facts point to the significant efforts underway to continue the essential public safety mission of DJJ, and reducing costs in a sound public safety manner.

Staff and Inmate Safety

Gangs and contraband are cited often as two driving forces behind prison violence. In 2005 the U.S. Supreme Court ruled that the state could segregate prisoners by race only in rare instances. In the wake of the decision, the state announced a legal settlement phasing out segregating inmates along racial lines. Efforts are also underway to reduce the flow of contraband into prisons.

21. What progress have you made toward implementing the settlement, and what is your timetable? Has it required changes in your prison gang strategy or other custody practices?

CDCR has developed, approved, and adopted Integrated Housing Program (IHP) regulations. General IHP familiarization training and inmate education were completed. All obligations to labor organizations required prior to implementation of the program were met. All inmates in the Department were assessed and assigned an Integrated Housing Code as of May 2008. The IHP was implemented at the first two institutions, Mule Creek State Prison (MCSP) and Sierra Conservation Center (SCC), in October 2008. The program implementation was faced with varying levels of resistance by the

inmate populations at MCSP and SCC, but is currently operating with minimal resistance.

CDCR has identified Folsom State Prison (FOL) and California Medical Facility (CMF) as the next two prisons to implement the IHP. Specific training for FOL and CMF staff will begin in July 2009, and implementation is currently planned for September 1, 2009. CDCR is also planning for specific training at Avenal State Prison (ASP), California Correctional Center (CCC), California Rehabilitation Center (CRC), and Chuckawalla Valley State Prison (CVSP) near the end of 2009. CDCR is developing a revised implementation schedule for the remaining institutions within the Department.

CDCR has not been forced to change prison gang strategies because gang affiliations are one of the many factors that can restrict an inmate from being housed with certain inmates or factions of the inmate population that would present a danger to either inmate if housed together. Prison gangs and disruptive groups are commonly the root cause of violence in prisons. Recognizing this, the Department appropriately made membership or affiliation with a prison gang or disruptive group one of the case factors which place restrictions on who an inmate may be housed with commensurate with his IHP Code. This consideration was allowed based upon the need to provide for the safety of inmates and staff, and the security of the institution.

Implementation of the IHP has impacted several other custody functions including inmate housing practices, inmate disciplinary processes, and the classification process. These changes were anticipated prior to implementation of the IHP, and addressed through the formal regulation change process.

22. Do you have the tools you need to diminish the influence of gangs? Are you satisfied with the progress you have made? What more needs to be done to diminish the influence of gangs?

According to the Department of Justice there are over 420,000 gang members statewide and it is estimated that CDCR houses over 71,000 gang members who account for approximately 70 percent of the in-prison violence. CDCR has been successful in identifying 10,000 gang members and associates through our existing validation process. More than 1,400 of these identified in-prison gang members are among the most influential leaders of the gangs who pose the greatest threat to the safety and security of our institutions. CDCR currently has 74 institutional gang investigators which makes us outnumbered almost 1000-1.

CDCR has always had an aggressive anti-gang strategy which has been used as a model by several other state correctional agencies as well as the Federal Bureau of Prisons. As gangs evolve, CDCR's gang interdiction strategies have evolved. For example, we recently restructured our gang validation process that will reduce the time to complete validations by approximately 30 percent. With the assistance of the

California State University, Sacramento Center for Collaborative Studies, CDCR produced a gang validation manual. Training on this manual and the gang validation process has been provided to the institutional gang investigators. In addition, CDCR is taking the following steps to combat institutional gang issues:

- CDCR is in the process of establishing the Criminal Intelligence Analysis Unit, partially funded from a grant from CalEMA. The unit will gather, analyze, and disseminate intelligence gathered by gang investigators both inside and outside CDCR.
- The Link Investigation and Network Cross-Reference data management application has been implemented to consolidate existing databases and provide additional investigative tools to the institutional gang investigators.
- Using Asset Forfeiture funds, CDCR recently purchased and received training in i-2 link-analysis and investigative tools software to be used by the Criminal Intelligence and Analysis Unit.
- Within the DJJ CDCR has implemented "Project Impact," an intervention strategy that provides youthful offenders an opportunity to disassociate from gangs, make connections to the community, and develop other skills which will enhance current treatment plans.

I am extremely proud of the progress CDCR has made in the efforts of combating gangs. Our interdiction strategies are ever evolving and our relationship with other agencies facing the same issues strengthens on a daily basis. We have established an excellent relationship with other local, State, and federal law enforcement and intelligence sharing agencies to work collaboratively to monitor, disrupt, and dismantle the most dangerous and violent regional, nation, and international gangs.

We can never have too many, or even enough tools to totally diminish the influence of gangs within our institutions. More programs, more staff, more training, more technology, and more equipment - all those things would be invaluable in our battle against gangs. However, if and until we can obtain those things, CDCR is moving in the right direction with its anti-gang strategies.

23. Please update the committee on what is being done to address contraband entering prisons, including cell phones and drugs? What is your current policy on searching those who enter prisons?

The three primary means of contraband entering a prison are through staff, visitors, and packages. Each of these areas is being specifically addressed in an effort to stem the ability of contraband entering institutions and threatening the safety of staff, inmates, and the public.

The Office of Correctional Safety (OCS) and the Office of Internal Affairs (OIA) have provided training to each institution on "Operation Disconnect." This operation involves OCS and OIA staff, along with Investigative Services staff from neighboring institutions, arriving unannounced at an institution and conducting thorough searches of all items being brought into the prison by staff. The operation has been successful in finding staff bringing contraband including cell phones, tobacco, narcotics, and even weapons into a prison's secure perimeter.

In addition, California State Prison, Solano, is being considered for a pilot program where airport type screening would be initiated at each entrance. Both staff and visitors would be subject to these requirements. This program is still in the developmental stages, and may be impacted by the current budget situation.

Among the strategies being used to stem cell phones from entering institutions are:

1. Cell Phone "Jamming" Options

The Safe Prisons Communications Act of 2009 has legislation in the United States House of Representatives (House Resolution 560) and Senate (Senate Bill 251) which would allow a state governor to petition the Federal Communications Commission to allow wireless signal jamming within a correctional facility's boundaries, provided the device does not interfere with outside communications. Secretary Matthew Cate has publicly supported this concept on numerous occasions. A Warden's Advisory Group (WAG) is currently collecting data on available systems which would render cell phones inoperable within their secure perimeters without effecting surrounding communities.

2. Cell Phone Detection Options

The WAG, in conjunction with OCS, is collecting data on cell phone detection systems available for purchase. A currently employed strategy is the use of canines in cell phone detection. SOL currently has canines which have been trained, and are being used to detect cell phones. On June 22, 2009, ASP, in conjunction with local jurisdictions, used canines to search two inmate housing units. This search produced 43 cell phones.

3. Increased Penalties for Cell Phone Possession in a Prison Setting

CDCR has continued to seek legislation to criminalize the unauthorized possession of cell phones and other wireless communication devices in prison. On February 26, 2009, Senator John Benoit (R - Palm Desert) introduced an Administration sponsored bill making the possession of a cell phone by an inmate, or the intent to deliver a cell phone to an inmate, a misdemeanor offense.

As of June 1, 2009, this bill, SB 434 (attached) was unanimously passed by the Senate and is making its way through the Assembly. Currently, it is not against the law for an inmate to possess a cell phone or for a staff member to bring a cell phone into a prison for an inmate. Also, CDCR regulatory policy prohibiting inmate possession of a cell phone is commensurate to an inmate found in possession of minor contraband. Regulatory policy is in the process of being changed to increase penalties for inmates found in possession of a cell phone.

The current policy on searching persons entering prisons is set forth in the California Code of Regulations, Title 15, Section 3288, Notice to Public. This regulation says that notices are to be posted on institutional entrance roadways and in sally port and pedestrian entrances stating that anyone entering these grounds consents to the searching of their person, property, and vehicle. Each institution has developed institution specific operational plans to comply with this directive. At a minimum, all persons are to have hand-held items (purses, lunch boxes, brief cases, etc.) searched whenever entering/exiting the secure perimeter of the institution.

Visiting

Many institutions have little or no space to process visitors who, in some cases, stand outside without shelter from sun or rain for several hours, waiting to visit inmates. Visits are terminated by staff when small visiting areas become too crowded. Some institutions allow appointments to minimize wait times, but others do not.

24. Who do you hold responsible for informing you of problems with visiting at both adult and juvenile facilities? Are improvements for processing visitors and visiting areas being contemplated as part of recidivism reduction or AB 900 efforts? Who is responsible for monitoring visiting practices for consistency among prisons?

I stay abreast of visiting issues through both the Chief Deputy Secretary, Adult Operations and the Chief Deputy Secretary, DJJ. Ultimately, the wardens and superintendents through their directorate are responsible for ensuring that visiting at all CDCR facilities are functioning appropriately and our staff display professionalism and treat all visitors with respect. The Associate Director, Female Offender Programs, oversees Statewide Visiting programs at our adult institutions and monitors all activities and issues arising from the Visiting areas. Additionally, we meet quarterly with the Statewide Inmate Family Council to address such issues as visiting, to ensure the process runs as smoothly as possible for visitors, inmates, and staff alike. We are also meeting with county juvenile court judges and other stakeholders involved with children of incarcerated parents who strongly advocate a closer connection between the prison system and the child welfare system. Specifically, they focus on juvenile court hearings and visitation policies that facilitate family reunification.

The DAI is working on proposals related to standardizing visiting practices, where possible, throughout the State. To this end, a CDCR Visitor's Handbook is in the final stages of development. As for standardization of processing procedures between prisons, a "one size fits all" approach is problematic based on numerous factors including sizes and locations of visiting rooms and the variance in volume of visitors at each facility. For instance, the ASP scheduling system was found to actually further limit the number of family members who would be able to visit at some prisons. I am committed to improving our visiting programs to ensure as much consistency as possible, and to provide the offender and visitors a clean, safe, dignified, and productive visiting experience.

25. If a third day of visiting was funded from recidivism reduction funds, are other visiting changes contemplated to promote recidivism reductions?

Visiting remains a very important inmate program for both rehabilitation and safe prisons. Throughout my career, family reunification within the visiting program has provided a large degree of normalcy for the offender and directly affects safe prisons. I will always maintain a commitment to provide a public friendly and positive visiting program for offenders. One aspect of meeting this commitment is the effective coordination with the Family Visiting Counsel and the prison specific counsels.

Admittedly, there are pockets of problems that emerge at the various sites that require executive level intervention. As a warden, I interacted with offenders and families to address these problems proactively, and I continue to expect wardens, superintendents, and the directorates to maintain that expectation. The nuisances of visiting areas such as acceptable clothing, parking, visiting hours, scheduling evolve at each prison and are impacted by staff changes. I place an emphasis on the appointing powers as executive changes occur to maintain stability in these programs. My commitment is to ensure that in spite of these evolving circumstances that problems are proactively addressed, stakeholders concerns listened to, and that the visiting program remains a high priority within the organization. With the aforementioned nuances, policy changes within visiting program remain a reality. Regulation changes are currently being processed to address sex offender minor visiting with nonvictims as an example of contemplated changes. Procedurally, appointing powers throughout the organization are evaluating modifications to visiting schedules, and continue to work with families and offenders to enhance this critical institutional program.

The enormity of the fiscal crisis requires review of all departmental resources. While not departing from the above-mentioned commitment to the visiting program, fiscal restraints have resulted in the policy level decision to suspend Third Day Visiting which was implemented at the majority of CDCR's prisons. Supplemental programs such as "Get on the Bus" will not be impacted at this time, and all holiday visiting will remain status quo. Suspension of this aspect of visiting will not impact normal Saturday and

Sunday visiting schedules. While unfortunate, the suspension of this program is evidence of the crisis level decisions necessary to address the significant budget situation faced by the State and the Department. The Department will reevaluate this policy when fiscal stability is realized.

Reentry Planning, Parole, and Release

Corrections administrators have talked about the need to better plan for the reentry of inmates into society, including a process that would provide every inmate with a risk and needs assessment that would be administered upon arrival in prison and utilized in a seamless fashion through parole. AB 900 requires the department to assess all inmates for the purpose of placing them in programs that will aid their reentry into society.

26. Who is responsible for implementing the risk-needs assessments and what is your timetable for implementation? How often will reassessments be conducted? Who will you hold accountable for ensuring that inmates are administered a risk-needs assessment at the appropriate intervals and are then placed in appropriate programs? How will you measure the effectiveness of the risk-needs assessment and its use within the department?

The development and implementation of risk-needs assessments is the primary responsibility of the Program Division. Like so many of our programs, the implementation overlaps into both Operations and Administration. My staff has worked with both Program and Administration staff in the role-out of this critical rehabilitative component. DAPO's PPP began using COMPAS in January 2006, to assess the risks and needs of eligible inmates who were within 240 days of release. In June 2007, the DAI began to conduct assessments of eligible inmates at intake within four reception centers using COMPAS. In November 2007, DAI expanded the assessment process into the remaining eight reception centers. CDCR is actively working towards combining all efforts into one seamless process.

Due to existing staffing ratios for the reception center process, and because of limited resources, it is difficult to capture all eligible inmates. At male institutions, all inmates arriving with a new commitment serving more than 241 days are assessed. At the female institutions, all female inmates are assessed upon arrival.

CDCR staff is currently in the process of continuing the development of the COMPAS assessment tool to best address the risk-needs of the California offender population, but also to identify the key times during their incarceration when the assessments and reassessments will be completed and/or updated.

In some locations, PPP staff also conduct reassessments on Parole Violators With New Terms and Parole Violators Returned to Custody who are serving more than 6 months ineligible or 12 months eligible.

Even while CDCR continues with the development, implementation, and incorporation of COMPAS assessment into our existing process, it is important to recognize the outstanding assessment processes that are already in place. CDCR staff currently ensures that all inmates receive appropriate assessments and evaluations in our existing medical, dental, mental health, educational, and classification processes.

The effectiveness of this assessment will be reflected in the quality of the participation in a given program. Through the utilization of the assessment tool, staff can place the appropriate offenders in the correct program, thereby increasing the likelihood that the offender will complete the program and be successful in his or her efforts to reintegrate back into the community.

27. Are you satisfied with the inmate parole planning process? How do you evaluate its effectiveness, and how can it be improved?

Since early 2006, the parole planning process within CDCR has made great strides; however, there is still room for growth in this area. Even though the preparation of the offender for release is the responsibility of all staff in CDCR, DAPO's PPP unit has been tasked with the responsibility of beginning the reentry planning process and is operational in all CDCR prisons. Customization of the COMPAS assessment for the specific needs of CDCR allows staff to build upon the initial intake assessment, update it throughout incarceration, and prior to release for reentry planning purposes. This allows DAPO to reevaluate the risk and needs of the institutional assessment in order to develop an assessment tailored to the offenders' risk and needs in the community prior to their release.

Access to COMPAS assessments allow correctional staff to quickly identify pertinent risk and need factors that allow for the placement of offenders into appropriate programs based upon their identified needs, optimizing the chances of success while under CDCR's jurisdiction and reduction in recidivism.

A standardized risk and needs assessment allows CDCR to optimize programming of the offender population, both in custody and out. It is a tool that can be used to determine the programming needs of the offender population. Combined with educational, vocational, and counseling programs, CDCR will be able to assist the offender in achieving the ultimate goal of rehabilitation.

28. Why are lifers expected to solidify their own parole plans with no assistance from CDCR staff yet Parole Agent II's and their staff are now at each prison assisting with parole plans for those with lower level sentences?

The PPP completes COMPAS assessments for all inmates within 240 days prior to release on parole. Lifers are not excluded from COMPAS assessment. However, the Board of Prison Hearings (BPH) and administrative reviews for lifers often result in more imminent release and provide a gap in services to this unique population. In 2008 there were 89 lifer inmates paroled.

The specialized parole process for these individuals is an area where more work is necessary. Admittedly, the development of release plans for lifers by counseling staff is generic and the information garnered for the report primarily derives from the offender and his/her counsel. Only after parole is granted does parole staff assist the offender to access departmental and community services. I logically agree that parole planning for this population should be more comprehensive and substantive to assist the offender with the unique transition to parole. I will work with the BPH and DAPO to reduce this gap. While there certainly will be both labor and legal challenges to a more thorough parole planning process for lifers, especially pre-granting of parole, the inescapable logic of assisting these offenders is clear.

29. Corrections officials and outside experts note that the biggest challenge for many newly released parolees is not just finding a job, but finding a place to live. Who in your agency is responsible for identifying additional housing options for those recently release? What actual help is needed, if any?

DAPO has employed a number of approaches for finding transitional housing for recently released parolees. Funding, especially in these difficult fiscal times, remains a significant challenge. It is uncontroverted that stable housing is a primary component to successful offender reintegration, and is the primary responsibility of the offender; not the State or the public. However, both communities and the State would be well served to develop policies that enhance stable housing for offenders as they re-enter society.

When the Correctional Counselor (CC) I completes the CDCR Form 611, Release Program Study, the inmate's plan for residence is identified. If the inmate has no viable residence in his or her county of last legal residence and is eligible to transfer to another area where he or she has housing resources with family, the CC I submits a Transfer Investigation Request. If the transfer is approved, the inmate receives reporting instructions to the new area.

The COMPAS evaluation will identify inmates with housing needs and provide housing resources that may be available upon release. This information is provided to both the Agent of Record (AOR), and the offender within 15 days of release.

Upon the parolee's release to the community, the AOR is responsible for assisting the parolee with finding housing. The parole agent may refer to:

- CDCR managed programs that assist parolees with housing such as:
 - Residential Multi-Service Center
 - Parolee Service Center
 - Community Based Coalition/Day Reporting Centers Transitional Housing
 - Female Residential Multi-Service Center
 - Female Offender Treatment and Employment Program
 - Parolee Service Network (Penal Code 3068)
- Family or friends of the parolee, if they reside in the county of last legal residence.
- Substance Abuse Program (SAP) aftercare program for 180 days, if they participated in SAP in prison.
- Community programs that offer housing such as homeless shelters, residential drug treatment facilities, mental health facilities, sober living facilities, church groups, and other community based-programs

All parolees attend the Parole and Community Team meeting to meet community providers that offer housing and other assistance.

Most DAPO residential programs are at or near capacity on a consistent basis (95 percent). Additional funding would allow for more facilities and greater capacity for:

- Residential Multi-Service Centers and Parolee Service Centers
(Current utilization exceeds 95 percent)
- Community-Based Coalition/Day Reporting Center Transitional Housing

More flexible county transfer criteria, deferment of restitution payments, and modification of out of country transfers are examples of policy revisions that could assist in this area. None of these policy decisions are uncontroversial and are impactful, both operationally and politically, to local jurisdictions and other stakeholders such as victims. CDCR should be responsible to assist the offender with transitional housing and coordinate with the community in which the parolee resides. The offender also must take responsibility in this area to avoid long-term dependency on State subsidy of housing.

30. What is your role in helping to design planned reentry facilities, including space for education programs and drug treatment, and ensuring the appropriate programs are in place?

My role in the development of the reentry model has been largely in a support capacity. The reentry program, with the exception of a short duration, has been under the leadership of my former colleague, Undersecretary Jett. Staff from all areas of the Department participated in preliminary facility planning, operational development, and program creation.

From the Facilities Management perspective, a prototypical design has been developed that incorporated input from all major divisions and was inclusive of programming space (education, drug treatment, and counseling). Program staff have done considerable work in the creation of programming concepts and community outreach. Conceptual programming was used to identify space in the preliminary facility design work. Finalization of program planning will not be completed until facility construction is further along and individual community siting issues are resolved. The prototypical design was developed with operational staff to ensure evidence-based security/construction standards were met as these facilities will house all levels of inmates. Progress with the reentry model has been slowed due to legal challenges (clean bond opinion and taxpayer lawsuit) and the inability to access AB 900 funding. However, clean-up language has been approved and taxpayer litigation is in the final stages of appeal. The Department anticipates that planning and implementation will begin in earnest within the next 30-60 days. As CDCR transitions into this more active phase, consideration is being given to transitioning reentry to the operations structure who will then be tasked with coordination of Facilities and Program to advance this common sense rehabilitative model at various projects throughout the State.

The first reentry facility was identified at the now closed Northern California Woman's Facility in Stockton, California. Reentry programming and community outreach was well underway with facility improvements identified, operational considerations established, and the project was readied for external agency review. The project has since been delayed due to pending environmental litigation. Staff assigned for activation have stood down as a result of the litigation delay and only minimal staff remain there today. Upon completion of the litigation, the facility improvements and reentry program development will be completed and this facility will likely be the first stand-alone reentry facility in the State. There is no anticipated completion date due to the external factors.

31. What is being done to ensure that inmate release dates are properly calculated? Is training adequate for staff who calculate the length of prison stays?

The calculation of release dates and the hard working staff involved in this complex process are very illustrative of the serious need for Information Technology (IT) solutions within the Department. Currently, the calculation of release dates is largely a paper process which includes audits at various intervals to ensure calculations are correct. It is only by the tenacity and professionalism of CDCR Case Records staff that our accuracy rates are maintained. As with any system dependent on human analysis,

especially a system consisting of complex sentencing laws and paper records, errors can be anticipated.

Until recently, shared computers and hand calculations were the order of the day. It was only recently, and really as a result of public outrage at systemic calculation errors resulting from court rulings, that the Case Records Specialists were all issued an individual work computer. Training is primarily on the job. Due to the calculation's technical nature, training can take up to a year before proficiencies are reached, and the employee can be permitted to calculate release dates without exhaustive supervisory review. The complex technical nature of this challenging work leads to a high staff turnover and makes retention of these specialized staff difficult. The current fiscal situation with furlough days and layoffs only amplifies the problems in this area. In spite of these very significant departmental challenges, the Case Records staff perform at an exemplary level throughout the organization.

CDCR is taking steps to address these Case Record challenges. However, these steps are complicated with the current fiscal crisis. Some of the efforts the Department continues to pursue are:

- Funding for, and implementation of, an off- site Case Records Academy focused on the technical nature of the classification.
- Upward mobility in the classification that allows the technical expertise of the classification to qualify staff for assignment to the CC series.
- Development of a "deep class" that encourages entry level clerical positions to seek assignment in the Records offices (this has been completed).
- The modernization of paper records to electronic files and computerized calculations. This IT effort is included in the scope of work in the Strategic Offender Management System procurement.

Case Records and the calculation of offender release dates will continue to be a high-risk concern for the Department into the foreseeable future.

Board of Parole Hearings

Under the 2005 reorganization, a "dotted line" relationship was established between your office and the Board of Parole Hearings, which exercises jurisdiction over inmates serving life terms under the Indeterminate Sentence Law, state prisoners serving specified terms of less than life, and those sentenced to life with the possibility of parole.

32. Please describe your role with respect to the Board of Parole Hearings.

Consistent with SB 737, Marcy's Law, the BPH is empowered to advise and recommend to the Secretary on general and specific policies and procedures related to the duties and functions of the Secretary. The Secretary similarly is empowered to

advise and recommend to the board on matters of general and specific policies and procedures related to the duties and functions of the board. While the board maintains its independence to adjudicate parole revocations and lifer hearings the interconnectivity with prison operations and administrative functions is undisputed. Functionally, the Undersecretary, Operations is delegated by the Secretary to coordinate with the Executive Officer of the BPH on those operational and administrative functions. This collaboration and the dedication of the Executive Officer and his staff has resulted in significant forward progress in the reduction of hearing backlogs, success in filling vacant appointments, and overall increased efficiencies in the board's important work.

I work collaboratively with the BPH in all areas with overlapping and joint responsibilities to ensure fair, impartial, and timely hearings in the parole suitability and revocation hearing processes. I work closely with the Executive Officer and BPH staff to make it a high priority to keep constant communication open to identify and remedy issues related to board practices. My predecessor implemented a workgroup with the BPH in December of 2007 and that workgroup is still functioning on a bi-weekly basis. I meet on a weekly basis with the Executive Officer to receive updates on current issues including briefings on postponement figures and the BPH ongoing efforts within the *Valdivia*, *Rutherford* and *Armstrong* federal court mandates. The continued workgroups have dramatically improved the quality control issues under the DAI in relation to our responsibilities in lifer parole suitability hearings. In working collaboratively with the BPH, we have also jointly made enhancements and provided training to staff on the Lifer Scheduling and Tracking System. I also coordinate with the BPH on budget and human resource matters

33. Former Secretary James Tilton asked one of your predecessors to monitor communications on parole issues to identify and focus on specific problems. What is the status of this effort, and what other specific systems have you created to improve the activities of the "board desk" at each prison and the coordination between the department and the board?

A representative workgroup was developed at the direction of Secretary Tilton to focus on issues affecting the "board desk" within prison Records Offices and the BPH. This workgroup is still in place and meets bi-weekly. The improvement in communications between the divisions has resulted in markedly increased efficiencies even during this period of extreme fiscal uncertainty. I believe that this success is a result of strong leadership provided by the Executive Officer of the Board and the DAI Director as they focused attention throughout the organization on these issues. I have personally emphasized to the Wardens the importance of this process, and have discussed statistical data requiring improvement at some locations. This effort has produced very specific results:

- Postponed hearings were reduced from a high of 53 percent in January 2008 to 7.6 percent in June 2009.
- The hearing backlog was reduced from a high of 1,458 in May 2008 to an all time low of 79 on June 1, 2009.
- The BPH was operating with the full 12 presiding commissioners for the first time in approximately 10 years.
- The BPH maintained between a 95 percent to 98 percent compliance rate under *Valdivia* timelines for revocation hearings.

The coordination between the BPH, the DAI, and my office has seen tangible progress. Budget cuts, lay-offs, furloughs, and turn over within the prisons and the BPH will continue to present challenges to sustain this success. I believe the processes and enhanced communication will allow the Department to maintain these efficiencies. If confirmed, I commit to continued focus to proactively, and with common sense, provide continued leadership in this area.

34. How is the board informed of, or involved in, CDCR's risk-needs assessment plans?

As noted in the previous responses about the risk-needs assessment, there is much work to accomplish to further embed the process into the culture of the Department to include BPH. The infrastructure to complete the assessments is really in its infancy and the application of the assessments in prison, parole, and BPH decisions will require time and commitment. Implementing programs in which the science suggests and offering the offender meaningful opportunity for rehabilitation, especially in these fiscally trying times, will be a challenge. I believe that the significant work done to date will provide the base in which the Department can integrate risk-needs assessments in its everyday decisions in the future.

A good example of the assessment tools used by the BPH is found in parole revocation decisions. The PVDMI provides a regulation-supported tool that incorporates the individual offender's risk-needs case factors in revocation decisions. BPH staff is being trained on this innovative decision instrument now, and I anticipate as this tool continues to be integrated into the organization, more consistent decisions aligned with offender needs will be realized. The result will be an increased use of remedial sanctions in lieu of incarceration, and decreased churning of offenders into prison beds. The application of these tools will also result in better discharge decisions of offenders that successfully complete their term of parole. Significant progress has already been seen in this area.

The Executive Officer of the BPH and his staff has been a participating stakeholder in the development and evolution of risk-needs assessments within the organization. Further progress in this area, even if slowed due to the current fiscal environment, will continue to be a priority for the Department and the BPH moving forward.

35. *When an inmate is denied parole suitability, he or she is often advised by the parole board member to enroll in a very specific program, such as anger management, or take up a new vocational program. What is the process of communication between prison staff and the board on the type and availability of programs for lifers sentenced with the possibility of parole, and how is follow-up monitored?*

When an inmate is denied suitability for parole, the BPH will often make a recommendation that the prisoner enroll in a self-help program, such as anger management, substance abuse, vocational, or educational programs. These recommendations are communicated to the Classification and Parole Representative (C&PR) at the institution. Upon completion of a parole suitability hearing, every inmate serving a life term is required to appear before the Unit Classification Committee (UCC) at his or her institution within 14 days of the board hearing. The UCC reviews the recommendations made by the panel members during the board meeting. If the panel recommends a specific program for the inmate, and the program is available at the institution, the committee will refer the inmate for inclusion in that program. Admittedly, there are circumstances when panel members recommend a trade or vocation that may not be available to the inmate due to circumstances outside the control of the inmate. The availability of the program at that particular institution and security issues such as being able to issue a gate pass consistent with the offenders custody level, are examples of barriers to meeting the BPH recommendations. If the program is available at another suitable institution, transfer procedures can be initiated. Overcrowding within the system and the availability of facilities appropriate to house lifers certainly complicates such transfers. Additionally, the current fiscal environment will result in the reduction of programs throughout the system and subsequently affect an offender's ability to meet the recommendations of the BPH.

In this imperfect system, the BPH must take into consideration the availability of programming at the institution in which the offender is housed. The independent role of the Commissioner's allows for such consideration, and fundamental common sense must be applied. The fiscal impact on the Department will only further aggravate this problem in the short term. My colleagues within Program, in collaboration with Operations and Administration, must provide as much flexibility as possible to prisons to expand programming opportunities, especially self-help programming, that permit life prisoners to meet BPH recommendations. To the extent that is not possible, the BPH must take into account this gap in services in all suitability decisions.

Stephen E. Jensen

Stephen Jensen
Responses

Nettie Sabelhaus, Appointments Director
Senate Rules Committee
Room 420
State Capitol
Sacramento, CA 95814

August 3, 2009

Senate Rules Committee

Re: Building Standards Commission Conformation

AUG 12 2009

Appointments

Dear Ms. Sabelhaus:

Please find below my responses to the Committee's questions concerning my confirmation as a member of the Building Standards Commission. I sent a copy of my Form 700 to your office on or about April 15, 2009. No substantial changes have occurred since that filing.

1. What are your future goals as a member of this commission? How will you measure your success?

The state of California is once again in a position of leading the nation, if not the world, when it comes to matters of public safety in the built environment. With the implementation of the 2007 California Building Code, we are again in a position of leadership that other states and many times nations seek to emulate. In 2008, we again led the charge with the adoption of the 2008 California Green Building Standards Code, making California the first state to adopt a statewide green building code. We have created a great deal of momentum and have paved the way to further developments relative to building standards and public safety, but as a future goal, it is imperative that we continue to be the progressive leaders that we have once again become. The aforementioned code adoptions are important pieces of the puzzle, but we must continue to lead in a positive and pragmatic way. Furthering this momentum is my greatest goal, particularly as we seek to adopt California's first statewide residential code.

2. What have been your major accomplishments as a member of the commission?

Without question, the adoption of the 2007 California building and fire codes would be my greatest accomplishment as a member of the California Building Standards Commission. As a public safety and fire official for over 20 years, I strongly opposed the previous commission's decision to adopt the NFPA 5000 building code in California. The NFPA 5000 code was new, unorthodox and inconsistent with national standards, which would have placed California far

behind the curve of many other localities throughout the world. When I was enabled to vote as a California Building Standards Commissioner for the adoption of the 2007 California building and fire codes, this was one of my proudest and greatest professional moments.

3. What might the BSC do to encourage high school and/or college students to consider jobs in the construction industry or other job sectors that involve building standards?

One of the great attributes of the California Building Standards Commission is the large cross-section of appointees and their professional disciplines. Vocational training is imperative to our growth and safety as a state, however; building standards are not only tied to vocational training. Having a representative of organized labor sitting next to a local building official provides a great opportunity for educational collaboration. For instance, a journeyman who may have been hurt on the job and is now permanently prohibited from returning to a specific job could collaborate with local government to become a building inspector. These types of partnerships from within the commission have great potential, particularly when looking at the different representative stakeholder organizations that commissioners have affiliations.

4. Please provide a status update on CCDA activities and the development of the master checklist.

The establishment of the CCDA board, the certified access specialist (CASp) program and continuing education for construction inspectors, building officials and plans examiners is a progressive first step towards improving knowledge of the many laws associated with disabled access. It is my hope that this will also improve the knowledge and education of the business community, the public and municipal jurisdictions on their role of making buildings accessible to all individuals. Members are being appointed to this newly created CCDA board and will have their first meeting soon. As a commissioner I look forward to working with the CCDA board on the development of a master checklist for building department staff to use.

5. What actions have you taken as a commission member to ensure the building codes are in compliance with state and federal disability access laws?

While California is a leader and progressive in their development of disabled access regulations, California's Title 24 access codes are currently not certified by the U.S. Department of Justice as meeting or exceeding the Americans with Disabilities Act (ADA). I have personally asked questions at various commission meetings about the certification process of California's disabled access laws (Title 24) by the State Architect and have been told that this is in process but proceeding slowly.

6. What actions have you taken to ensure new building standards take into consideration the needs of the disabled community?

As a building official for over 20 years in California, I am involved in enforcing disabled access rules and regulations on a daily basis. This experience has included educating public officials, contractors, architects and business owners of the numerous regulations and responsibilities contained within California Title 24 and the Americans with Disabilities Act (ADA). I review each state agency code proposal for access compliance prior to supporting its adoption at the state level.

7. *Could improvements be made in the model code adoption process? If so, please describe.*

The building standards process of requiring reviews and hearings are necessary to ensure that the public, industry and interested parties are involved in this rulemaking. Open meetings and transparency within government are critical to the work we perform as a volunteer state commission of appointees. With technology there may be ways to shorten the time it takes to publish the codes once they are approved at the commission thus reducing the overall time it takes to process the code adoption process.

8. *What do you believe can be done to streamline the state agency reviews of model codes when they are published, and perhaps reduce duplication and regulatory complexity?*

I believe that state agencies could be more involved in the national model code adoption process and participate in code change proposals by proposing code changes that could be incorporated into the standardized model code. California is a leader in building safety and should be processing their ideas through the national model codes for incorporation into the next model code edition. This could reduce the number of amendments to the model codes that the commission acts on and thus reduce duplication and regulatory complexity.

9. *As a member of the commission's Green Building Standards Committee, do you believe the green building standards should be strengthened? If so, how?*

The 2008 California Green Building Standards Code starts as voluntary green building regulations. I believe that many of these regulations should be strengthened by transitioning these from voluntary to mandatory standards. The 2010 California Green Building Standards Code will have many mandatory measures and allows for local jurisdiction modification to higher standards. This will help meet the AB 32 targets by reducing greenhouse gasses through high performance building construction.

10. *Are there other changes to the green building standards you believe are needed? Please specify.*

Changes to the 2008 Green Building Standards Code are occurring now with the development of the 2010 edition of the California Green Building Standards Code which will be published in July 2010 with a statewide effective date of January 1, 2011. I believe that many of the provisions identified as voluntary should be transitioned to mandatory requirements. Inclusion of onsite energy systems into the code such as solar and wind power will also reduce our need for fossil fuel powered power plants.

11. *Please explain what is being done to improve the commission's current outreach and public access efforts, including but not limited to the Internet. How do you monitor the BSC's outreach and dissemination of public information?*

Open meetings and transparency within government are critical to the work we perform as a volunteer state commission of appointees. I have been pleased to see the recent efforts of commission staff that have webcast and/or broadcast many commission hearings. I have also been

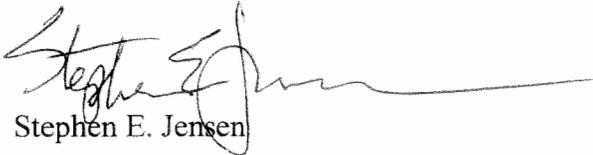
pleased to see the ability for individuals to have access to teleconference facilities where they can provide testimony directly to the commission during a hearing. I would like to see these practices furthered in the future where individuals would not necessarily need to be present at commission hearings to testify or participate within the hearing itself. As a commissioner, I pay close attention to web postings, commission mailings and notifications and overall I am pleased with the responsiveness of the commission staff and their abilities to disseminate pertinent information to stakeholders and the public. I have personally reported on commission activities to local building officials and builder groups at local, regional and state meetings and conferences.

12. How has your agency been impacted by the budget cuts?

The state and its “unprecedented” budget crisis have affected us all – not just as members of a statewide commission, but as Californians. The California Building Standards Commission is one of the many commissions who are able to do so much with so little. Although as commissioners we were not pleased to see the Executive Order mandating a third “furlough Friday” each month, we understand that this is indeed a time to tighten up all budgets to preserve many of the valuable resources that we offer as a state. We have also sought to work in partnership with the state legislature and Governor’s office to ensure that our expenses remain necessary and cost effective. For instance, we print very little as a commission to be conscious to the environment but also to save costs. Many commissioners pay their own travel to commission hearings to help the state save money. We are all in this together as a state of concerned citizens and we all have to do our part – as commissioners and citizens.

Please let me know if you need any additional information.

Sincerely,



Stephen E. Jensen

CALIFORNIA LEGISLATURE

MEMBERS

SAM AANESTAD
VICE CHAIR

GILBERT CEDILLO

ROBERT DUTTON

JENNY OROPEZA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG

CHAIRMAN

July 17, 2009

*Richard Sawhill
Responses*

Richard J. Sawhill, III

Dear Mr. Sawhill:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Building Standards Commission (BSC) on August 26, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by August 7th.

We would also like to receive an updated Form 700, Statement of Economic Interest, by August 7th.

Accomplishments and Goals

In 2005 the Senate Rules Committee asked you to submit your goals as a member of BSC. In your response, you indicated that your goals are to ensure the highest ethical standards by BSC, ensure the public's confidence with an open and public process, and ensure the future model building code changes will be adopted in a timely basis.

1. *What efforts have you made to advance your previously stated goals?*
2. *What are your future goals as a member of this commission? How will you measure your success?*
3. *What might the BSC do to encourage high school and/or college students to consider jobs in the construction industry or other job sectors that involve building standards?*



Disability Access

Senate Bill 1608 (Corbett), Chapter 549, Statutes of 2008, created the California Commission on Disability Access (CCDA), which is an independent state entity that serves as an advisory body and information center on disability access issues. CCDA was created in an effort to promote compliance and prevent unnecessary lawsuits and is required, in consultation with staff from BSC, to develop a master checklist for building inspectors to use for construction-related disability access compliance. BSC has been assigned the responsibility of assisting with CCDA activities.

BSC also established an accessibility committee, which serves an advisory role to the commission. The accessibility committee annually reviews the technical merit of building standards proposed by state agencies and provides recommendations to BSC. Committee members are appointed by BSC and represent the public, building design professionals, the building and construction industry, local government building officials, fire officials, disability access advocates, and other affected parties.

4. *Please provide a status update on CCDA activities and the development of the master checklist.*
5. *What actions have you taken as a commission member to ensure the building codes are in compliance with state and federal disability access laws?*
6. *What actions have you taken to ensure new building standards take into consideration the needs of the disabled community?*

Adoption of Building Codes

Every three years, BSC reviews model codes that are developed and published by numerous national independent code-developing bodies. During the review process, up to 13 state agencies and the public are solicited for recommended amendments to California's Building Code. After obtaining input from interested parties, one or more of BSC's code advisory committees conduct public meetings in which they review the changes. After public discussion and further changes, the proposed amendments are published. Finally, BSC reviews the amendments and model codes for possible approval. This is a lengthy and complex process.

7. *Could improvements be made in the model code adoption process? If so, please describe.*
8. *What do you believe can be done to streamline the state agency reviews of model codes when they are published, and perhaps reduce duplication and regulatory complexity?*

In 2008 BSC adopted the California Green Building Standards Code intended to cut energy and water usage to help the state meet its goals to curb greenhouse gas emissions. The standards are optional. Some critics argue that optional regulations eliminate the incentive to comply with more stringent standards which, in turn, may reduce opportunities to maximize environmental and health benefits.

The commission has stated that it will continue to work with stakeholders to develop a comprehensive set of mandatory provisions in the 2010 edition of the California Green Building Standards Code.

9. *Do you believe the green building standards should be strengthened? If so, how?*
10. *Are there other changes to the green building standards you believe are needed? Please specify.*

Public Access to Government

BSC is subject to the Bagley-Keene Open Meeting Act and required to conduct its business in a manner that allows the public to monitor and take part in the commission's decision-making process.

Access to meeting agendas, minutes, and meeting materials are essential to allowing the public to monitor the actions of government entities like BSC. The commission's Web site is a primary source of information for the public. While the commission posts its meeting agendas, minutes, and proposed code adoptions on its Web site, other meeting materials are not available.

11. *Please explain what is being done to improve the commission's current outreach and public access efforts, including but not limited to the Internet. How do you monitor the BSC's outreach and dissemination of public information?*

Economic Impact on BSC Operations

The state of California is experiencing an unprecedented budget crisis, which has affected every aspect of state government. In response, the Governor has issued multiple executive orders instructing state agencies to reduce personnel expenditures by implementing a hiring freeze, eliminating overtime, terminating temporary employees, suspending all personal services contracts, and implementing a mandatory furlough of state employees.

12. *How has your agency been impacted by the budget cuts?*

Richard J. Sawhill, III
July 17, 2009
Page 4

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,


DARRELL STEINBERG

DS:TS

Richard J. Sawhill

August 13, 2009

Via Email (cheryl.minnehan@sen.ca.gov)

Honorable Darrell Steinberg
Chairman, Senate Rules Committee
California State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Chairman Steinberg,

I respectfully submit the following responses to your letter of July 17, 2009 for the confirmation hearing on my reappointment as a Building Standards Commissioner. This confirmation hearing is scheduled to be held on August 26, 2009. The updated Form 700 is also included as an exhibit to this response letter.

1. As a commissioner I have participated in the public hearing process maintaining an independent view while making all decisions related to the Commission. At each meeting we have encouraged public participation to ensure the public's right to be involved in the process of the Building Standards Commission. The building codes were adopted on a timely basis for the first time in years. Early in the process I made a motion, which was adopted by the Commission, that any person, group or organization which attempted to delay the adoption of a specific part of the code would have that portion of the code set aside while the remaining portions of the code would proceed with the adoption process. This action ensured that special interest could not hold the process hostage; rather they would find themselves isolated. The codes were all adopted on schedule.
2. To ensure the next code adoption process stays on schedule and the building codes are timely adopted. I also desire to maintain minimal cost increases associated with the California Building Codes. This will be accomplished by regularly evaluating the costs associated with the actions of the Commission and staff. This is a team goal of the Commission and staff, not that of an individual commissioner.
3. We do not actively promote outreach, but willing respond to requests and informational opportunities.
4. Staff is actively pursuing implementation, but is currently waiting for the final two appointees by the Assembly.
5. To ensure building codes are in compliance with state and federal disability laws, each commissioner must discuss such issues with appropriate staff and proposing agencies during the development and adoption process.

Senate Rules Committee

AUG 18 2009

Appointments

6. To ensure building codes are in compliance with state and federal disability laws, each commissioner must discuss such issues with appropriate staff and proposing agencies during the development and adoption process.
7. The most significant improvement which could be made, in my opinion, is to make it more difficult to adopt an emergency change to an existing code. This process appears to reduce the public's timely participation and bypass steps provided to ensure adequate review prior to adoption.
8. The current process is so regulated by statutory and regulatory mandates it would be difficult to actually modify the system for improvement.
9. Green Building Codes will be strengthened during next, and future, code adoption cycles. There will also be improvement as new technologies are developed and implemented in the marketplace.
10. The current adoption process for the Green Building Codes is appropriate. If they are to be strengthened, there must be justification for such adoption, and not a simple response to political correctness. To rush the adoption process reminds me of the saying "we never have time to do it right, but we always have time to do it over."
11. The Building Standards Commission is constantly preparing and developing systems and procedures to maximum utilization of technology. A good example is the use of the internet and website during the most recent code adoption cycle. To my knowledge, we do not currently monitor specific results.
12. Furlough days.

Cordially,

Richard J. Sawhill

Richard J. Sawhill

attachments

RJS:rjs

July 8, 2009

Senate Rules Committee

Rex Hime
Responses

Honorable Darrel Steinberg,
President Pro Tem
California State Senate
State Capitol, Room 420
Sacramento, CA 95814

JUL 08 2009

Appointments

Dear Senator Steinberg and Members of the Rules Committee:

It is my pleasure to respond to the questions you have posed and provide the answers to you for the confirmation hearing on my reappointment as a director of the California Exposition and State Fair (Cal Expo).

Goals

1. What are your goals and objectives as a director of Cal Expo? What challenges do you see before you as compared to the challenges you faced during your previous tenure? How will you measure your success?

My greatest contribution to the people of the State of California to date has been my service on the Board of Directors for Cal Expo.

It continues to be a truly great but rewarding challenge to work with many varied aspects of our state's economy and develop a program that not only provides "Big Fun" but exposes all Californians to our state's great diversity - great talent, educational institutions, and leadership in addressing worldwide issues. Facing the continuing economic challenges, which are greater now than at any time in our memory, is a huge hurdle to overcome while working to bring the over 40 year old facilities into the 21st century. These issues loom larger than ever before. I believe my work on developing a plan which makes use of the underutilized land at Cal Expo to provide new grounds and new venues is an exciting opportunity to provide real solutions.

Measuring my success will be done by others not me – if I make adults think twice about the fair and bring a smile to the face of youngster that is success.

Funding for State Fair

2. How will the board monitor the expenditures of Cal Expo's portion of the new General Fund appropriation?

The Board of Directors meets monthly and all fiscal matters are reviewed on a regular and routine basis by our Finance and Audit Committee. The full Board also receives the same information and, can make inquiry of any report provided by the Cal Expo staff during the review period provided in our regular open meetings. The Board also votes to approve the monthly financial records provided. The additional \$265,000 expected from the General Fund appropriation will be treated no differently and it is important to note that this new appropriation does not change nor increase the current amount of dollars received from the F&E fund.

Rules Committee Response

July 8, 2009

Page 2

3. Will the new General Fund appropriation change the way Cal Expo carries out state fair operations? If so, how?

The direct answer is NO, as the appropriation you speak of is not received directly by Cal Expo. The monies are transferred to the F&E Funds managed by the Division of Fairs and Expositions. It is our understanding that the Cal Expo allocation to be received will not change.

4. How is the board monitoring this activity? What role has Cal Expo staff played and what role have outside consultants played in this effort? How is the board ensuring that the hiring of outside consultants is cost-effective?

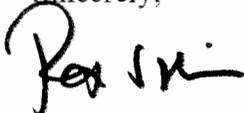
The Real Estate Committee, an ad hoc committee assigned by the Board Chair, monitors and reports all activity to the Executive Committee of the Board and, when appropriate a full report is made to the Board of Directors at their monthly public meetings. The Board reviews all recommendations of the ad hoc committees and approves all expenses before they are contracted out for services. The Board has been coordinating its efforts with the Department of General Services and the State Fair Leasing Authority.

5. How does the proposal to sell Cal Expo affect the status of the redevelopment project?

After the announcement, we worked with the Governor's staff and Agency Secretary of Consumer Affairs and the Department of General Services Director to ensure a complete understanding of what the project proposal was all about - using the underutilized land at Cal Expo to maximize the revenue potential of the property to its fullest extent. As a result, because the project reflected the goals of any consideration of a sale, we were told to continue the negotiations and to report back progress on the developments of this proposal.

Thank you for your consideration of my reappointment. I believe that my past experience on the Board and my skills enable me to continue to be an effective and dedicated member of the Board to the benefit of Cal Expo.

Sincerely,



Rex S. Hime

Statement of Goals

CalHFA administers programs in the areas of first-time homebuyer assistance, homebuyer lending, mortgage insurance, and multifamily lending. CalHFA is a completely self-supporting agency; the bonds it issues are repaid by revenues generated through mortgage loans.

1. What are your goals and objectives as a member of the CalHFA board, and what do you hope to accomplish during your tenure? How should we measure your success?

To assist CalFHA to restructure its bond obligations and loan portfolio so that it is financially capable to assist first time home buyers to purchase their first home.

To assist CalFHA in finding other sources of funding to continue operating its various programs to assist first time home buyers.

To assist existing CalFHA borrowers to stay in their homes and repay their loan so that CalFHA can help other first time home buyers.

To develop strategies and new financial structures to keep CalFHA's credit rating high so that it can continue to operate and lower its cost of funds.

To develop additional programs that will increase the number of first time home buyers in California by working with other lenders and developers.

The measure of my success and that of my other board members will be in evaluating the financial strength of CalFHA during my tenure and in comparing the number of first time home buyers being helped today versus the number being helped during my tenure.

Bond Market Difficulties

Because of the state's poor fiscal condition, on December 17, 2008, the Pooled Money Investment Board (PMIB) froze \$3.8 billion in financing for infrastructure projects across the state. Customarily, CalHFA relies on its line of credit with PMIB, which it uses to borrow money to finance projects; once CalHFA sells bonds, it repays PMIB. As a result of the PMIB decision in December, however, CalHFA no longer has access to PMIB loans and has been forced to suspend most of its lending and down payment assistance programs. The lack of access to PMIB loans, combined with CalHFA's heavy reliance on variable rate bonds, has put a great deal of strain on the agency's financial situation, to the point that the agency is on watch for a possible downgrade of its credit rating.

Senate Rules Committee

-1-

MAY 05 2009

Appointments

2. (a) *What do you understand to be the financial threats facing CalHFA?*
(b) *Do you think the agency took too much financial risk during the housing boom years?*

(a) Variable rate debt is one component of an overall financial strategy the Agency has used successfully for more than a decade. Using variable rate debt, the Agency has been able to obtain a sufficiently low cost of funds so that low income borrowers could obtain interest rates that allowed them to qualify for loans, and provided multifamily developers with a competitive rate which permitted more affordable apartments to be developed. Variable rate debt should not be confused with variable or adjustable rate loans: all of CalHFA's loans to borrowers (other than certain construction loans to developers) are fixed rate loans.

This variable rate debt has only recently become an issue. Most of CalHFA's variable rate bond investors are money market funds. The meltdown of the capital markets has caused investors to flee money market funds in favor of Treasuries. The money market funds in turn have sold off vast amounts of short term bonds to fund redemptions. That in turn has caused vast amounts of CalHFA bonds to be "put back" to the banks (called "liquidity providers") that have previously agreed with CalHFA to buy those bonds in such a situation, and the bond debt basically becomes a bank loan to CalHFA. The rate of interest paid by CalHFA on that loan goes way up, and the amortization period goes way down, significantly increasing debt service requirements. Thus, a fundamental short term mismatch is created between borrowers paying loan payments over 30 years and CalHFA paying for its capital over five years.

While CalHFA has always made sound, well underwritten loans, the deterioration of the overall California economy has caused job losses and financial stress to borrowers, and the steep decline of real estate prices within this state have resulted in higher rates of delinquency on loans. Over the last five years, CalHFA's single family conventionally insured mortgage portfolio has increased significantly as a percentage of the entire portfolio and increases in foreclosure activity have lead to an increase in mortgage insurance claim payments. CalHFA has direct exposure to the mortgage insurance industry via the California Housing Loan Insurance Fund and indirectly through its reinsurance agreement with Genworth Mortgage Insurance Corporation.

The bottom line is that CalHFA is experiencing a difficult confluence of conditions at the moment – historic highs in unemployment that make it difficult for borrowers to pay their mortgages, declines in

real estate values in our state of 40 to 50 percent, and bond markets that are inaccessible.

- (b) No. As home prices in California rose dramatically between 2000 and 2006, many first-time homebuyers felt this was a good time to purchase a home as an investment. CalHFA's mission is to offer to these borrowers first mortgages to help them realize the dream of homeownership. CalHFA did not follow the trend of the private mortgage lending industry and never offered any subprime or "Alt-A" loan products. All loans were fully underwritten by CalHFA and fully documented. In fact, in 2006, CalHFA concluded that the debt to income ratio permitted under Fannie Mae underwriting was too high, and adopted a more stringent standard.

Prior to this period of rapidly increasing home prices, the vast majority of CalHFA loans were FHA insured loans. But very soon the median price of California homes far exceeded FHA limits of \$269,000 (2004-05), \$312,000 (2005-06) and \$362,000 (2006-08). For the most part, FHA loan originators no longer operated in the state and private mortgage insurance was the only option for many of our borrowers. CalHFA was able to offer "conventional" (i.e., non-FHA) loans with low cost CalHFA mortgage insurance backed by a reinsurance treaty with Genworth Mortgage Insurance Company (Genworth). We also elected not to utilize a mortgage backed securities (MBS) business model at that time due to the additional cost associated with that strategy.

CalHFA has used variable rate debt since the 1990's, to allow the Agency to offer the lowest possible fixed rate loans to its borrowers. As interest rates declined between 2000 and 2006, the need to raise capital using variable rate debt increased. The cost of capital for fixed rate debt simply exceeded the level necessary to offer competitive rates to borrowers. As a result, increasing amounts of variable rate debt were issued and an interest rate swap strategy was employed to protect the Agency from interest rate volatility.

The market conditions which resulted in being put on watch for a possible downgrade are the result of the epidemic of subprime and predatory lending. During that epidemic, state HFAs stood as the high public purpose alternative to subprime loans, and made billions of dollars of well-underwritten, borrower-friendly loans to first-time homebuyers that likely would have otherwise gone to subprime lenders. It would be ironic and tragic if a high public purpose housing finance agency such as CalHFA - the "good guys"- were driven out of the market by the acts of less scrupulous subprime lenders. CalHFA has a major role to play in mortgage

lending to low and moderate income homebuyers in the years to come. CalHFA plans to be there to serve those borrowers.

3. *What do you think CalHFA's strategy should be to regain a sound and stable financial footing? What policies, if any, should the agency set to prevent a recurrence of the current situation?*

This question presupposes CalHFA could or should have done something more to prevent the current situation. The challenges currently facing the Agency are the result of an unprecedented decline in the capital and real estate markets. CalHFA is working aggressively to modify loans to enable people to stay in their homes and to keep properties from falling into foreclosure. The Agency is also working with its investment banks and other counter-parties to ensure that we are getting as much assistance as possible. In terms of policies going forward, CalHFA will be much different because the market is so different. It will take some time for the bond and credit markets to recover. The Agency may not be able to raise the same amount of bond funds in the future. Many aspects of the business models used by state housing finance agencies may have to be changed because of changes in the credits market and changes in the mortgage lending industry. One piece of good news – home prices have fallen dramatically and are more affordable than they have been in many, many years. In addition, demand for affordable rental housing has increased. Since its inception, the mission of the Agency has never been more in demand at any single point in time.

4. *If CalHFA is unable to sell bonds due to the difficult financial situation, will the agency look to the state for financial assistance in order to keep operating?*

CalHFA is already in the process of developing products that will allow it to meet the needs of its borrowers through the private placement and direct sale of loans. These products will not require state funds, but will allow CalHFA to reestablish lending activity. When the bond market is once again functional, the Agency will have more flexibility in the way it will be able to conduct business and will not be as dependent on bond funding.

CalHFA is also aggressively working with federal officials to free up markets and to ensure that some of the underpinnings of housing finance agencies, including mortgage insurers, come out of this era intact and ready to serve going forward. In the short term, we and

other state housing agencies have requested assistance at the federal level to return liquidity to the markets.

5. Please discuss the impact of the recent PMIB actions on CalHFA programs. (a) Has the agency estimated how many people are adversely affected by suspension of CalHFA programs? (b) How many CalHFA commitments to multi-family rental projects have not been honored in 2007 and 2008? (c) What is the dollar amount? (d) Do you foresee any relief for financing multi-family projects in the coming months?

- (a) The PMIB action impacted CalHFA programs in two ways. First, since mid-December 2008, the Agency has been unable to utilize the surplus funds in the PMIB as a "warehouse" line of credit. That line of credit has been a source of liquidity to purchase loans until such time as the line could be repaid with bond proceeds. At the time the PMIB line was frozen, CalHFA had a substantial pipeline of loans ready for purchase, which could not be funded. CalHFA was forced to use limited reserve funds to purchase these loans. Second, for Agency bond funded multifamily projects that also required MHP funding, the PMIB action has delayed the flow of those funds and slowed the completion of those projects. In terms of how many people were impacted, it is hard to make an estimate on that point because it would have been very dependent on the market at those times. We do know that we are well behind our annual goals, which when adopted, assumed a fully functioning bond market.
- (b) & (c) On the multifamily side, the CalHFA Board had approved loans for 15 projects, totaling \$172 million, and contingent upon compliance with a number of agreements. Because of the failure of the credit market, CalHFA was not able to sell the bonds needed to fund these loans within the time frame required by CDLAC. In an attempt to keep those projects moving forward and to assist the borrowers, CalHFA offered to be the conduit issuer on all the projects, offering to issue the bonds if the borrower could find a new debt lender. To date, two projects have closed and one more is in the process of closing. The remaining returned their bond allocation since they could not secure new financing within the allotted time.
- (c) The Agency's ability to finance new deals in the coming months will depend not only on our ability to access bond funds at a reasonable rate, but also the ability of developers to attract tax credit equity investors.

Agency Staffing

Longtime Executive Director Terri Parker retired on December 16, 2008. At its December 12th meeting, the board delegated her duties to Deputy Director Steve Spears until the Governor appoints a new executive director (who is subject to Senate confirmation). Last summer the board hired a consulting firm to assist in the search for candidates to recommend to the Governor, and a search committee made up of four board members held several meetings around the state.

6. *How is the board being informed of the status of the search for a new executive director?*

Prior to the expiration of Ms. Parker's term in December, a subcommittee of the Board was created to assist in the effort to find a new Executive Director. A consultant was hired to help identify viable candidates with the appropriate experience and background to fill the position. The subcommittee did meet with a number of potential candidates, and all information was forwarded to the Governor's Appointments Unit for consideration. I believe finding a qualified candidate to fill this position is a priority for the Governor, but no final decision has yet been reached.

7. *How is the board communicating with staff in the absence of a permanent executive director?*

As you noted above, Steve Spears has been tasked as Acting Executive Director until a permanent appointment is made. Mr. Spears and the CalHFA staff continue to communicate with the Board and deliver all necessary materials in a timely and effective manner. Staff continues to provide detailed and extensive updates on the Agency's operations. For example, the staff has continued with the normal process of updating the Agency's Strategic Business Plan and the Annual Operating Budget. The Board was updated on the current years' business plan at the January Board meeting and also discussed the Agency's Five Year Business Plan at the March Board Meeting.

Conflicts of Interest

In 2006 CalHFA sponsored SB 257 (Chesbro), Chapter 748, Statutes of 2006. This bill gives the CalHFA board authority to establish the compensation of key exempt management positions, based on a salary survey contracted for by the agency's executive director. While the understanding of the Senate at the time was that this authority would be used to attract new employees to vacant positions, the board later proposed significant salary increases for existing staff

as well, including the executive director. Since the executive director was not only a member of the board by virtue of her position, but her term of appointment was set to expire in December, the action raised both conflict-of-interest and "pension spiking" concerns.

The compensation committee that recommended these actions was led by the chair of the board, who was also president of a mortgage company that had sold CalHFA millions of dollars in loans. An internal investigation performed by an outside law firm found that no laws were broken, but recommended that the compensation process be changed to exclude the executive director and board members who do business with CalHFA from compensation decisions in order to avoid conflict-of-interest concerns.

8. *Should the board or the executive director be responsible for selecting, guiding, and monitoring the work of a salary survey contractor? What do you believe to be the appropriate role of agency staff regarding legislation that affects their salaries?*

In March of 2008, the CalHFA Board of Directors approved Resolution 08-09 which elected to retain the existence of the Compensation Committee, and made certain changes to the compensation process. Through the adoption of this resolution, the Board directed that any contracts designed to implement the compensation process, including the engagement of the consultant required to conduct the salary survey, be reviewed by the Committee. The Committee would then make a recommendation to the full Board, which would approve or disapprove the contract. If the Board approved the contract, the Executive Director would be directed to sign the contract on behalf of the Agency. A second resolution, 08-10, addressed concerns regarding the role of staff and the Committee in dealing with the compensation consultant. The Board directed the Committee to create a balanced compensation process with endeavors to avoid perceptions of conflicts of interest, while at the same time permitting the involvement of staff to the extent reasonably necessary to accomplish the Committee's duties under the charter.

9. *Has the board taken any steps to implement the recommendations from the internal investigation?*

The above listed actions were specifically taken in response to those recommendations.

Mental Health Services Act

In November 2004 California voters approved Proposition 63, the Mental Health Services Act (MHSA). MHSA imposes a one percent income tax on personal income in excess of \$1 million. A portion of MHSA funds can be used for capital facilities—including housing—that provide supportive services for mental health clients and their family members. From this stems the MHSA Housing Program, administered by the Department of Mental Health (DMH) and CalHFA. Initial funding of \$400 million has been designated for the program. The MHSA Housing Program provides funding to develop permanent supportive housing for individuals with serious mental illness, and their families, who are homeless or at risk for homelessness. During the application and review process, CalHFA underwrites requests for capital funds and capitalized operating subsidies, while DMH evaluates applications for target population and supportive services plans. Once funds are awarded, CalHFA will oversee the housing and financial aspects of the development, while DMH will oversee provision of services.

10. How have the state's current fiscal difficulties and related actions, such as the PMIB decision, impacted the MHSA Housing Program? How many projects have been shut down or are at risk of being shut down?

No projects have been shut down because of the PMIB decision. However, many projects were impacted by that initial freeze (we do anticipate that the recent actions by the PMIB will positively impact the status of some of the items listed below).

- Two MHSA projects (Vida Nueva in Rohnert Park and Fireside Apartments in Marin) that are complete are waiting for MHP funding to convert to permanent financing. Because of the delay in securing permanent financing, the project has experienced increased costs associated with maintaining the interest payments on the construction loan. This is a cost that was neither anticipated nor included in the project budget. CalHFA, with the permission of the County Mental Health Department, was able to utilize an additional amount of MHSA funds to pay down part of the construction loans on Vida Nueva to reduce the impact of not being able to fund the HCD loan. We anticipate doing the same thing for Fireside if it becomes necessary.
- Three MHSA projects (Mutual Highlands and Boulevard Court in Sacramento, Courtyards in Los Angeles,) have had trouble meeting readiness criteria for 9% tax credits because of the PMIB situation. To meet the readiness test, a project needs to be able to give a notice to proceed in early June 2009. At least one commercial bank has indicated that it is not willing to close its construction loans until it is sure that bonds have been sold to cover the HCD permanent take out loan.

- One of the lenders for The Fairmont Apartments in Alameda County has indicated that it will close the loan in time to meet a CDLAC extension date of June 30, 2009, but has stated that it will not fund the loan until it is sure that bonds have been sold to cover the HCD permanent take out loan. CalHFA, with the county's permission, has agreed to make a predevelopment loan from MHSAs to help the project with carrying costs while they wait for their construction loan closing.
- Another project, Sunflower, closed its construction loan and MHSAs loan. The developers were able to proceed by putting an additional year of interest into the interest reserve at the request of their construction lender. CalHFA disclosed this to the County Mental Health Department, and received permission to move forward.
- CalHFA has continued to fund predevelopment loans to projects with MHP commitments, but only after disclosing the potential risks to each County Mental Health Department, and receiving a letter from them agreeing to fund the MHSAs predevelopment loans.
- Many more projects have applied for MHP Supportive Housing Loans but have not been able to move forward because HCD was not issuing new commitments. MHSAs is continuing to make commitments to these projects, contingent upon receiving MHP awards.

11. *Three MHSAs-funded projects were recently opened in Rohnert Park, San Francisco, and Santa Barbara. Please describe CalHFA's role in developing these projects. (Note: - CalHFA recently closed a fourth loan – information for that project has also been included.)*

- 990 Polk Street in San Francisco. CalHFA was asked to make a \$1 million MHSAs loan to fill a construction gap in a project that was, at the time, 70% complete. The project has a total of 110 units, 50 of which will be reserved for persons with mental illness. The MHSAs loan funds were used to include 10 units for mentally ill seniors. CalHFA performed a due diligence review (underwriting the loans) to make sure that the project was financially feasible, and that the additional funds would allow the project to reach completion. CalHFA also worked with the County Mental Health Department and State Department of Mental Health (DMH) to review the service plan and service budget. CalHFA has executed a final commitment letter. This project has since been completed, and is leased up, including the 10 MHSAs units.

- Vida Nueva in Rohnert Park. CalHFA was asked to make a \$600,000 MHSA loan to fill a construction gap in a project that was, at the time, 70% complete, as well as fund a \$600,000 operating subsidy reserve. The project has a total of 24 units, including six MHSA family units. This project has since been completed and is leased up. The MHSA loan funds (\$600,000) were used to pay down the construction loan to reduce the interest carry costs on the project while it waits for the MHP loan to fund. The \$600,000 Operating Subsidy Reserve will be used for rental subsidies for the six MHSA units.
- MHA Gardens in Santa Barbara. CalHFA was asked to make a \$1 million MHSA loan to fill a construction gap in a project that was, at the time, 90% complete, as well as fund a \$500,000 operating subsidy reserve. The project has a total of 51 units, 35 of which are for persons with mental illness, and the remainder for workforce housing. The MHSA funds are being used to fund 10 units for persons who were being displaced because the State funded board and care facilities in which they were living were closing. CalHFA executed a final commitment letter and final closure is pending. The MHSA loan funds will be used to retire part of the construction loan. The \$500,000 Operating Subsidy Reserve will be used to supplement other rental subsidies for the 10 MHSA units.
- Sunflower Apartments in Salinas. CalHFA was asked to make a \$1.6 million MHSA loan as well as fund a \$1.5 million operating subsidy reserve for 15 MHSA units. The project has a total of 18 units, 17 of which are for persons with mental illness. The 15 units funded by the MHSA loan are reserved for persons who are homeless and mentally ill. CalHFA executed a final commitment letter and all of the loan documents for the MHSA loan. The MHSA loan closed along with the construction loan in late March and will be used to fund construction draws in the early stages of the program. The Capitalized Operating Subsidy Funds were transferred to the project to be used as operating subsidies for the 15 MHSA units. Two additional units are being funded by the County and will be use as transitional housing

Subprime Mortgage Crisis

California is on the front line of the nation's mortgage crisis. More than 200,000 homes were foreclosed on in 2008. According to projections, the state could face more than 450,000 additional foreclosures in 2009. Last year CalHFA launched the Community Stabilization Home Loan Program, which provides \$200 million to help first-time homebuyers purchase foreclosed homes. On February 4, 2009, Representative Ellen Tauscher (D-CA) introduced H.R. 906, the Housing Disaster Area Foreclosure Prevention Act of 2009. This bill would allow state housing finance agencies, such as CalHFA, to use federal mortgage bailout

funds to help underwrite refinancing of mortgages where the property is worth less than the owners' mortgage payments.

12. What actions has CalHFA taken to assist California homeowners at risk of losing their homes to foreclosure?

- In December of 2007, CalHFA sent its first letter to all of its borrowers encouraging them to contact their servicer (including the name and phone number, website and email address for each servicer) or a credit counselor if they were having a problem making their mortgage payments. This letter was sent again more recently.
- In December 2007, the Department of State, Foreign Operations and Related Programs Appropriations Act of 2008 (HR 2764) provided funding for a National Foreclosure Mitigation Counseling (NFMC) grant program to be administered by NeighborWorks® America. Specifically, that bill authorized NeighborWorks® to make grants to qualified counseling intermediaries to provide mortgage foreclosure mitigation assistance in areas with high rates of defaults and foreclosures. The counseling is intended to assist homeowners of owner-occupied homes with mortgages either currently in default or in danger of default. CalHFA, partnering with the Rural Community Assistance Corporation (RCAC), was initially awarded just over \$8 million in Round one funding on behalf of 20+ local foreclosure counseling agencies within California. Additional funds were subsequently made available for a second round of funding in 2009, through the enactment of HR 3221, the Housing and Economic Recovery Act of 2008. CalHFA/RCAC was conditionally awarded approximately another \$8 million in Round two funding.
- CalHFA is pursuing legislation to allow the Agency to subordinate downpayment assistance loans made under the California Homebuyer's Downpayment Assistance Program (CHDAP) if a borrower has a demonstrated hardship and the subordination is required to avoid foreclosure on the property.
- CalHFA has been working with borrowers in financial trouble for years, but the Agency's options were limited. CalHFA began development of a more aggressive loan modification program toward the end of 2008, and discussed this expanded program with the Board in January 2009. When details of the new federal loan modification program were announced, the Agency stepped back to determine if that program would work for our borrowers. Unfortunately, it was concluded that our bond indentures would not allow us to fully participate in the federal Home Affordable Modification program. CalHFA has since redesigned its program to incorporate several key elements of the President's

plan. It will be ready to go within the next two weeks and CalHFA has already begun training servicing staff and reviewing files of loans it services to see who might be eligible. Unlike the President's plan, it does not allow principal reduction, but it will refer borrowers to loan counselors, offer borrowers who have suffered financial hardship to extend the terms of their loan, reduce the interest rate, or take other measures to help them stay in their home.

13. Does CalHFA support federal efforts such as H.R. 906?

CalHFA, along with numerous HFA's across the country, has been working aggressively to obtain assistance from the federal government. Specifically, we are seeking assistance that will: 1) improve the financial condition of private mortgage insurers, most of which have recently experienced significant ratings downgrades despite the fact that they continue to hold adequate capital to pay claims on their existing books of business; 2) create a market for MRBs through either the direct purchase by the Treasury or through purchase by the housing GSEs; 3) assistance from Treasury in remarking short-term variable rate debt either by stand-by bond purchase agreements or letters of credit strengthening and restructuring the variable debt portfolio; and 4) some source of assistance. With regard to HR 906 specifically, CalHFA staff have provided Ms. Taucher's staff with the technical information she needed to develop the bill.

Eric Kawamura
goals

**Statement by Eric K. Kawamura to the Senate Rules Committee
Regarding Confirmation as a Member of the Board of Directors of
The California Housing Partnership Corporation**

Mr. Chairman and Honorable Members of the Senate Rules Committee:

I am writing in response to your request for a brief written statement outlining my short and long-term goals as a member of the Board of Directors of the California Housing Partnership Corporation (the "Corporation"). These goals are intended to further the Corporation's mission to create, acquire and preserve housing affordable to lower income households, while providing leadership on housing preservation policy and funding.

In the short term, my goals include helping guide the Corporation to use its reputation and expertise as a national leader in financing and preserving affordable housing to continue to advocate for enhancing federal support for programs such as the Low Income Housing Tax Credit, which are the foundation of so many of the successful private-public partnerships that have created successful examples of privately owned affordable housing here in California. In addition, I will continue to support the Corporation in developing innovative new financing solutions that use scarce public dollars to leverage private resources and expertise. I also plan to use my own knowledge and experience as an attorney in the banking field to continue to help strengthen the Corporation's internal operations and financial position.

In the long term, my goals include helping the Corporation play a leadership role in identifying a permanent new source of revenue that can be used by the state to obviate the need of perennially returning to the Legislature and the voters to ask for approval of additional affordable housing bonds. Another long term goal is to help the Corporation develop its Preservation Clearinghouse into a well-recognized resource where public agencies as well as owners and developers of affordable rental housing can come for expert advice and information that enables them to do their jobs more efficiently.

During my prior term as a member of the board of directors of the Corporation, and as its treasurer, I have helped to establish improved processes for budgeting and financial management that have contributed to the continued financial health of the Corporation. As the Corporation is self funding, responsible fiscal management, consistent with its legislative mandate, is critical to its mission, particularly in light of the current difficult economic environment.

In conclusion, if confirmed by the Senate Rules Committee, I will continue to use my skills and experience to help the Corporation further its mission of creating and preserving affordable housing for lower income Californians. Thank you for this opportunity to provide you with this information.

Eric K. Kawamura

Senate Rules Committee

JUL 21 2009

Appointments

CALIFORNIA LEGISLATURE

MEMBERS

SAM AANESTAD
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

JENNY OROPEZA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG
CHAIRMAN

Hon. John Zebrowski
Responses
Law Revision Commission

June 24, 2009

Hon. John Zebrowski

Dear Justice Zebrowski:

The Senate Rules Committee will be conducting a confirmation hearing on your appointment to the California Law Revision Commission on Wednesday, August 19, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by July 15th.

We would also like to receive an updated Form 700, Statement of Economic Interest, by July 15th.

Goals

The California Law Revision Commission (CLRC) is established to study major topics of law, as assigned by the Legislature, that require detailed review that cannot be easily handled in the ordinary legislative process. It is also authorized to recommend revisions to correct technical or minor defects in the statutes. The commission's work is independent, nonpartisan, and objective.

1. *Please provide a brief statement of goals you hope to accomplish during your term on the California Law Revision Commission. How will you measure your success?*



2. *What do you believe should be the priorities of the Law Revision Commission? Are there topics of law you believe should be studied by the Law Revision Commission?*

The Independence and Objectivity of the Commission

The CLRC has long held a reputation for its independent, nonpartisan, and objective work.

3. *The role of the commission and its members is to approach its work independently and objectively. If you or another commission member reasonably felt that a commissioner could not be or was not being independent and objective with respect to the Law Revision Commission's work on a study, is there a procedure for recusal?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,


DARRELL STEINBERG

DS:GW



Hon. John Zebrowski
Associate Justice, California Court of Appeal (Ret.)
Judge, Los Angeles Superior Court (Ret.)
915 Wilshire Boulevard, Suite 1900
Los Angeles, California 90017

TEL (213) 683-1600
FAX (213) 683-9797
JusticeZebrowski@adrservices.org

July 23, 2009

Hon. Darrell Steinberg
Chairman, Senate Rules Committee
C/O Nettie Sabelhaus
Senate Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814-4900

RE: AUGUST 19 LAW REVISION COMMISSION APPOINTMENT HEARING

Dear Senator Steinberg and Ms. Sabelhaus:

In response to your letter dated June 24, 2009, I enclose an updated Form 700 Statement of Economic Interest together with my response to Questions 1 – 3 in your letter.

The Form 700 lists a number of stock holdings. All but a very small portion of these holdings are held by my retirement plan as small fractional interests in common interest funds managed independently from me. These common interest funds operate in a manner similar to a mutual fund – the fund manager decides how to invest the funds; I have no part in making such decisions. Just as with a mutual fund, my only discretion is either to direct my pension plan to invest in a particular common interest fund, or to withdraw investment from that fund.

I have however been advised that because such common interest funds are technically not SEC-registered mutual funds, I am obligated to report the proportionate (small) interests of my pension plan in the (hugely larger) holdings of these common interest funds. I have therefore obtained the most recent report available from the funds, July 7, 2009, and have listed the responsive holdings on Schedule A-1 to Form 700.

Question No. 1: History shows that society benefits mightily from a well-functioning system of law that is knowable in advance. As society becomes increasingly complex and the volume of material covered by the statutory law grows, the possibilities for incongruities, obsolescence, confusion or even outright conflict also grows. Although such events might be expectable and perhaps even inevitable, they do detract from the societal benefits bestowed by a body of knowable law. The Law Revision Commission has long played an important role in

Senate Rules Committee

JUL 23 2009

Appointments

identifying and recommending fixes for such anomalies, and my goal would be to continue serving in that fine tradition.

Question No. 2: The priority of the Law Revision Commission should be to contribute to the maintenance and clarity of that body of knowable law that provides the above-mentioned benefits to society. At present, the Law Revision Commission has a rather full agenda which should be worked through. As some tasks/subjects are completed, others can be added to the end of the queue as the Legislature may direct. A few subjects occur to me which might be referred to the Legislature with a suggestion that the Legislature authorize study of them. Certain aspects of eminent domain law might justify study, as well as the subject of provisional directorships for troubled or deadlocked corporations (presently a dysfunctional statute) and certain abuses which often occur in enforcement of “rents and profits” clauses in trust deeds. Other subjects might arise as time goes on, but to this point in time I have been focusing my attention on the subjects already authorized for study by the Legislature, as opposed to developing suggestions for new areas of study.

Question No. 3: I know of no formalized procedure, but general concepts of fiduciary operations provide some guidance.

Anyone operating in a position of public trust such as serving on a Commission has an independent and personal duty not to use that trust for personal purposes or in a biased way. Hence each Commissioner has, should that Commissioner find themselves in a situation in which objectivity could not be maintained, a responsibility to recuse themselves. The call of the question, however, seems to be what should be done if one Commissioner perceives that another Commissioner has lost the ability to perform objectively with regard to a particular study (“a study”).

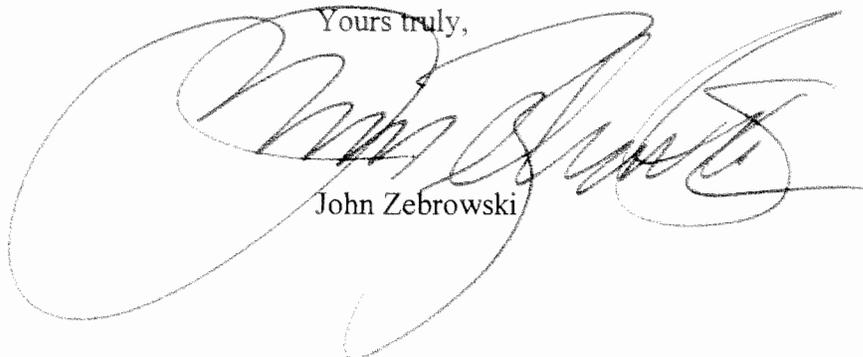
Initially, a reasonable tolerance for difference of opinion is important to maintain. Simple differences of opinion should not quickly be taken for bias or partiality on the part of another Commissioner. Thus the first step in any “procedure” that may apply in such a circumstance is to ascertain whether a real issue of partiality is present, or only an issue of differing opinion. Generally this will entail examination of the bases for the differing opinions, and whether these differences arise from legitimate and articulable considerations or otherwise.

In addition, since the Commission is multi-member, lack of objectivity on the part of one member with regard to one study should not (technically, at least) significantly impact on the Commission’s actions, providing the remaining majority maintains objectivity. Hence if a lack of objectivity is perceived in one member, but limited to one study subject, it will most likely be possible to work around this problem without the need for initiation of formal recusal proceedings. Only if the isolated non-objective member’s lack of objectivity became a general problem, applying to all or a great number of issues, will a difficult problem exist with respect to that member. Such a problem would ultimately be solved by expiration of their appointment, so initial consideration should be given to when that would occur.

With respect, however, to the question asked, the ultimate responsibility for recusal lies with the party who should recuse. The procedure available to other Commissioners would be to discuss and perhaps point out an appearance of partiality which should lead to recusal, and to decline to be swayed and act upon arguments which appear to be driven by partiality rather than by objective analysis.

Thank you for your consideration of the above and my candidacy for confirmation, and I look forward to continue working on the Commission if confirmed.

Yours truly,

A large, stylized handwritten signature in black ink, appearing to read 'John Zebrowski', written over the typed name.

John Zebrowski

JUL 29 2009

SENATE RULES COMMITTEE - CONFIRMATION QUESTIONS
COMMISSIONER C. C. YIN - SUBMITTED JULY 28, 2009

CC Yin
Responses

Appointments

- 1. What are your goals as a member of the Lottery Commission? What do you hope to accomplish during your term? How will you measure your success?**

My goal is to make the California Lottery one of the most effective and admired organizations in the State of California, maximizing its potential and contribution to public education in California. Internally, I will work with other Commissioners to instill a culture of pride, entrepreneurship, and accountability to the people serving the Lottery organization. Externally, I will work with other Commissioners to achieve consensus with the Governor's Office, Legislature, communities, and our customers for the good of the people of California. Increased revenues and contribution to public education, public opinion, and the satisfaction of stakeholders will measure my success.

- 2. What have been your most significant accomplishments so far as a member of the Lottery Commission?**

My greatest accomplishment, since being appointed approximately four months ago, is bringing a culture change to the Lottery. Specifically, I have done this through instituting performance measurement and accountability processes from the top down, and instilling a spirit of entrepreneurship, pride in public service, as well as accountability of work. As Audit Committee Chair, I have worked with Lottery staff to establish a formal Committee, a formal charter, and build effective communication with our external audit concerns. Additionally, I have initiated a plan to engage in building a stronger and more effective problem gambling outreach, education, and treatment program with the Department of Alcohol of Drug Programs. I am driving the Lottery to work with its stakeholders so that we can learn about the challenges and opportunities that face the Lottery through active involvement with the public. The Lottery must study opinions and input from its stakeholders, analyze public opinion, and study its history and performance to find common ground between staff, the Governor's Office, the Legislature, customers, beneficiaries, and the public. The result of this will be that of building a strong foundation for continued growth in Lottery revenues and contributions to public education.

- 3. How often does your commission meet? How do you stay informed of the lottery's activities given this meeting schedule?**

The Commission is required to meet four times annually, and we usually meet six to eight times per year. The Directorate briefs the other Commissioners and me monthly, being provided short weekly status updates. The Executive staff is at our disposal 24/7 if we have questions.

- 4. Is the commission planning to pursue any changes for lottery modernization? If so, how will the commission implement these changes?**

Over the next three years, we plan to continue the three major strategies that we started in the first business plan – improving the Lottery's image, improvement of both products and marketing, and modernization of operations. The current Business Plan, which was the first long term business plan, did much to set the Lottery on a course of continuous improvement, but it ends next year. To ensure continuity, the Lottery began developing its next Business Plan. This plan will be completed and presented to the Commission in January. This plan calls for an analysis of our systems, processes, and procedures to identify and prioritize those changes that would maximize funding for education. This plan generates strategies, a detailed outline of projects, and a financial model with sales and profit projections, that will generate long-term sustainable growth, continuing our efforts in continuous improvement, image, and modernization.

- 5. Has the commission made any adjustments pursuant to its 2007–10 business plan, which have helped the lottery to better compete in the marketplace? If so, please describe.**

In the past two years, the Lottery started work on projects addressed in the Business plan and identified various strategic directions for growing Lottery business and contributions to California's public schools. In the area of improvement of the Lottery's image, the Lottery implemented new marketing campaigns, initiatives, and rebranded with a new logo. Winner awareness of not only jackpots, but second tier prizewinners as well, has been emphasized by the "Only" Campaign, which has helped to lift sales 10-13% for lower jackpots in the Superlotto and Mega-millions games. We have promoted responsible gaming and stepped up law enforcement efforts to create a safe and inviting experience for players. Our new game show – Make Me a Millionaire - has drastically increased Scratcher sales through the Make Me a Millionaire Scratcher. The Lottery completed an E-business needs analysis and implemented second chance drawings on tickets. In the area of modernizing operations, the Lottery is in the second year of increasing retailer locations and upgrading the quality of our retailer support. The Lottery expanded recruitment of new types of retail locations and optimized the use of technology with our current retailers, which culminated in the recruitment of Southern California pharmacies as Lottery retailers.

6. **How does the commission coordinate with the Office of Problem Gambling under the interagency agreement for problem gambling efforts? How are you informed of Office of Problem Gambling activities? What responsibility do you assume for how problem gambling education and treatment is handled?**

Attacking Problem and Pathological Gambling will take a coordinated approach and this requires that the Lottery continue to be an active and effective partner in outreach, education, prevention, and treatment – especially in the Asian Pacific Islander community. Lottery and OPG staff interact regularly and the Lottery is provided monthly updates on the use of funds provided under the Interagency Agreement (IA), with the Lottery being actively involved in the decision making process for the use of funding that we provide. This guidance and participation ensures effective and efficient collaboration between the Lottery and OPG, keeping each of the Departments efforts in concert with one another, as well as the other stakeholders Statewide. Currently, the Lottery is using the data provided in support of the IA to initiate a plan to engage in building a stronger and more effective problem gambling outreach, education, and treatment program with the Department of Alcohol of Drug Programs. However, the two Departments cannot work alone and will seek guidance from the Governor's Office, Legislature, stakeholders, and the community, to develop a stronger and more effective program. Additionally, the Lottery actively provides information, input, and guidance on the use of Statewide monies for treatment as a representative on the OPG Advisory Board, which develops services and updates the Statewide problem-gambling plan. As more information, treatment options, and monies – both tribal and card room - become available, the Lottery will continue to collaborate with stakeholders to address opportunities to increase awareness and treatment of the issues problems surrounding Problem and Pathological Gambling.

7. **Given the failure of Prop 1C and the \$1 million appropriation, is the lottery considering any options that would allow for more funding to the Office of Problem Gambling so that it can increase its problem gambling awareness efforts and treatment levels? If so, please describe.**

Between last year and this year, the Lottery committed \$375,000 to OPG for Statewide prevention efforts. The Lottery plans to continue fiscal support for these programs in the future. In support of this funding, the Lottery receives monthly reports and comprehensive outcomes studies comprised of statistical field data. In light of the failure of Proposition 1C, the Lottery is currently exploring the potential increase of our contribution for additional projects initiated by our Department to Statewide Problem and Pathological Gambling education, outreach, prevention, and treatment efforts.

8. **What is the status of the new headquarters project? When do you expect to break ground on the first of the new buildings to be constructed? What role will the commission play in monitoring the new construction?**

The new headquarters project is currently in the design development phase. The architect was brought under contract in January and the construction contractor was brought under contract in July. Utilizing Integrated Project Delivery the architect and construction contractor will work on the design together, thereby minimizing change orders and cost overruns during construction. The construction for the new headquarters should begin in the spring of 2010. The Lottery Commission will receive regular status reports from the Lottery's project manager during the construction phase covering the costs, schedule, and any current risks. Actual costs and work performed will be compared to the project budget and the baseline schedule to verify that the project is on track. Additionally, current risks will be defined in terms of probability and impact. As a former engineer, contractor, and businessperson I plan to visit the worksite personally to talk with the architect and contractor to gain first hand insights during project completion.

9. **What is the estimated completion date of the new headquarters project? How has the commission arrived at this estimate, as well as the cost estimates for the project? Has the commission developed a contingency plan for leasing of the additional office space if the state's demand for this space does not materialize?**

The new headquarters building completion is estimated for the fall of 2011. The current estimate for the headquarters building completion was developed by a joint effort of the Lottery's architectural consultant, the contractor, the city government, and the Lottery. The first phase of the project is for the use of Lottery Headquarters only. The Lottery will only move forward with constructing additional office space if there is market support from both public and private sectors.

10. **How do you interpret the commission's authorization regarding "employee incentives?" What actions have been taken to increase scrutiny of such expenditures?**

The Commission took action at our May 20, 2008, Commission meeting to address employee incentives for non-sales staff. At this meeting, the Commission restricted employee recognition to the types of recognition offered by other state agencies consistent with Department of Personnel Administration rules and guidelines. These are the rules and guidelines I intend to enforce.

CALIFORNIA LEGISLATURE

MEMBERS

SAM AANESTAD
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

JENNY OROPEZA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG
CHAIRMAN

July 21, 2009

*Jorge Carreon, MD
Responses*

Jorge F. Carreon, M.D.

Dear Dr. Carreon:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Medical Board of California (MBC) on August 26, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by August 11th.

We would also like to receive an updated Form 700, Statement of Economic Interest, by August 11th.

Statement of Goals

1. *What are your current goals and objectives as a member of MBC? How will you measure your success?*
2. *What do you believe are the most pressing issues facing the board?*

Midwifery Advisory Council

Business and Professions Code Section 2509 requires that MBC create and appoint a Midwifery Advisory Council, which consists of licensees of the board and members of the public who have an interest in midwifery practice. The council is charged with making recommendations on matters specified by the board, which may include the Licensed Midwife Annual Report and legislation that affects midwifery practice. You were recently appointed to the council as a representative of the obstetrics/gynecology community.



3. *What are your goals as a member of the Midwifery Advisory Council? How will you measure your success?*

Board Autonomy

The Administration has influence in numerous ways over regulatory boards within the Department of Consumer Affairs (DCA), such as approval of budget change proposals, review and approval of regulatory changes, review and approval of contracts, and many other administrative functions. The department also provides mandatory training to new board members. The director of DCA has the specific authority to establish uniform standards to be used by healing arts boards with substance-abusing licensees, establish guidelines to prescribe components for mandatory continuing education administered by the boards, and appoint interim executive officers.

4. *Beyond the administrative functions discussed above, what other ways does the Administration interact with the board?*
5. *In your experience, what specific role does the Administration play in assisting you with your board member duties?*
6. *What training have you received regarding discharging your board duties and/or ethics?*

Shortage of Health Care Providers

Ensuring that the state's workforce is qualified and prepared to meet the needs of California's employers is essential to the recovery of the state's economy. Additionally, California is facing an unprecedented shortage of health care providers.

The Senate Health Committee held a hearing on the workforce shortage on March 4, 2009. Testimony at the hearing included reports on existing programs and suggestions for possible solutions. The chief deputy director of DCA testified that all of the health boards, including MBC, were asked to review workforce trends within their respective jurisdictions and identify how the boards could relieve the shortage of health care providers.

On April 15, 2009, DCA held a meeting with all of the healing arts boards, during which the shortage of health care providers was a prominent subject for discussion. At the meeting, the healing arts boards were encouraged to undertake a study to identify bottlenecks in the licensing process and to develop an action plan on how to address the workforce shortage in each of the boards' respective jurisdictions.

Additionally, the board's strategic plan contains an objective to "develop a plan for addressing access to care and the shortage of doctors that is appropriate to the board's mission and resources."

7. *Please describe the status of the board's plan for addressing access to care and the shortage of doctors.*
8. *What steps has the board taken to study its licensing process and to correct any undue delays in obtaining a license to practice medicine? How do you monitor progress?*
9. *Has the board made any effort to encourage high school and college students to consider jobs in health care professions? If so, please describe.*

Corporations that are not owned by health care professionals are prohibited from practicing medicine in California and, therefore, cannot employ physicians. This prohibition is intended to ensure that laypersons do not influence the professional judgment and practice of medicine, but it is believed to have restricted employment opportunities and access to health care in some rural and underserved areas. In an effort to address the growing problem of limited access to health care, a pilot project to allow qualified hospital districts to recruit, hire, and employ physicians as full-time paid staff in rural or underserved communities was authorized by Senate Bill 376 (Chesbro), Chapter 411, Statutes of 2003.

The pilot commenced on January 1, 2004, and MBC issued its mandated report to the Legislature in October 2008. However, only five hospitals participated, along with six physicians. As a result of the limited participation, MBC concluded that it could not assess the success of the pilot.

As the concern over access to care continues to grow, the state Legislature is considering several new bills that would allow certain qualifying hospitals in underserved communities to employ physicians.

10. *Under what circumstances do you believe it would be appropriate for non-medical corporations to employ physicians?*

Physician Conduct

A December 2, 2008, story in the *New York Times* reported that hospital staff are sometimes hesitant to communicate urgent and important health care issues out of fear of being berated by physicians. A survey by the Institute for Safe Medication Practices found that 40 percent of hospital staff surveyed reported having been so intimidated by a doctor that they did not raise their concerns about orders for medication that appeared

to be incorrect. According to the same story, "Such behavior contributes to medical mistakes, preventable complications, and even death." The story quotes an MBC representative describing a case in which a resident at a University of California hospital noticed a problem with a fetal monitor strip on a woman in labor. The resident didn't call anyone, out of fear, because the attending physician was notorious for yelling and ridiculing residents, and the baby died.

This issue has caused the nation's leading hospital accrediting agency to require hospitals to adopt a written code of conduct and a process for enforcing it. Additionally, MBC is in the process of amending its disciplinary guidelines to, among other things, add anger management as a condition of probation for cases, when appropriate.

11. *Do you believe MBC is addressing this issue appropriately? Would you recommend any additional actions?*

Public Disclosure

The board's disclosure policies have been criticized by the board's enforcement monitor as failing to meet its public protection mandate by not making relevant disciplinary and criminal history available to the public. In response to the criticism, Senate Bill 231 (Figueroa), Chapter 674, Statutes of 2005, enhanced the scope of information to be shared with the public and mandated a study of the role of public disclosure in the board's public protection mandate. The following year, Senate Bill 1438 (Figueroa), Chapter 223, Statutes of 2006, required the California Research Bureau (CRB) to conduct the study, which was released in November 2008.

The CRB report, "Physician Misconduct and Public Disclosure Practices at the Medical Board of California," found that the board's disclosure requirements vary depending on whether a request is in person, in writing, or via telephone or Internet query, and made 11 recommendations on how the board could improve its public disclosure policies and practices. Although this issue was on the agenda for the board's January 30, 2009, meeting, it did not take any action on this item.

12. *Do you believe the board's existing disclosure provisions sufficient to enable consumers to make informed choices when selecting a physician? Should the board's public disclosure processes and policies be improved? If so, how?*

Peer Review

In peer review, physicians evaluate their colleagues' work to determine compliance with the standard of care. Peer review is triggered by a wide variety of events, including patient injury, disruptive conduct, substance abuse, or other medical staff complaints. It is an internal process to review medical care, identify substandard medical care, develop ways to improve physician practice, and report certain events to MBC for further investigation.

Senate Bill 231 enacted in 2005 required a comprehensive study of the physician peer review process. The resulting report, "Comprehensive Study of Peer Review in California: Final Report," was issued on July 31, 2008, by Lumetra, a nonprofit health care consulting group. The study found that the present peer review system does not meet its intended purpose and identified numerous problems with the peer review process, including inconsistencies in the way the law is interpreted. The study also found that MBC "bureaucracy and current mode of operation may create barriers" to its efficiency and effectiveness with regard to peer review.

On March 9, 2009, the Senate Committee on Business, Professions, and Economic Development held an informational hearing to discuss the Lumetra report. A representative from MBC testified that the board could improve its consumer protection efforts if the board received notification that a peer review proceeding was going to be initiated, rather than receiving notification once it had been completed. The board representative also testified that regulation of the entities performing peer review and the peer review process do not fall within the board's jurisdiction. This regulatory model makes it difficult for the board to facilitate changes to the peer review policies and procedures at hospitals and in other peer review settings.

On May 27, 2009, Public Citizen, a national nonprofit consumer advocacy organization, issued a report titled, "Hospitals Drop the Ball on Physician Oversight." According to the report, hospitals are not meeting federally mandated reporting requirements regarding adverse actions the hospitals take on doctors in their employment. Although a federal law requires hospitals to report physicians who have had their admitting privileges revoked or restricted for more than 30 days, Public Citizen found that nearly half of the hospitals in the United States have not submitted a single doctor's name to the databank. About one-third of the hospitals in California have never reported. According to Public Citizen, "Lack of detection and widespread under-reporting to the National Practitioner Data Bank raise serious questions about hospital peer review."

The report indicates that lack of reporting deprives state medical boards of critical information needed for regulatory oversight and creates the potential for patient harm.

13. *Are you satisfied with MBC's response to this issue? Please explain.*

14. *What information should the board receive regarding peer review, and when do you think it should be received?*

Economic Impact on Board Operations

The state of California is experiencing an unprecedented budget crisis, which has affected every aspect of state government. In response, the Governor has issued multiple executive orders instructing state agencies to reduce personnel expenditures by implementing a hiring freeze, eliminating overtime, terminating temporary employees, suspending all personal services contracts, and implementing a mandatory furlough of state employees.

15. *Given the cuts in temporary staff, reduction of staff hours, and restrictions on personal services contracts, how will the board ensure it is able to meet the needs of its constituents in a timely and efficient manner? Are there any backlogs in the board's licensing and/or enforcement programs? If so, how will the board address those backlogs?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,


DARRELL STEINBERG

DS:TS

Jorge F. Carreon M.D.

August 10, 2009

Responses

Nettie Sabelhaus
Senate Rules Committee
Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

Statement of Goals

1. My current goals are to help my colleagues protect the public and to try to rehabilitate the doctors that we regulate.
2. The most pressing issues facing the board are the lack of personnel, morale and motivation in the members of the staff.

Midwifery Advisory Council

3. I am not serving on the Midwifery Advisory Committee. However, I am on the Cultural Linguistic Committee, the Education Committee and the Wellness Committee. My goals on these three Committees will be to contribute to the discussions before each committee and actively participate in fostering policy development that ensures the mission of the Board. Being a new Member of all three Committees I aspire to contribute my experience and commitment to the work ahead.

Board Autonomy

4. Routinely, Board Members do not meet with the Department of Consumer Affairs. Input on legislation proposed by the Board may be provided by DCA and the Members may participate in meetings with the Executive Director to discuss pertinent bills.
5. An initial new Board Member training session is offered.
6. I completed the required ethics course and was provided the new Board Member Orientation by DCA on April 22, 2009. Also, on January 7, 2009, I attended the Medical Board's comprehensive Board Member orientation provided by their Executive Management team. The orientation has been most helpful in providing the

Senate Rules Committee

AUG 11 2009

Appointments

training required to fully participate as a Board Member. The Board's Executive Director, and staff, provided a comprehensive overview of all Board programs, the strategic plan, organizational charts, staffing, policies and procedures, and the Board Member Administrative Procedure Manual. The Board's Chief of Enforcement and Chief of Licensing provided extensive training, including all elements of the Board Member's roles and responsibilities required for making decisions on Enforcement and Licensing issues. Fortunately, the Medical Board staff has been responsive to my questions and my requests for assistance.

- During Board meetings, training and education are provided to Board members on a diversity of items.

Shortage of Health Care Providers

7.

- The mandated study on malpractice insurance for volunteer physicians has been completed by the Board. A meeting with the Board and all stakeholders is scheduled for September 2, 2009. The topic of discussion will be how to implement the suggestions in the study which require legislative solutions. Additional access to care could be achieved by providing malpractice insurance to physicians who are willing to provide health services in a voluntary capacity or possibly an exemption from legal liability for volunteer physicians.
- The Board has also partnered with the University of California at Davis for the pilot telemedicine project regarding diabetes education and treatment for rural and other underserved communities. They are looking at two major goals of the Telemedicine program: 1) to improve health outcomes for diabetics in underserved communities where co-morbidities are much higher than other populations, and 2) to decrease the overall cost of health services for these same patients. The intention is that once the cost and health benefit of this program is realized, it will become a best practice Telemedicine program to serve others throughout the state of California and in other states. This pilot will improve access to health education and services to over 33 rural clinics over the next three years that they currently lack.
- As a member of the Wellness Committee and as a means of addressing access to care, we are looking at ways to keep physicians healthy so they will continue practicing longer. We are also finding ways to educate physicians on ways to avoid getting into trouble with the Medical Board which is taking a more proactive role than previous Boards. We want all physicians to understand how serious it is to get a DUI to encourage them to never drink and drive which could end up with them losing their license.

8.

- Recently, the Board had been working to secure a contract for an outside vendor to audit/assess its licensing processes and form a business process re-engineering plan. Due to the Governor's Executive Order, we were unable to finalize the contract. The Board hopes to be able to implement the licensing study as soon as possible to help

- improve the time it now takes to process a license.
- Staff is working on an innovative and new online system which will allow applicants to track required documents and other elements necessary for them to complete their licensing application. If all goes as planned the system could be up and running by the end of October or early November.
 - To promote consistency among licensing staff and for the purpose of training, the Board has developed a policy and procedure manual this past year.
 - Board Members are provided licensing statistics, including backlog updates, at each Board meeting by the Chief of Licensing. At the July 2009 Board meeting, Members offered feedback and suggestions to assist with current backlog.
 - The Board is sponsoring/supporting legislation (AB501) this year that addresses the need for a limited license for physicians who have a disability, but who may be able to safely practice with a signed agreement that limits the practice to an area recommended by a reviewing physician.
9. No, this is not part of the Medical Board's mission. However, we do support those entities that educate and encourage youth to enter the health professions field.
10. Recently, the Board took a support position on Senate Bill 726 (Ashburn) for the fact that it allows an expansion of the Board's original pilot program, yet keeping the pilot at a reasonable and controllable size. The Board is hopeful that this expansion allows ample physicians to fully assess the impact of direct employment of physicians by district and rural hospitals. It is important that any pilot program (or future approved program) be limited to those areas that are underserved. As long as the law makes it specific that the hospital cannot control the activities of the employed physicians and there is an avenue for the physician to complain to the Board if this happens, then consumer protection can be achieved in the pilot.

Physician Conduct

11. The Board takes great interest in this issue, in particular since several studies were completed denoting an increase in disruptive physicians. The Board has added anger management as a course, and further has developed a Wellness Committee. The Committee consists of Board Members and physicians who have an interest in physician's overall health and wellness. Its' mission is "To further the Board's consumer protection mission by encouraging and guiding licensees to promote a sound balance in their personal and professional lives so that healthy physicians offer quality care to their patients." The Committee is discussing the need to reach out to medical school students. The belief is that by reaching students prior to their joining the workforce, the number of disruptive physicians can be reduced.

Public Disclosure

12. With the expansion of information provided on each physician's online Board profile,

beginning July 20, 2009, the Board provides sufficient information for consumers to make informed decisions when choosing a physician.

- The law, requiring what is public on the Board's Web site and what is obtained by a letter, states that information disclosed on the Web site is only available for 10 years, rather than indefinitely – and, not all misdemeanors are required to be reported.

Peer Review

13. The Board Members are in support of Senate Bill 820 (Negrete-McLeod and Aanestad), providing improvements to the peer review process- even though we did not seek legislation pertaining to the peer review process. Board staff assisted the author with the language in this bill, and they are confident that it will provide more extensive information from hospitals to the Board. The bill provides further definition of peer review and makes minor changes to the documentation that must be provided to the Board.
 - Before moving forward with any other action, if this legislation is signed, it is important that the Board know how it will improve the peer review process.
14. The Board supports the SB 820 bill language requiring early reporting of certain incidents. If hospitals follow the current requirements of B&P 805, the Board would obtain the necessary information needed to protect health care consumers.

Economic Impact on Board Operations

15.
 - Due to the above-mentioned cuts, the Board's focus will be directed toward its core functions, i.e. licensing of physicians and enforcement of the Medical Practice Act. Staff will provide updates to the Board at each quarterly meeting describing how the cuts have impacted the functions of the Board as well as the status of backlogs.
 - The 15% cut in staffing resources is of great concern to the Board and has and will continue to have a significant effect on timelines, though the Board has no control over the situation. With these cuts comes an increase in backlog and delays throughout the Board's programs.
 - The Board is experiencing a backlog in its Licensing Program. Recently, Board Members offered suggestions to improve that backlog. The Members are cognizant that a study of the licensing program is pending and that the study should provide recommendations on improving the efficiency of the Licensing Program. The Board supports adding temporary staff to immediately reduce the backlog and make it more manageable during the furlough period.
 - Currently there is no backlog in reviewing complaints in the Board's Enforcement Program. However, the timeframes for the Board's enforcement process have been a source of concern to some. A plan to improve the Board's timelines was recently approved by the Board Members and staff has been directed to pursue the necessary legislation to assist the Board's investigators. Additionally, the Board recently

received a comprehensive report on the Board's Vertical Enforcement Process and approved and directed staff to incorporate those recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge F. Carreon', written in a cursive style.

Jorge F. Carreon M.D.

CALIFORNIA LEGISLATURE

MEMBERS

SAM AANESTAD
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

JENNY OROPEZA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

July 21, 2009

DARRELL STEINBERG
CHAIRMAN

Sharon Levine, MD
Responses

Sharon L. Levine, M.D.
Associate Executive Director
The Permanente Medical Group, Inc.
1950 Franklin Street, 20th Floor
Oakland, CA 94612

Dear Dr. Levine:

The Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Medical Board of California (MBC) on August 26, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by August 11th.

We would also like to receive an updated Form 700, Statement of Economic Interest, by August 11th.

Statement of Goals

- 1. *What are your current goals and objectives as a member of MBC? How will you measure your success?*

My goal, as a member of the Medical Board of California, is to do my utmost, through full participation in the work of the Board and through ongoing education of the physician community and of the public, to enable and support the achievement of the Board's primary responsibility of protecting the public.

In the course of my work I interact with large numbers of physicians within and outside the Permanente Medical Groups, which affords me opportunities to enhance understanding of the work of the Board among my professional colleagues, and to participate in the Boards efforts to enhance the public's understanding

Senate Rules Committee

AUG 12 2009

Appointments



2. *What do you believe are the most pressing issues facing the board?*

In my short time on the board I have had an opportunity to interact with many of the full time staff who support the Medical Board and the Executive staff of the MBC. I am extremely impressed with the competence and commitment of these individuals, and with their dedication to their work, and to the people of California. I believe that the most pressing issues facing the Board relate to the need, clearly felt by the staff, to improve the efficiency and effectiveness of the work processes related to licensure and enforcement, in the face of constrained resources, mandatory furloughs equivalent to 15% of the effective workforce, and a continuing increase in the number of applicants applying for licensure in the state. In addition, the staff have outlined and implemented several programs and processes which would increase and improve communication throughout the licensure process, whose completion is dependent upon freeing up the resources needed to complete design and implementation

3. *How do you view your role as a member of the board? How do you balance your role as a licensed doctor and member of the executive management team at the Permanente Medical Group, Inc., with the need to represent all Californians when deliberating policy decisions?*

I understand that as a member of the Board my primary role and responsibility is to participate fully in the work of the MBC, and its Committees, to support the Board's work in licensure and enforcement, in the service of the Board's responsibility to protect the safety of the public in California both as consumers of physician services, as well as patients. This responsibility is entirely congruent with my role within the executive leadership of The Permanente Medical Group, where my responsibilities include responsibility for ongoing operational improvements particularly in the area of high quality, safe use of prescription drugs; participation in our Northern California Quality Oversight Committee work; accountability for development of physician health and wellness programs, and professional development for our 6000+ physicians.

In the discussions and deliberations about policy, I have had responsibility for public policy and health policy, and community benefit, for The Permanente Medical Group for almost 20 years, and fully understand and believe that in my role as a participant in policy decisions as a member of the Board, I am representing all Californians, and am doing so with the perspective of understanding and embracing the responsibility for stewardship and accountability profession has for the Californians we are privileged to care for.

Board Autonomy

The Administration has influence in numerous ways over regulatory boards within the Department of Consumer Affairs (DCA), such as approval of budget change proposals, review and approval of regulatory changes, review and approval of contracts, and many other administrative functions. The department also provides mandatory training to new board members. The director of DCA has the specific authority to establish uniform standards to be used by healing arts boards with substance-abusing licensees, establish guidelines to prescribe components for mandatory continuing education administered by the boards, and appoint interim executive officers.

4. *Beyond the administrative functions discussed above, what other ways does the Administration interact with the board?*

The Administration's interactions with the MBC are largely through communication with the Executive leadership of the Board directly, and through the leadership of the Department of Consumer Affairs. Board members are asked to provide input and direction to staff on legislation, both that proposed by the board as well as legislation which has impact on the Board and its functioning.

5. *In your experience, what specific role does the Administration play in assisting you with your board member duties?*

In my admittedly brief tenure on the Board, the Administration through the DCA provides required new Board member training, as well as providing guidance through the support functions outlined above.

6. *What training have you received regarding discharging your board duties and/or ethics?*

I have taken the required ethics course (4/4/2009) and will be attending an upcoming session of the DCA New Board Member Orientation. I also benefited enormously from a very comprehensive Medical Board Executive Staff orientation on April 17th, 2009. The orientation included a thorough overview of all Board functions, programs, organizational charts, staff assignments, policies and procedures. Staff reviewed with me the Board Member Administrative Procedure Manual, and walked me through a thorough review of all the elements of a Board member's responsibilities for decision making regarding licensing and enforcement issues. I am particularly grateful for, and impressed by, the responsiveness and availability of staff to answer questions as they arise, and to the ongoing education they provide to us as Board members at our quarterly meetings.

Shortage of Health Care Providers

Ensuring that the state's workforce is qualified and prepared to meet the needs of California's employers is essential to the recovery of the state's economy. Additionally, California is facing an unprecedented shortage of health care providers.

The Senate Health Committee held a hearing on the workforce shortage on March 4, 2009. Testimony at the hearing included reports on existing programs and suggestions for possible solutions. The chief deputy director of DCA testified that all of the health boards, including MBC, were asked to review workforce trends within their respective jurisdictions and identify how the boards could relieve the shortage of health care providers.

On April 15, 2009, DCA held a meeting with all of the healing arts boards, during which the shortage of health care providers was a prominent subject for discussion. At the meeting, the healing arts boards were encouraged to undertake a study to identify bottlenecks in the licensing process and to develop an action plan on how to address the workforce shortage in each of the boards' respective jurisdictions.

Additionally, the board's strategic plan contains an objective to "develop a plan for addressing access to care and the shortage of doctors that is appropriate to the board's mission and resources."

7. *Please describe the status of the board's plan for addressing access to care and the shortage of doctors.*

The Board has completed its mandated study on malpractice insurance for volunteer physicians. The Board will be holding a meeting with all stakeholders on September 2, 2009 to discuss the best way to implement the suggestions in the report, which will require legislative solutions. By either providing malpractice insurance to physicians willing to provide health services as volunteers or providing some sort of exemption to legal liability for physician volunteers, access to care for underserved populations will be improved.

The Board has also partnered with the University of California at Davis for the pilot telemedicine project regarding diabetes education and treatment for rural and other underserved communities. Two major goals of the telemedicine program are to a) to improve health outcomes for diabetics in underserved communities where co-morbidities are much higher than other populations and b) to decrease the overall cost of health services for these

same patients. The intention is that once the cost and health benefits of this program are validated, the model will be available for dissemination as a best practice for telemedicine programs throughout the state of California and beyond. This pilot will improve access to health information and support services to over 33 rural clinics over the next three years.

The Board has no control over the actual number of physicians graduated from the various Medical Schools in the state, or the number of physicians who, upon completion of their training, choose to practice in California. By continuing to monitor and improve the performance of the licensing process (see below), it will be doing its part to encourage talented physicians to see California as an excellent environment for medical practice.

8. *What steps has the board taken to study its licensing process and to correct any undue delays in obtaining a license to practice medicine? How do you monitor progress?*

The Board was in the process of obtaining a contract to have an outside vendor audit/assess the Board's licensing processes and establish a business process re-engineering plan. However, due to the Governor's Executive Order, that contract could not be finalized. The Board will be requesting approval as soon as its 15% reduction plan is approved.

The Board is near completion of a new online system which will allow applicants to track the status of the various required documents and other elements necessary for them to complete their licensing application. This system is expected to be in place by the end of October, though the project may be delayed due to the continued mandated furlough of staff of 3 days per month.

The Board has developed a policy and procedure manual over the past year to promote consistency among staff and for training purposes.

At each Board meeting, the Chief of Licensing provides licensing statistics to the Board Members. Those statistics include any backlog the Board may be experiencing. At the recent Board meeting, the Members provided feedback and suggestions to assist with the current backlog, and acknowledged that staff is faced with a continuing year over year increase in applicants for licensure, a particular challenge with an effective 15% reduction in staff availability due to mandatory furloughs..

The Board has pending legislation(AB501) this year addressing a need for a limited license for physicians who have a disability but who may be able to safely practice but with a signed agreement to limit the practice on whatever area as recommended by the reviewing physician, which may provide some additional physician staffing.

9. *Has the board made any effort to encourage high school and college students to consider jobs in health care professions? If so, please describe.*

I am not aware of any specific activities focused on high school and undergraduate students, but there are likely to be future opportunities to partner with foundations and other not-for-profits who are involved in promoting health careers to young Californians.

Corporations that are not owned by health care professionals are prohibited from practicing medicine in California and, therefore, cannot employ physicians. This prohibition is intended to ensure that laypersons do not influence the professional judgment and practice of medicine, but it is believed to have restricted employment opportunities and access to health care in some rural and underserved areas. In an effort to address the growing problem of limited access to health care, a pilot project to allow qualified hospital districts to recruit, hire, and employ physicians as full-time paid staff in rural or underserved communities was authorized by Senate Bill 376 (Chesbro), Chapter 411, Statutes of 2003.

The pilot commenced on January 1, 2004, and MBC issued its mandated report to the Legislature in October 2008. However, only five hospitals participated, along with six physicians. As a result of the limited participation, MBC concluded that it could not assess the success of the pilot.

As the concern over access to care continues to grow, the state Legislature is considering several new bills that would allow certain qualifying hospitals in underserved communities to employ physicians.

10. *Under what circumstances do you believe it would be appropriate for non-medical corporations to employ physicians?*

The Board recently took a support position on Senate Bill 726 (Ashburn) which allows an expansion of the Board's original pilot program, but still keeps the program as a pilot, limited to a small scale but hopefully sufficient to enable meaningful evaluation. It is believed that this expansion will allow enough physicians to fully participate to enable the evaluation of the impact of direct employment of physicians by both district hospitals and

rural hospitals. It is important that any pilot program (or future approved program) be limited to those areas that are underserved and for which there appear to be no alternatives; and that the pilot establish, before expansion beyond the pilot, that the employment of physicians does not lead to consumer harm, or in any way compromise the judgement of physicians, or their ability to act in the best interests of their patients, and that the employment relationship exists for the sole purpose of serving underserved communities.

Physician Conduct

A December 2, 2008, story in the *New York Times* reported that hospital staff are sometimes hesitant to communicate urgent and important health care issues out of fear of being berated by physicians. A survey by the Institute for Safe Medication Practices found that 40 percent of hospital staff surveyed reported having been so intimidated by a doctor that they did not raise their concerns about orders for medication that appeared to be incorrect. According to the same story, "Such behavior contributes to medical mistakes, preventable complications, and even death." The story quotes an MBC representative describing a case in which a resident at a University of California hospital noticed a problem with a fetal monitor strip on a woman in labor. The resident didn't call anyone, out of fear, because the attending physician was notorious for yelling and ridiculing residents, and the baby died.

This issue has caused the nation's leading hospital accrediting agency to require hospitals to adopt a written code of conduct and a process for enforcing it. Additionally, MBC is in the process of amending its disciplinary guidelines to, among other things, add anger management as a condition of probation for cases, when appropriate.

11. *Do you believe MBC is addressing this issue appropriately? Would you recommend any additional actions?*

It has been repeatedly documented that patient safety, and the avoidance of preventable medical errors, are significantly enhanced by systems and processes which 1) establish the rights and responsibilities of all members of the care team to speak up and identify recognized or potential harms to patients and 2) address and neutralize the relative power differential between physicians and other members of the care team. It is incumbent upon institutions and, as noted, now required by accrediting agencies to ensure that such policies and procedures exist, and that there is institutional monitoring to ensure that the policies are followed. The Board has been very interested in, as in the case referenced, the risks to patient safety created by disruptive physicians, who intimidate others on the care team through anger and outbursts, and inhibit optimal

communication of patient information. Not only has the Board added anger management as a course required as a condition of probation where appropriate, but the Board has developed a Wellness Committee. This Committee is made up of Board members as well as physicians who have an interest in physicians' overall health and wellness. This Committee's mission is "To further the Board's consumer protection mission by encouraging and guiding licensees to promote a sound balance in their personal and professional lives so that healthy physicians offer quality care to their patients." One of the discussion items has been potential outreach to medical students, with the promotion of health and life balance early in the careers of these physicians in training, to avoid the conditions which lead to disruptive behaviors among physicians...

Public Disclosure

The board's disclosure policies have been criticized by the board's enforcement monitor as failing to meet its public protection mandate by not making relevant disciplinary and criminal history available to the public. In response to the criticism, Senate Bill 231 (Figueroa), Chapter 674, Statutes of 2005, enhanced the scope of information to be shared with the public and mandated a study of the role of public disclosure in the board's public protection mandate. The following year, Senate Bill 1438 (Figueroa), Chapter 223, Statutes of 2006, required the California Research Bureau (CRB) to conduct the study, which was released in November 2008.

The CRB report, "Physician Misconduct and Public Disclosure Practices at the Medical Board of California," found that the board's disclosure requirements vary depending on whether a request is in person, in writing, or via telephone or Internet query, and made 11 recommendations on how the board could improve its public disclosure policies and practices. Although this issue was on the agenda for the board's January 30, 2009, meeting, it did not take any action on this item.

12. *Do you believe the board's existing disclosure provisions sufficient to enable consumers to make informed choices when selecting a physician? Should the board's public disclosure processes and policies be improved? If so, how?*

With the Board's new physician profiles that began on July 20, 2009, the Board now provides sufficient information regarding each physician on its Website.

The law which dictates the difference between what is public on the Web site and what is obtained by a letter is due to the fact that the disclosure on the Web site is only available for 10 years rather than indefinitely. Also, not all misdemeanors are required to be reported

Peer Review

In peer review, physicians evaluate their colleagues' work to determine compliance with the standard of care. Peer review is triggered by a wide variety of events, including patient injury, disruptive conduct, substance abuse, or other medical staff complaints. It is an internal process to review medical care, identify substandard medical care, develop ways to improve physician practice, and report certain events to MBC for further investigation.

Senate Bill 231 enacted in 2005 required a comprehensive study of the physician peer review process. The resulting report, "Comprehensive Study of Peer Review in California: Final Report," was issued on July 31, 2008, by Lumetra, a nonprofit health care consulting group. The study found that the present peer review system does not meet its intended purpose and identified numerous problems with the peer review process, including inconsistencies in the way the law is interpreted. The study also found that MBC "bureaucracy and current mode of operation may create barriers" to its efficiency and effectiveness with regard to peer review.

On March 9, 2009, the Senate Committee on Business, Professions, and Economic Development held an informational hearing to discuss the Lumetra report. A representative from MBC testified that the board could improve its consumer protection efforts if the board received notification that a peer review proceeding was going to be initiated, rather than receiving notification once it had been completed. The board representative also testified that regulation of the entities performing peer review and the peer review process do not fall within the board's jurisdiction. This regulatory model makes it difficult for the board to facilitate changes to the peer review policies and procedures at hospitals and in other peer review settings.

On May 27, 2009, Public Citizen, a national nonprofit consumer advocacy organization, issued a report titled, "Hospitals Drop the Ball on Physician Oversight." According to the report, hospitals are not meeting federally mandated reporting requirements regarding adverse actions the hospitals take on doctors in their employment. Although a federal law requires hospitals to report physicians who have had their admitting privileges revoked or restricted for more than 30 days, Public Citizen found that nearly half of the hospitals in the United States have not submitted a single doctor's name to the databank. About one-third of the hospitals in California have never reported. According to Public Citizen, "Lack of detection and widespread under-reporting to the National Practitioner Data Bank raise serious questions about hospital peer review."

The report indicates that lack of reporting deprives state medical boards of critical information needed for regulatory oversight and creates the potential for patient harm.

13. *Are you satisfied with MBC's response to this issue? Please explain.*

Although the Medical Board did not seek legislation regarding the peer review process, the Board supports Senate Bill 820 (Negrete-McLeod and Aanestad), which provides improvements to the peer review process. Staff worked with the author's office on the language in this bill and believes it will provide more information to the Board from hospitals. Additionally, it provides a definition of peer review and makes other minor changes to the documentation that must be provided to the Board.

If this legislation is signed, it would be prudent for the Board to evaluate the impact of these changes to the peer review process prior to moving forward with any other action.

14. *What information should the board receive regarding peer review, and when do you think it should be received?*

As stated above, the Board supports the language in SB 820 which requires early reporting of certain specified incidents which prompt the initiation of an investigation at the time the investigation begins, rather than upon conclusion which will improve the timeliness of the notification of the Board for a subset of incidents which are more likely to lead to an action against a licensee, and will enable the board to focus its resources earlier on these actions. Additionally, when hospitals follow the current requirements outlined in B&P 805 the Board does receive the information necessary to ensure public protection.

Economic Impact on Board Operations

The state of California is experiencing an unprecedented budget crisis, which has affected every aspect of state government. In response, the Governor has issued multiple executive orders instructing state agencies to reduce personnel expenditures by implementing a hiring freeze, eliminating overtime, terminating temporary employees, suspending all personal services contracts, and implementing a mandatory furlough of state employees.

15. *Given the cuts in temporary staff, reduction of staff hours, and restrictions on personal services contracts, how will the board ensure it is able to meet the needs of its constituents in a timely and efficient manner? Are there any backlogs in the board's licensing and/or enforcement programs? If so, how will the board address those backlogs?*

Because of these cuts, the Board will need to focus solely on the core functions of the Board, i.e. licensing of physicians and enforcement of the Medical Practice Act. The Board is receiving updates from staff at each meeting on how these cuts have impacted the functions of the Board and what are the backlogs.

The Board is very concerned about the 15% cut in staffing resources that has and will continue to have a significant affect on timelines. A 15% cut in staffing is causing an increase in back log and delay in all programs.

The Board currently has a backlog in its Licensing Program. The Board Members recently suggested ways to improve the backlog, but also is aware that a study of the licensing program is pending, and when approved the study should assist with ways to improve work processes and efficiency within the Licensing Program.

Although there is no backlog in the review of complaints to date in the Board's Enforcement Program, the timeframes for the Board's enforcement process are of concern to some individuals. The Board Members approved a plan to improve the Board's timelines and have told staff to pursue legislation necessary to assist the Board's investigators. In addition, the Board recently received an in-depth report on the Board's Vertical Enforcement Process and approved staff move forward with the recommendations from that report.

KNUTE MICHAEL MILLER

August 7, 2009

Knute Michael Miller
Responses

The Honorable Darrell Steinberg, Chairman
Senate Rules Committee
Attn: Nettie Sabelhaus, Senate Rules Appointments Director
Room 420, State Capitol
Sacramento, CA 95814

Dear Mr. Chairman:

I am writing in response to your July 21, 2009 letter in connection with a confirmation hearing on my reappointment as a member of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun scheduled for August 26, 2009. I have enclosed a copy of FPPC Form 700 for the calendar year ended December 31, 2008. Further, I am pleased to provide answers to your several questions:

- 1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Board of Pilot Commissioners? How will you measure your success?*

My principal goal is to ensure that the Board's primary responsibilities – relating to safety and expressed by the Legislature in Harbors and Navigation Code sections 1100 and 1101 – are carried out successfully. This will entail the successful implementation of changes to the Board's navigational incident (marine casualty) investigations and procedures resulting from the enactment of SB 1627 in 2008. Pursuant to that legislation, the Board itself has new direct responsibilities and procedures that must be devised and implemented consistent with the legislation and other laws. The Board should contract with additional investigators with both marine and investigative skills. The Board should move swiftly to select additional trainees for its pilot trainee training program and bring those trainees into the program as dictated by projected needs. As president of the Board it is my responsibility to ensure that these several projects move forward with dispatch, orchestrating the efforts of staff and fellow Board members as well. If they do, I will have been successful in this focus of responsibility.

A second but administratively critical focus is to ensure that the successful transition of the Board from its prior status as an independent board to constituent department of the Business, Transportation, and Housing Agency continues and comes to fruition expeditiously. Necessarily changes of this sort and this scope must take time – but not too much time. As president of the Board I have and will continue to play an active role in adjusting the Board's procedures and lines of communications to conform to those of BTH Agency. I would hope that the Board would be fully integrated into BTH not later

Senate Rules Committee

AUG 07 2009

Appointments

than the end of this fiscal year. (To put this in context, the Board for many years received administrative services from the Department of Consumer Affairs under an inter-agency agreement. Those services effective July 1, 2009 will be provided by the California Highway Patrol. I anticipate that, realistically, it will take a full year to work through all of the new processes which will be addressed as they arise by our very small staff of three.)

2. *How are you, as a board member, kept informed of staff activities? What training do you receive to help you perform your board duties?*

As Board president I am in regular contact with the Board's staff. They communicate with me telephonically and electronically. I also go by the Board office several times a month between Board meetings to meet with staff on various issues.

During the period of my previous appointment I attended a program given by the staff of the National Transportation Safety Board concerning their marine casualty investigation procedures and practice. I also have the benefit of discussion of a wide array of subjects with the Board's legal counsel and senior executives of the BTH Agency.

3. *What changes have you observed in the operation of the board since its integration into the [BTH] agency? Are you satisfied with the board's current performance or would you recommend changes?*

The advice and involvement of executives of the Agency has been extremely helpful to the Board in guiding its decisions and setting its priorities. While the Board as such (the Commissioners) continue to perform well, the Board staff has not had the capacity to perform at a superior level. For 15 years the Board staff consisted of only two employees – an executive director and a secretary – and their combined efforts were not enough to further the Board's missions and comply with all state requirements (as likely will be addressed by the Bureau of State Audits in its findings and recommendations). The recent addition of an Assistant Director will improve the overall staff capacity substantially. Though I am not prepared to do so at this moment, I may recommend the addition of another clerical staff person in the future. The ability post-July 1, 2009 to access CHP administrative staff will facilitate a substantial improvement in Board operations, I believe.

4. *What outcomes have you experienced from new [port agent responsibilities] requirements if any? Have the number of reports to the board increased?*

New HNC section 1130(c) places into statute elements of the Board's regulations (section 218(c)(6) "The Port Agent shall: Report to the Board all accidents, groundings, collisions or similar navigational incidents involving vessels to which a pilot has been assigned." And though not as precise, 218(c)(7) ". . . Report to the Board any matter which, in his or her opinion, affects the ability of a pilot to carry out his or her lawful duties."). New section 1130(c) adds specific requirements and makes them explicit. In the past, it would have been unlikely that a Port Agent would have failed to make the reports now required

by the new legislation. I have thus far not experienced any new outcomes nor has the number of reports to the Board increased.

5. *Is the board receiving the information required on the types of prescription medication pilots are using?*

SB 1217 made a number of changes to pilot and pilot trainee fitness requirements but preserved most elements of prior law as well. Under the Board's regulations the examining physician does not report to the Board what types of prescription medication pilots are using or other medical information. Under the regulations the Board's examining physician finds the pilot fit for duty, not fit for duty, or permanently not fit for duty and provides that determination to the Board. The new legislation did not supersede the Board's regulations in that regard. The new legislation provides in HNC section 1176(e) that whenever a pilot . . . or pilot trainee is prescribed either a new dosage of a medication or a new medication, or suspends the use of a prescribed medication, he or she shall, within 10 days submit that information to the "[Board examining physician] who shall determine whether the change affects the pilot or trainee's fitness for duty.

Since the effective date of the legislation (January 1, 2009) the Board staff has received two reports from its examining physicians in connection with the new requirement of section 1176(e). None of these reports included information on the types of prescription medications in question. None of the reports received to date have resulted in a finding that the pilot or pilot trainee was rendered not fit for duty as a result of the change in medication. There have been no reports of a failure by a pilot or pilot trainee to provide the list of prescription medication required under the new law.

6. *Has the board not renewed any licenses of a pilot found to be not fit for duty?*

Since January 1, 2009 the Board has received two requests from pilots for a disability retirement based upon a finding by the Board's examining physician that the pilot was permanently not fit for duty. Upon a pilot's retirement, the pilot's state license expires by operation of law. During the time of my appointment to the Board there have been other requests for a disability pension but no licenses have been non-renewed against a pilot's will because the pilot was found to be not fit for duty.

7. *What changes beside the ones required because of recent legislation (SB 1627 and SB 1217) has the board made as a result of the Cosco Busan oil spill incident?*

In its Spring Finance Letter for FY 2008-09 and subsequent years, the Board requested expenditure authority to pursue three principal tasks that derive from the Board's experience with the Cosco Busan accident. The budget signed September 29, 2008 granted the Board's request for the expenditure authority. (The Board is a special fund agency and receives no funding from the General Fund. The Board has adjusted its surcharges on pilotage service fees to pay for the new activities.)

Those new tasks were:

- (1) Examine developments in navigation technology used by ships calling in waters under the Board's jurisdiction and develop new policies if needed. The Board established a new standing committee to examine such developments. That committee has, in fact, examined such developments and the Board has adopted a policy that ensures that all pilots licensed by the Board have carry-aboard personal pilotage units (so-called PPU's) that are programmed to assist the pilot in navigating our waters, and that pilots be appropriately trained in the use of the PPU's. The Board has begun the rulemaking process in connection with this new policy. Pilots licensed by the Board have already acquired and been trained in the use of these devices, in advance of the requirement that will be imposed once the rulemaking process is complete. The Board also worked with its pilot continuing education provider to provide enhanced training in advanced electronic navigation systems, as recommended by this committee.
- (2) Review the Board's pilot fitness standards and processes and develop new policies if needed. To that end, the Board established a new Pilot Fitness Committee composed of a retired US Army brigadier general and flight surgeon, an expert in medical quality assurance, and a senior pilot. The committee is contracting with a specialist in occupational medicine from the teaching staff at the University of California, San Francisco Medical Center to study the medical fitness issues as they apply to pilots the Board licenses, to review the Board's fitness determination standards and procedures, and other related matters such as the qualifications of Board examining physicians. The consultant will submit to the Committee a report and recommendations that will be considered by the Board. New rulemaking likely will be required as a result of this review.
- (3) Review the Board's incident investigation and review procedures to determine whether changes are appropriate. The Board established an Ad Hoc Committee on Investigation Procedures. That committee is tasked with updating criteria for selecting Board investigators and examining the incident review processes administered by other pilotage regulators on the Pacific Coast and elsewhere. The purpose is to develop improvements to the current statutory regime and develop best practices, as needed. Rulemaking changes may be required.

Please do not hesitate to contact me if I can provide additional information that will be helpful to the Committee.

Sincerely yours,

Eric Osen

Eric Osen
Responses

August 13, 2009

Hon. Darrell Steinberg
Chairman - Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Dear Senator Steinberg,

In response to your inquiry, I submit the following responses to the provided questions.

- 1) Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Board of Pilot Commissioners? How will you measure your success?

My primary goal as member of the Pilot Commission is to contribute to the enhancement of safety in navigation upon the waters of San Francisco Bay and tributaries. The Commission can effect such a goal by closely monitoring the training program for the pilot trainees, ensure the adequacy of the ongoing training of existing pilots, and by ensuring that incident investigations are conducted professionally and corrective actions are taken promptly. Post Cosco Busan, there is legislation in place to support such goals.

I currently chair a fledgling committee to review and recommend new procedures for incident investigations. During my upcoming term, I hope to see the Commission through to a state where investigations are conducted in a more professional manner, with actual corrective actions. Success will be measured by an ultimate reduction in incidents involving pilot error. Unfortunately, historic data will be of little use, as current and past incident review committees (IRC's) have habitually found 'no pilot error' for incidents that clearly did have pilot error.

- 2) How are you, as a board member, kept informed of staff activities? What training do you receive to help you perform your board duties?

Board President generally advises the Commissioners of the activities of the Board Staff. That said – the day to day activities and communications of the Board Staff are generally unknown to the Commissioners. Training of the Commissioners is not provided to my knowledge. I did attend a budgeting course (2 day) in Sacramento, but this was not mandated, and was a onetime event.

- 3) What changes have you observed in the operation of the board since its integration into the agency? Are you satisfied with the board's current performance, or would you recommend changes?

I will be quite blunt on this matter. There was a great deal of interest in the operation of the Board in the days and months after the Cosco Busan incident. Legislation was passed, and the Board fell under the BT&H. The support that I see from the oversight agency appears only in the form of lawyers. From my

Senate Rules Committee

AUG 18 2009

Appointments

August 17, 2009

Page 2

observation, I do not see any real improvement since falling under the BT&H. The only difference that I see is the presence of another attorney at every meeting. Review of the BT&H website does not even show the Pilot Commission as a member (see <http://www.bth.ca.gov/aboutus/default.asp>). Clearly – state resources are taxed, and the Pilot Commission has fallen out of the limelight.

I had expected that once the Pilot Commission became an entity of a larger, more robust organization, additional resources would be committed to the Commission, and improvements would be apparent. From my perspective, I see no real benefit from being under the BT&H.

Changes that I would recommend are as follows:

- a) Removal of current Executive Director. His performance is sub standard and has been for quite some time. The Commission has been engaged in performance reviews of the Executive Director for some time, but we have not taken any substantive action.
- b) On Board decisions that have a direct impact on individual income – Commissioners that would benefit from the result of the vote should be excluded from that vote.
- c) Commission office should either be renovated at its current location, or moved entirely to a more suitable location. The office and meeting spaces are not suitable in my opinion.
- d) BT&H should provide support to the Commission in the form of personnel and resources. Sending a lawyer to San Francisco once per month does not constitute support.

- 4) What outcomes have you experienced from these new requirements, if any? Have the number of reports to the Board increased?

Port Agent reports at regular Commission meetings have not changes significantly since the enactment of the legislation. Of course – the Executive director may receive reports – but it is unusual for him to report directly to Commissioners. Either he makes no report, or only reports to the President of the Commission.

- 5) Is the Board receiving the information required on the types of prescription medication pilots are using?

I received absolutely no information on prescription drug use, or any other data as to the physical health of the pilots other than periodic 'not fit for duty' reports from the Port Agent at regular meetings.

- 6) Has the Board not renewed any licenses of a pilot found to be not fit for duty?
Executive Director renews licenses and just reports doing so at the meetings.
Commissioners have nothing to do with the license renewal process. I have informed the Executive Director that this process is no longer acceptable to me. I now require evidence of Pilots suitability prior to re-issuance of license.

- 7) What changes beside the ones required because of the recent legislation (SB 1627 and SB 1217) has the board made as a result of the Cosco Busan oil spill incident?
The changes required by legislation are significant challenges. I can think of no other changes that have been made since the incident.

In conclusion – I would only add that these responses are from me alone. They do not represent the views or opinions of my employer or those from other industry interests. I have not been coached on any of the responses, and have not shared my response with any other party.

August 17, 2009

Page 3

I am available at any time to discuss these responses, and elaborate if necessary. Thank you for your consideration.

Respectfully,

Eric S. Osen

CALIFORNIA LEGISLATURE

MEMBERS

SAM AANESTAD
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

JENNY OROPEZA



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DARRELL STEINBERG
CHAIRMAN

July 21, 2009

David I. Wainwright
7/21/09

David I. Wainwright

Dear Mr. Wainwright:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment as a member of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun on August 26, 2009. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by August 11th.

We would also like to receive an updated Form 700, Statement of Economic Interest, by August 11th.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Board of Pilot Commissioners? How will you measure your success?*

The board regulates the 60 bay pilots and one inland pilot. The commission, since its inception in 1850, has been independent and reported only to the Governor. Last year, SB 1627 (Wiggins), Chapter 567, Statutes of 2008, placed the board within the Business, Transportation and Housing Agency and made the Secretary of that agency a nonvoting ex officio member. The legislation also requires the Bureau of State Audits to perform a financial and performance audit of the board, to be completed by the end of this year.

2. *How are you, as a board member, kept informed of staff activities? What training do you receive to help you perform your board duties?*



3. *What changes have you observed in the operation of the board since its integration into the agency? Are you satisfied with the board's current performance or would you recommend changes?*

The recent legislation also added the requirement that the port agent be responsible for the general supervision and management of all matters related to the business and official duties of pilots licensed by the board. The port agent is now required to immediately notify the executive officer of the board of a suspected violation, navigational incident, misconduct, or other rules violation that is reported to him or her.

4. *What outcomes have you experienced from these new requirements if any? Have the number of reports to the board increased?*

SB 1217 (Yee), Chapter 568, Statutes of 2008, added fitness requirements for pilots. The legislation requires the board to appoint a physician who is qualified to determine the suitability of a person to perform his or her duties as a pilot. The legislation also required that trainees and pilots seeking license renewal undergo physical examinations. In addition, trainees and pilots must submit information to the board's physician on prescription medication they are taking.

5. *Is the board receiving the information required on the types of prescription medication pilots are using?*

6. *Has the board not renewed any licenses of a pilot found to be not fit for duty?*

On November 6, 2007, the merchant vessel *Cosco Busan* sideswiped a tower of the San Francisco Bay Bridge and spilled over 53,000 gallons of bunker fuel into the bay. A Coast Guard report on the incident outlined the bad luck and human error that caused confusion and misinformation. The spill blackened 69 miles of shoreline and killed more than 1,600 birds from Oakland to San Francisco and along beaches from Marin to San Mateo counties.

There have been three investigations into the incident and the National Transportation Board said that the "degraded cognitive performance," as a result of his use of prescription drugs, of Captain John Cota—the pilot licensed by the board—was a primary reason for the crash, as was the lack of communication between Cota and the ship's Chinese captain.

7. *What changes beside the ones required because of recent legislation (SB1627 and SB 1217) has the board made as a result of the Cosco Busan oil spill incident?*

David I. Wainwright
July 21, 2009
Page 3

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Darryl Steinberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

DARRYL STEINBERG

DS:KW

David Wainwright
Responses

1. My primary goal is to continue to field the best pilots the industry has to offer by concentrating the Board's resources on selection, training and fitness. Also, I intend to complete my rulemaking calendar, in particular implementation of SB1627 and SB1217.
2. Our president is very active and informative. Board maritime counsel Ray Paetzold and BT&H counsel Gabor Morocz are very accessible. We meet monthly. I chair a very active Rules and Regulations committee; chair an ad hoc committee on trainee selection; sit on the Finance committee and the ad hoc committee on Incident Review Procedures. The Department of Consumer Affairs earlier this year provided a rulemaking seminar.
3. The two most prominent and positive changes are the regular attendance at Board meetings of BT&H Secretary Bonner's representative Gabor Morocz and the addition of Assistant Director Nancy Bennett. Mr. Morocz brings another layer of legal and bureaucratic advice and the support of our mother agency. Ms. Bennett is a very welcome administrative marvel and a quick study. Karin Fish of the Department of Finance has also been very helpful. Though I am satisfied with the Board's rapid evolution over the last 12 months, I expect more progress.
4. I have not noticed a change in (I assume you refer here to incident review) outcomes or an increase or decrease in reports to the Board. The port agent continues to report all incidents immediately to the Board's executive director.
5. The Board does not of course receive medical information. However, all pilots and Board physicians were immediately informed of medical review procedure changes required by SB1217. There have been no reports of any failures to notify.
6. Two pilots this year have been found permanently unfit for duty and have subsequently retired.
7. Prior to the passage of any Cosco Busan legislation the Board formed or energized three committees. These are the Pilot Fitness Committee, the Nav Tech Committee and the ad hoc Committee on Incident Review Procedures. Fitness standards and procedures were reviewed and funding granted for a UCSF study of the Board's pilot fitness system. The Nav Tech Committee drafted regulation wording and recommended use of PPU's (navigation laptops) by Board licensed pilots. All pilots now own PPU's and their use on the Bay is a standard. The Commission also added enhanced pilot training in advanced electronic navigation systems. The ad hoc committee on Incident Review Procedures made immediate recommendations to increase the staffing of and compensation for incident investigators.

Senate Rules Committee

AUG 10 2009

Appointments

Gael H. Troughton

Gael H. Troughton
Goals
Rehabilitation Appeals
Board

July 10, 2009

Darrell Steinberg, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Mr. Steinberg:

Thank you for the opportunity to provide a statement outlining my goals for my next term as a member of the REHABILITATION APPEALS BOARD (RAB).

As a long-serving member of RAB, I have served as a member, chairman, and acting chairman. During my first term (1996 to 2001), I learned how the board functioned, and subsequently was honored to be the board's chairman. I became very familiar with CCR title 9, and the role of the board in providing fair hearings. I discovered that RAB is a working board that holds many hearings throughout the course of a year, and a great deal of dedication is required. I was willing to provide that dedication. The board's work is a very important vehicle for those members of society who are disabled, and require a fair hearing for their issues as clients of the Department of Rehabilitation.

In 2005, I again became a member, and occasionally acting chairman of RAB, during a period of time when the board lacked a quorum, and had a huge backlog of hearings. My goal at the time was to reduce the hearing backlog, provide my expertise as a former board member, and ensure continuity for the board's mission of providing fair hearings. The board's hearing backlog was eliminated in 2006, and I was proud to have substantially aided in accomplishing that goal.

Senate Rules Committee

JUL 21 2009

Appointments

My reason for moving forward with a third term on RAB, is to guide, advise, and ensure that the board's mandate for fair hearings is accomplished. My skill as a longtime board member, knowledge of CCR title 9, and general hearing experience is an invaluable asset, especially as the board takes on new members. I have already served as acting chairman during this third term, and fully expect to fill that role when needed. I work fulltime in private industry, but my employer has graciously allowed me the time to fulfill my obligation as a member of RAB. RAB requires a great deal of time and personal dedication, and I'm willing to continue that service because I believe in the role of the board for the disabled community of California.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Gael H. Troughton".

Gael H. Troughton
Member, Rehabilitation Appeals Board

enclosure: FORM 700, dated 07/09/09

cc: Rehabilitation Appeals Board

Henry Jay Forman, Ph.D.

Responses
San Joaquin Valley
Unified Air
Pollution Control
District

May 26, 2009

Nettie Sabelhaus
Senate Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

Senate Rules Committee

JUN 15 2009

Appointments

To the Senate Rules Committee:

This letter contains my responses to your questions prior to the meeting on July 1st. My answers follow each question.

Goals

1. *SB 719 (Machado), Chapter 728, Statutes of 2007, created four new positions on the SJVUAPCD governing board that includes your new seat as a member with medical or scientific expertise in the health effects of air pollution. What are your goals as one of the two, new, nonlocal government positions on the district's governing board? How will you measure your success?*

Answer: My goal is to attempt to ensure that decisions of the board are made with consideration of the best available scientific information. I realize that other issues, most notably economic, must also be considered; however, I represent the scientific community's interest in advocating science in the public interest. I will measure success when in making decisions the board scientific chooses evidence over dogma, and fact over opinion.

2. *What do you believe are the most pressing issues facing the district?*

Answer: Geography and topography, population growth, transportation, and poverty. The Valley has conditions that favor the build up and deposition of air pollutants. The estimated population growth and lack of public transportation will increase air pollution. With two major arteries for delivery of products, the impact of heavy-duty vehicles is greater than in most locations. Problems with the economy, which even before the recent economic downturn were more challenging in the San Joaquin Valley due the high poverty level, means that the economic costs of reducing air pollution can have a greater impact.

3. What ethics training have you received to prepare you for your duties? How have you been trained to recognize conflicts of interest?

Answer: As a faculty member and supervisor of several employees at the University of California and other universities before that, I have taken required training in ethics including the recognition and avoidance of conflicts of interest. I am also required to follow strict ethics and conflict of interest rules as both a recipient and reviewer of grants for various agencies including the National Institutes of Health.

Federal Economic Stimulus Funds

On February 17, 2009, President Obama signed HR 1, the American Recovery and Reinvestment Act of 2009 (ARRA), which provides \$787 billion in economic investment nationally. The goals of ARRA are to jump-start the economy and create jobs for Americans in an accountable, transparent manner. California is the beneficiary of approximately \$50 billion for a variety of statewide programs. A considerable portion of funds are targeted for improving transportation, energy, and the environment and could potentially help address air quality issues in the San Joaquin Valley.

4. What actions is the district taking to ensure that it secures as much federal stimulus funding as possible?

5. Please describe the district's efforts in public outreach to help make people aware of available ARRA funds. What types of guidance is the district providing for the public in applying for federal stimulus dollars?

Answer to questions 4 and 5: As these are closely related, I have answered them together. The district has posted information about ARRA on its website (http://www.valleyair.org/Grant_Programs/ARRA/ARRA.htm). On the site and in mail to individuals and organizations it is offering assistance to interested parties to work jointly on projects and/or provide assistance in writing grant applications. It is making multiple efforts to obtain all funds available to the district. For example, the district is working with the Partnership for the San Joaquin Valley to formulate a regional ARRA plan.

I also asked the Director to supply specific information to help me address these questions, which he provided are shown on the next page. It shows that the District is acting as lead applicant for the following projects totaling \$137.5 million:

Grant	Description of Project	Amount Requested	Total Cost of Projects
DERA (EPA) Submitted	School bus replacement and retrofit, Ag irrigation pump repowers, heavy-duty truck replacement and retrofit, off-road equipment replacement and retrofit, locomotive repower	\$70 million	\$150 million
Transportation Electrification Submitted	SJV Regional Transportation Electrification Program	\$2.7 million (ARRA) \$640,000 (CEC)	\$3.3 million
Clean Cities (DOE) In Progress	SJV Regional Proposal for Alternative Fuel Infrastructure and Vehicles	\$9.9 million (ARRA) \$17.9 million (CEC)	\$27.8 million
Clean Cities (DOE) In Progress	Southwest Transportation Liquefier with Fueling Station and Fueling Station Upgrade	\$8 million (ARRA) \$2.5 million (CEC)	\$12.6 million
Clean Clean Cities (DOE) In Progress ities (DOE)	Central Valley Regional Transportation Center	\$8 million ARRA \$8 million (CEC)	\$45 million
Clean Cities (DOE) In Progress	Clean Energy Alternative Fuel Infrastructure and Vehicles	\$9.9 million (ARRA)	\$19 million
Total		\$137.5 million	\$257.7 million

Transportation Funding

Goods movement is a significant contributor to air pollution in the San Joaquin Valley. Heavy-duty diesel trucks emit approximately 170 tons of nitrogen oxide in the valley each day. Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, allocated the first \$250 million in February 2008 for goods-movement-related emission reduction projects. Of this amount, the district was allocated approximately \$45 million to be spent on heavy-duty diesel truck emission reduction projects—the highest of any air district.

6. What is the status of these funds? What is the most effective use of these funds for the San Joaquin Valley? How much air pollution do you expect to be reduced in the valley because of these funds?

Answer: The proposed budget for Proposition 1B for the next fiscal year is \$45 million. In 2008, \$5.7 million of the above allocation was forwarded to the District as an “early grant” to provide for a head start in reducing emissions due to an existing pool of applicants ready to move forward with projects.

In the first major solicitation for applications under the Prop 1B program, the District conducted a major comprehensive outreach effort to maximize the response from the trucking sector, particularly from single owners/operators. This outreach included radio advertising, billboard advertising, speaking at events, and one-to-one assistance in workshops. The response was overwhelming with \$135 million worth of applications received during the solicitation.

On January 23, 2009, the District was notified by the California Air Resources Board that, due to the state budget crisis, all statewide funding for Proposition 1B was suspended until further notice. They ordered the District to freeze all grant awards until further notice from the state. This included all truck replacement contracts already signed by the applicants. This order also prohibited the District from entering into new contracts.

Although the state prohibited awarding of grants, to minimize further delays when the state budget troubles are resolved, the District did not stop the administrative processing of the applications. Work on processing grant applications continued with the goal of being able to issue checks immediately upon release of funding by the state.

Projects funded under the first year of the Prop 1B program are expected to reduce 12,500,000 pounds of NO_x, and 900,000 pounds of particulates.

Regardless, as a biologist, I see some problems in this program and others that are aimed at reducing air pollution from heavy-duty vehicles. The main approach to reduction of air pollution from heavy-duty vehicles is aimed at reducing the mass of nitrogen oxides (NO_x) and particulates. While reduction of NO_x is certainly of benefit to public health, reduction of the mass without consideration of the size of particulates that result from the new technology, is a potentially deadly error. This is because ultrafine particulates, which are produced in greater amounts by the higher temperature of new engines, are far more damaging to lungs and cardiovascular health. Unfortunately, the solutions most often favored by CARB, the EPA and other agencies and then written into regulations are based on engineering solutions and assumes or lacks biological and health effects information. This sometimes is because of an actual lack of such data and is compounded by a lack of support for this type of research. Toxicology research is not well supported by the National Institutes of Health and the Environmental Protection Agency and CARB has appeared to be more interested in measurement of defined toxicants. Furthermore, the proposed research budget of the district is \$250,000, which is equivalent to direct costs of one average grant from the National Institutes of Health.

Agriculture

The San Joaquin Valley is one of the most productive agricultural regions in the world. Agriculture is vital in providing employment for a large portion of the population in the valley. However, agriculture is a source of air pollution as well, including livestock (digestive processes and manure management), combustion of liquid and gaseous fuels used for irrigation and crop production, emissions from fertilizer use and application of other soil additives, and emissions from agricultural residue burning.

7. What steps do you believe the agricultural industry needs to take to help reduce its share of air pollution? What should the district do to encourage or enforce these actions?

Answer: Farm equipment and diesel fired irrigation pumps constitute one of the larger sources of nitrogen oxides (NOx) emission in the San Joaquin Valley. Regulating farm equipment falls under the jurisdiction of the California Air Resources Board (ARB), which will adopt regulations in the next three to five years. The District can expedite the clean-up by providing grants for cost-effective projects to clean up these devices ahead of the upcoming regulations. The District can also develop an arrangement with ARB to provide for effective local enforcement of the state regulations. As for the irrigation pumps the majority have been replaced with cleaner diesel combustion technologies. Shifting to electric engines provide for the substantial reductions in emissions associated with irrigation pumps. The District needs to work with utilities to encourage access to electrical service to farms in the Valley by providing incentives.

8. Under current law the ARB establishes "no burn days" for agriculture in order to protect public health and achieve clean air standards. Your district has adopted a rule prohibiting fires in fireplaces during certain times of the year. What are your views on whether these two rules should be synchronized so that on bad air days neither agriculture nor the public may burn materials? Should agricultural operations be permitted to engage in open field burning when the public has been prohibited from having fires in their fireplaces?

Answer: It is also the District policy to prohibit open burning of agricultural waste when the use of residential fireplaces is prohibited by the District. I do not believe that no agricultural burning should be allowed by the District when the use of fireplaces is prohibited. I voted to support legislation (SB-382, Florez) to codify this policy.

Community Outreach

At the governing board's hearing on March 19, 2009, the board unanimously voted to renew a one-year contract with the Jeffrey Scott Agency, in the amount of \$857,500, to execute comprehensive, multilingual outreach/advertising campaigns, including the Healthy Air Living Initiative, Clean Green Yard Machines, and Check Before You Burn wood-burning curtailment program.

9. At the end of this contract in 2010, how will you measure the success of these outreach programs?

Answer: When public policy inconveniences or costs people, there is naturally going to be problems with compliance. As an educator, I believe that meeting the enormous air quality challenges is enhanced by an effective public education and outreach program as it helps people understand the reasons why the District compels them to make changes and adhere to air friendly behavior. Those aspects that help people see the benefits to their health and health of their families would seem most useful. The District's public education and outreach program is aimed at curtailing the use of residential fireplaces during winter months and reducing vehicle miles traveled during spring and summer; however, energy efficiency and waste minimization is a year-round goal of the program.

The District will rely on a planned public survey later this fall, scientifically reliable measurements of air quality impact associated with residential fireplaces during winter, and verifiable changes and reductions in vehicle miles traveled by the general public to measure the effectiveness of the public education and outreach program and to assess any changes or enhancements that might be necessary.

Public Health/Children's Asthma

According to the Center for Disease Control's National Health Interview Surveys, asthma is the leading cause of chronic illness in American children. San Joaquin Valley has the highest prevalence of childhood asthma in the state (one out of five children in the region). Compromised air quality is a major contributing factor in the frequency and severity of asthma symptoms in children, and reducing exposure to air pollution is important for improving the health of asthmatic children.

Studies have shown that children exposed to higher ambient levels of ozone and particulate matter are more likely to be admitted to emergency rooms for acute asthma symptoms. San Joaquin Valley ozone and particulate matter air pollution is among the worst in the state. In 2008 the San Joaquin Valley logged 82 days of bad ozone days.

10. Should your board be addressing the problem of childhood asthma? If so, what do you believe is the most effective way? Is there a timetable?

Answer: Probably one of the most frustrating of issues regarding the effects of air pollution on health is a lack of knowledge about what it is that is causing the increase in So, the approach now is to minimize exposure to all air pollutants, which while itself is a wonderful goal, is less effective than would be specific reductions. Currently however, the most effective approach, is to minimize children exposure to elevated air pollution levels. The District has a highly effective relationship with many schools throughout the Valley that provides notification to parents and students and allows them to plan their daily activities. In 2009, the District will increase funding of this program and will provide additional financial and logistical support to more schools throughout the Valley.

Also In 2009, the District will receive the results of a study by the University of California at San Francisco (UCSF) funded by the District which will provide Valley-specific data concerning the factors that cause or contribute to asthma aggravation cases in the Valley. The results of this study should provide additional guidance on areas to focus. As noted in a previous answer, the District's budget for research is only \$250,000, which is the size of the direct costs of one average grant from the National Institutes of Health.

11. What are the most effective actions the district can take to improve ozone and particulate matter air pollution?

Answer: Adopting and enforcing strong and cost-effective regulations on stationary sources. Developing and promoting effective land-use policies combined with public education and outreach programs aimed at reducing non-essential vehicle use. Securing adequate funding, and effective expenditure on cost-effective emission reduction projects from sources of air pollution that fall outside the District's legal regulatory authority, such as on-road heavy-duty vehicles.

The district is a partner with nongovernmental organizations and school districts in the voluntary Air Quality Flag Program (AQFP), which provides schools with information and educational materials on air quality and health impacts. The program also provides schools with flags that serve as a daily, visual indicator of air quality conditions and a means to ensure that children are not outdoors during bad ozone days.

12. How do you measure the success of the program?

Answer: I will judge the success of the program by the number of schools that actively participate in the program and the number of students attending those schools. The program was developed in 2004 in Merced County and has been established as a best practice program that has been duplicated in several other Air Districts throughout California. The American Lung Association is discussing the possibility of it becoming a national outreach program of their organization. The program is a partnership between the San Joaquin Air Pollution Control District and asthma coalitions and other non-governmental agencies. The goal of the program is to educate faculty, staff, students and parents on air quality and protect them from air-pollution exposure. This will improve student health, decrease absenteeism and promote scholastic achievement by providing schools with information and educational materials on air quality and the health impacts of prolonged exposure of air pollution, free of charge. It also provides schools with four flags that serve as a visual communicator of daily air-quality indicators and health descriptors of the Air Quality Index. Finally, the program provides template policies and guidelines on steps school should take to protect their students from air quality-related health effects on those days when air pollution reaches high levels. Schools in the SJVAQCD are eligible to participate in this program and, as of early 2009, nearly 675 Valley schools had implemented the program. More schools are added to the program every year as the District's goal is to eventually run the program in 100 percent of all Valley schools.

Sincerely,



Henry Jay Forman, Ph.D.

Grant Destache
Responses
WQCB, San Diego

May 15, 2009

CALIFORNIA LEGISLATURE
Senate Rules Committee
Darrell Steinberg, Chairman
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Steinberg:

I am please to present to you and the Senate Rules Committee, my responses to the questions stated in your letter request dated May 4th 2009 in relation to my confirmation hearing schedule for June 24th, 2009.

I have used the original letter format to respond leaving the categories and questions intact, I have also highlighted my responses.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the board?*

To effect change in the public's value placed on water and water quality in the region. To provide direction towards the recycling and reclaiming the water supply that is imported into the San Diego Region, in order to reduce the regions reliance on imported water to the greatest possible measure.

What goals do you have for the board, and how will you accomplish them?

My goals mirror the policies of the San Diego Region Basin Plan with a focus on the need for new scientific and economic analysis in the prosecution of the board action.

- **Amplify the focus on Publicly Owner Water Treatment (POTW's) facility upgrades to best technology to produce recycled and reclaimed water, thus reducing discharges and potential NPDES violations.**
- **Expand the number of projects for environmental improvement projects through Supplemental Environmental Projects (SEP's) directed at improving the water quality in the San Diego Basin.**

Senate Rules Committee

MAY 19 2009

Appointments

- **Work with the Executive Officer to increase the availability of qualified SEP projects allowing for a variety of environmental programs.**
- **Engage state and local environmental groups to identify and acknowledge high quality environmental programs that need to be implemented.**

How will you measure your success?

- **Increase in the production and use of recycled and reclaimed water in the San Diego Basin.**
- **An increase in SEP's by entities able to implement SEP's and the funding directly focused improving the water quality in the San Diego Basin.**

2. *What do you believe are the most serious problems facing your regional board?*

- **Local Water Supply – The board faces a significant issue in the implementation of recycling, reclamation, desalination and ground water recovery legislation, policies and programs that are focused on the regulation of waste water treatment dischargers. With the focus on supplementation of local water supplies and the board's adherence to state board water policy will be an ongoing issue as new technologies and projects come under current regulation and policy.**
- **Storm Water – The regulation of Point Source and Nonpoint Source discharges will continue to be the best method to increase surface water quality in the region. The board faces the challenge of directing the Executive Officer and staff to provide clear acknowledgement of the acceptable pollution control BMP's the municipal, industrial and construction permit holders can rely on to eliminate discharge of pollutants to storm water conveyance system. Without this direction the permit holders will continue to struggle with the best design, construction and implementation of water quality BMP's.**

3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues, such as beach closures, sewage spills, or the overall quality of water in rivers, streams, and ocean waters in your region?*

Through Programs/Topics Brochures and specific reporting such as SWAMP Publications that can be accessed on the State Water Board and SDRWQCB websites.

State and Regional Boards

The state and regional boards were created nearly four decades ago. In January 2009 the Little Hoover Commission issued a report on improving the performance of the state's water boards. One of the findings was that the relationship between the state and regional boards is not well-defined. This has led, they believe, to inconsistencies and inefficiencies among boards, an inability to set statewide priorities, and a lack of focus by the state board on holding regional boards accountable for clean water outcomes.

The report also found that there is little focus on clean water outcomes or accountability. Regional boards admit they have difficulty in analyzing watersheds to determine whether their programs are protecting and improving water quality. The regional water boards' focus is more on issuing permits and determining whether dischargers abide by permits than determining if the water is actually getting cleaner.

Another issue that has been raised in the past, and also discussed in the recent commission report, is that many of the issues board members have to deal with are very technical, and a number of board members are basically volunteers and do not have such formal technical experience.

4. *What is your view of the relationship between the state board and your regional board? What type of guidance do you receive from the state board?*

In my view, the state board provides policy, direction, oversight and leadership for the regional boards. However, in my short time serving on the SDRWQCB, I have become aware of a lack of continuity between the State and Regional Boards. In some cases an inability to get policy clarification when making decisions has become evident.

The board relies on the legal staff, our state board representative and the board chair for guidance. However, I believe additional interaction is required to provide a more succinct level of guidance and clear understanding of the state board's policies and legislation.

5. *How do you balance the board's focus on the permitting process and the focus on broad policy issues, such as updating basin plans and setting regional priorities? What is the best use of the board's time?*

I believe the permitting process and requirements associated with the regulations are adequately defined allowing the Executive Officer and staff to properly execute the permitting process. The board should have the oversight and approval functions.

The best use of the board's time would be spent:

- 1) Reviewing and updating of the Basin Plan;
- 2) Policy review and implementation;
- 3) Clear definition of regional issues and measurable actions to resolve those issues.

6. *How does the state board and your regional board staff assist you to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*

The regional board staff does an excellent job providing clear and concise documentation of the issues in the reports, studies and supporting documentation on the issues before the board. The state board provides the legal resources required for the board to make quality decisions.

The state board could better assist the regional boards by providing regular review and updates of state board policies that are/or have changed, providing consistency and continuity between all boards. This also would allow the regional boards to request clarification on actions or policy issues that are on their scheduled agendas.

Enforcement

In 2005 the Office of the Secretary of Cal/EPA reported to the Legislature on environmental enforcement, and suggested that the state and regional water boards were among the worst agencies in enforcing the law. In 2008 the state board, in its *Strategic Plan 2008–12*, said it would adopt an updated water quality enforcement policy by December 2008. That enforcement policy will now not be adopted until mid to late 2009. On January 1, 2009, the state board published its 2008 enforcement report. Among other things, it showed the number of violations that were imposed by regional boards compared to completed enforcement actions. For the four-year period from 2005 through 2008, the San Diego regional water board scored a low of 60 percent in 2008 and a high of 92 percent in 2006 in wastewater violations compared to completed enforcement actions. This is slightly above the average of the nine regional boards. For stormwater violations compared to completed

enforcement actions, the board scored a low of 77 percent in 2006 and a high of 91 percent in 2008. This is slightly below the average of the nine regional boards.

The San Diego region is also home to the largest underground tank leak in the state that has not begun cleanup. Twenty years ago, the board ordered Ametek/Ketema Aerospace to map the extent of the underground plume that was created when tens of thousands of gallons of solvents and other chemicals leaked from an underground tank. San Diego city officials are concerned that the plume may impact one of their municipal wells in the El Cajon Valley. On the board's February 11, 2009, agenda was an item to levy an administrative assessment of civil liability to the company for \$2.3 million. That action was postponed and has not been rescheduled to date.

7. *What is your view on how your board should enforce water quality laws? When are fines and penalties appropriate, and when are more informal actions necessary?*

The enforcement of water quality laws need to be consistent and within the letter of the law. I believe that fines and penalties for regular recurring violations need to be the highest priority. Recurring violations indicate the lack of quality management, effective maintenance and proper planning by the management, staff and boards of dischargers throughout the region and state.

Through the permit application process the dischargers have the responsibility to provide service to their customers in the best operational manner, but also the protection of the environmental areas that they inevitably will come into contact with and discharge effluent through those areas is also part of their responsibility to customers. The installation and implementation of safety programs, devices, backup systems and operator training provides for the basis for that protection. Those entities that do not demonstrate the desire to install these protections should be the focus for enforcement.

Informal actions are better suited to the discharger that has a limited history of violations and acts responsibly towards any discharge violations.

8. *How do you prioritize your enforcement activities, given current budget constraints?*

Enforcement activities should be given the highest priority by the Executive Officer and staff. Consistent review of reporting requirements is the best avenue to water quality.

9. *Without a current formal state board policy on enforcement, how does your board determine it is consistent in its enforcement practices with other regional boards?*

In my limited time on the board, I have not investigated our consistency with other regional boards on enforcement. To be consistent with my previous response, I do believe that an increased level of state board interaction would provide a long term solution to all regional boards to be more aligned, not only on enforcement but in other areas also.

10. *Why has it taken so long to address the cleanup of the Ametek property? What plan does the board have to address the cleanup of this site and the protection of the El Cajon Valley municipal well?*

I have done a partial review of the documentation associated with the Ametek/Ketema issue. As of this date, I have not uncovered the specific reasons for the duration of this case. However, it appears on the surface that the actions taken by the RWQCB follow the procedures required by law and the discharger has prolonged the process for many years using various methods.

From the documentation that I have reviewed, the current plan is for the monitoring of the plume to be ongoing in order to track the contamination potential of all the wells in the El Cajon Valley. Also, continued interaction with the appropriate stakeholders affected by the action.

Sewage Overflows

The San Diego region has a long history of sewage overflows. For FY 2007–08, there were a total of 215 spills, accounting for 1,637,233 gallons of sewage spilled. There were five jurisdictions that had spills totaling over 100,000 gallons:

<u>Name</u>	<u>Number of spills</u>	<u>Volume of spills</u>	<u>Percent of spills recovered</u>
Santa Margarita Water District	6	528,134	3.1%
City of San Diego	87	490,815	11.8%
Rancho California Water District	1	151,000	1.3%
City of Laguna Beach	4	138,300	57.9%
City of Oceanside	12	108,566	79.6%

11. *How is your board addressing the sewage overflow problems?*

As I stated above in my response to Question #7, I believe that dischargers that have recurring violations for sewage spills should receive a close inspection of their actions and an unbending implementation of the enforcement that is available to the board. It is important a clear message needs to be delivered, one reflecting the board's intent to be assured the problems related to recurring violations will be rectified.

12. *Why are some jurisdictions able to recover a significant amount of their spills while others are not able to?*

Maintenance, inspection, testing and regular review of operations are required to keep infrastructure operating. I believe that more preventative maintenance will cure a large amount of accidental spills. But the recovery of spills can be affected by many issues. In addition to the timely actions initially taken by the jurisdiction, the location and quantity of the spill, has a direct effect on the amount of spill recovered. As I stated, previously the agency management needs to be very proactive in the implementation of spill prevention and recovery. I believe that exposing the weaknesses related to specific management will in turn change the management and its preparation for potential spills.

13. *To what degree do you believe that portions of the federal stimulus money can help to refurbish the aging sewer infrastructure in the San Diego region?*

It is my belief that the use of federal stimulus funding can have a dramatic effect on the aging sewer infrastructure in San Diego.

The use of federal stimulus funds to help develop a non-potable water distribution system within the San Diego area could:

- **Fund upgrades to the sewer system;**
- **Recover the costs associated with recycling water that is currently dumped in the ocean through sales of recycled water;**
- **Upgrade the treatment facilities and solve the long term dischargers to the ocean outfalls.**
- **Reduce the requirement for imported water;**
- **Add new recycling facilities that increase revenue;**

Recycled Water

The board regulates approximately 57 wastewater treatment facilities that recycle wastewater for reuse, generating a maximum of 539 million gallons per day. This recycling produced nearly 104,000 acre-feet in 2007. Recycled water is primarily used for landscape irrigation, but some is also used in agriculture, industrial, and commercial

Grant E. Destache
May 4, 2009
Page 8

uses. A significant amount of recycled water, 47,000 acre-feet, was not reused but discharged into the ocean in 2007.

14. *What role does recycled water have in meeting water demand in the San Diego region? What should be the future role of recycled water?*

With the current water emergency we see today. A plan to replace existing water mains and service laterals with a focus on major irrigation water users should be implemented.

By installing new potable water lines parallel to existing and using the existing potable lines for recycled water we could then use the 47,000 acre feet of recycled water per year for irrigation and use the proceeds from those sales to pay for additional new potable water infrastructure. At the retail cost of \$500 per acre foot recycled water would generate approximately \$23million in revenue to use in additional infrastructure projects and increase our non-potable water use, decreasing San Diego's reliance on imported water.

The role of recycle water should be viewed as the saving commodity that will have a lasting beneficial to the region. The days of importing water and using it ONE TIME should be considered a monumental waste of natural resources. At the very least, by using recycled water for irrigation the recharging of our aquifers will be a beneficial use and provide potable ground water over the long term.

15. *Does the board have plans to utilize the recycled water that is now not used but discharged into the ocean?*

The board is engaged in ongoing discussions with all of the stakeholders in the region to implement plans to increase to use of recycled water throughout the region. The plan is to continue to add recycled water use through quality projects.

If you have any questions you can contact me at 1-619-895-6264 at any time.

Thank you for your help.

Sincerely,

Grant E. Destache

Cc: Nettie Sabelhaus, via US Mail
Cheryl Minniehan, via email

625-R

Additional copies of this publication may be purchased for \$9.25 per copy (includes shipping and handling) **plus current California sales tax.**

Senate Publications & Flags

1020 N Street, Room B-53

Sacramento, CA 95814

(916) 651-1538

Make checks or money orders payable to **SENATE RULES COMMITTEE.**
Credit cards not accepted.

Please include stock number 625-R when ordering.