California State Auditor

BUREAU OF STATE AUDITS

Investigations of Improper Activities by State Employees:

July 2005 Through December 2005

March 2006
I2006-1

The first five copies of each California State Auditor report are free.
Additional copies are $3 each, payable by check or money order.
You can obtain reports by contacting the Bureau of State Audits
at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
(916) 445-0255 or TTY (916) 445-0033

OR

This report is also available
on the World Wide Web
http://www.bsa.ca.gov

The California State Auditor is pleased to announce
the availability of an on-line subscription service.
For information on how to subscribe, please contact
the Information Technology Unit at (916) 445-0255, ext. 456,
or visit our Web site at www.bsa.ca.gov

Alternate format reports available upon request.

CALIFORNIA STATE AUDITOR

ELAINE M. HOWLE
STATE AUDITOR

STEVEN M. HENDRICKSON
CHIEF DEPUTY STATE AUDITOR

March 22, 2006

Investigative Report I2006-1

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations of improper governmental activity completed from July 2005 through December 2005.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

CONTENTS

SUMMARY

Investigative Highlights . . .

State employees and departments engaged in improper activities, including the following:

- ☑ *Provided gifts of free rent of more than $87,000 to employees.*
- ☑ *Failed to capture as much as $8.3 million annually in potential rental revenue.*
- ☑ *Improperly allowed employees to accrue $17,164 worth of leave credits.*
- ☑ *Improperly authorized around-the-clock overtime payments for employees who, as a result, received nearly $58,000 to which they were not entitled.*
- ☑ *Made duplicate payments to an employee of nearly $26,000.*
- ☑ *Falsified time sheets to receive $3,445 in wages for hours not worked.*

RESULTS IN BRIEF

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act (Whistleblower Act) contained in the California Government Code, beginning with Section 8547, receives and investigates complaints of improper governmental activities. The Whistleblower Act defines an "improper governmental activity" as any action by a state agency or employee during the performance of official duties that violates any state or federal law or regulation; that is economically wasteful; or that involves gross misconduct, incompetence, or inefficiency. The Whistleblower Act authorizes the state auditor to investigate allegations of improper governmental activities and to publicly report on substantiated allegations. To enable state employees and the public to report these activities, the bureau maintains the toll-free Whistleblower Hotline (hotline): (800) 952-5665 or (866) 293-8729 (TTY).

If the bureau finds reasonable evidence of improper governmental activity, it confidentially reports the details to the head of the employing agency or to the appropriate appointing authority. The Whistleblower Act requires the employer or appointing authority to notify the bureau of any corrective action taken, including disciplinary action, no later than 30 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

This report details the results of the six investigations completed by the bureau or jointly with other state agencies between July 1, 2005, and December 31, 2005, that substantiated complaints. This report also summarizes actions that state entities took as a result of investigations presented here or reported previously by the bureau. Following are examples of the substantiated improper activities.

DEPARTMENT OF FISH AND GAME

The Department of Fish and Game (Fish and Game) allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds. We identified seven volunteers

and six employees who resided in state-owned homes in Fish and Game's North Coast Region but were not required to pay rent. Because Fish and Game provided free rent to some employees and volunteers, the State did not receive more than $87,000 in rental revenue to which it was entitled during a 21-year period. Therefore, that amount represents a gift of state funds to the employees and volunteers residing in the state-owned homes and a loss in revenue to the State.

Additionally, when it charges an employee living on state property a rate below the fair market value, Fish and Game must report to the State Controller's Office the difference between the rate charged and the fair market value as a taxable fringe benefit; however, it failed to do so for all of its employees across the State. As a result, state and federal tax authorities were not notified that taxes were due on potential housing fringe benefits totaling almost $3.5 million for tax years 2002 through 2005, depriving those authorities of $1.3 million in potential tax revenues to which they were entitled.

Finally, although Fish and Game is the focus of this report, it has come to our attention that all 13 state departments that own employee housing may be underreporting or failing to report housing fringe benefits. According to a 2003 Department of Personnel Administration housing report, state departments may have failed to report housing fringe benefits totaling as much as $7.7 million. Additionally, because departments charged employees rent at rates far below market value, the State may have failed to capture as much as $8.3 million in potential rental revenue in 2003.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Contrary to the terms in the collective bargaining agreement, when a holiday fell on a scheduled day off, the Sierra Conservation Center (center) allowed exempt employees to accrue holiday credits for later use, even though they had not worked. For example, between January 2002 and May 2005, the center improperly allowed one employee to accrue 48 hours of holiday credit for holidays that she was not scheduled to work, resulting in a gift of public funds of $1,653 to the employee. Overall, between January 2002 and May 2005, the center improperly allowed nine exempt employees to accrue 516 hours, resulting in gifts of public funds totaling $17,164.

In addition, the center allowed these nine exempt employees to work alternate schedules involving 10-hour days, which as a result of the language in the bargaining unit contract,

allowed them to miss work without having to charge a total of 1,460 hours to their leave balances. This management decision resulted in a gift of public funds to the employees totaling $49,094.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

A supervisor at the Department of Forestry and Fire Protection (Forestry) improperly authorized around-the-clock overtime payments to several of his employees, which resulted in payments totaling nearly $58,000 to which these employees were not entitled and $3,907 for questionable overtime.

We also found that a heavy fire equipment operator at another Forestry location received more than $16,000 in questionable or improper overtime payments by taking advantage of a lack of oversight by his direct supervisor and a lack of communication among all battalion chiefs with authority to sign time sheets.

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD AND DEPARTMENT OF CORRECTIONS AND REHABILITATION

Between October 2000 and May 2002, a physician filed multiple claims with the Victim Compensation and Government Claims Board (Board) and the Department of Corrections and Rehabilitation (Corrections), claiming he was entitled to a monthly $2,700 recruitment and retention bonus given to Corrections employees in the chief psychiatrist classification. Although we believe the Board had no legal standing to hear the physician's claim, he received payments from both the Board and Corrections, resulting in duplicate payments to the physician of $25,950. Additionally, although both entities were aware that he was about to receive state funds to which he was not entitled prior to receiving his final payment, they neither adjusted the physician's final claim nor recovered the overpayment.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

A Corrections employee falsified his time sheets and received pay to which he was not entitled. Specifically, Corrections identified almost 150 instances in which department sign-in logs or timekeeping records maintained by the employee's nonstate employer indicated that the employee falsified his time sheets to inflate the actual number of hours he worked at his state job. By falsifying his state time sheets, the employee violated state law

and received $2,875 in wages for hours he did not work. Further, Corrections found at least 14 instances in which the employee called in sick or simply did not show up to work but worked at his second job on those days. This improper use of 134 hours of leave resulted in payments to the employee totaling $3,960.

EMPLOYMENT DEVELOPMENT DEPARTMENT

In violation of state law, from July 2004 through October 2004, an Employment Development Department employee made 420 personal telephone calls, or 77 percent of all her calls, totaling 21 hours and 10 minutes, that were not related to state business or were to her outside employer and its various representatives. In addition, the employee inappropriately used her state computer for personal purposes. Specifically, of the 1,229 e-mail messages stored on her state computer, 1,012, or 83 percent, were of a personal nature. ■

CHAPTER 1

Department of Fish and Game: Gift of State Resources, Mismanagement

ALLEGATION I2004-1057

The California Department of Fish and Game (Fish and Game) allowed volunteers and employees to reside on state property without requiring them to pay rent.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation, as well as other improper acts. Fish and Game allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds.[1] We identified seven volunteers and six employees who resided in state-owned homes in Fish and Game's North Coast Region but were not required to pay rent for a total of 718 months between January 1984 and December 2005. Because Fish and Game provided free rent to these employees and volunteers, the State did not receive more than $87,000 in rental revenue to which it was entitled during that time.[2] Therefore, that amount represents a gift of state funds to the employees and volunteers residing in the state-owned homes and a loss in revenue to the State.

Additionally, when it charges an employee living on state property a rate below the fair market value, Fish and Game must report to the State Controller's Office the difference between the rate charged and the fair market value as a taxable fringe benefit; however, it failed to do so for all of its employees across the State. As a result, state and federal tax authorities were not notified that taxes were due on potential housing fringe benefits totaling as much as $3.5 million for tax years 2002 through 2005, depriving those authorities of as much as $1.3 million in potential tax revenues.

---

[1] For a more detailed description of the laws discussed in this chapter, see Appendix B.

[2] This conservative amount is based on the nominal rents Fish and Game charges when it requires its employees to pay rent. However, if fair market value, as determined by the Department of Personnel Administration, were applied to the 718 months of free rent (as discussed later), this figure could be greater.

Finally, although Fish and Game is the focus of this report, it has come to our attention that all 13 state departments that own employee housing may be underreporting or failing to report housing fringe benefits. In 2003 alone, state departments may have failed to report housing fringe benefits totaling as much as $7.7 million. Additionally, because departments charged employees rent at rates far below market value, the State may have failed to capture as much as $8.3 million in potential rental revenue in 2003.

To investigate the allegation, we reviewed rental agreements and reporting records for properties held by Fish and Game in its North Coast Region. We also analyzed a state-owned housing review performed by the Department of Personnel Administration (DPA), reviewed state laws and regulations, and examined state and department policies regarding the use of and reporting requirements associated with state-owned homes. Finally, we interviewed Fish and Game employees.

BACKGROUND

According to Fish and Game, many of the homes it owns in the North Coast Region are on the grounds of hatcheries or wildlife areas, often in remote areas. Most employees live in Fish and Game housing either as a condition of employment or to provide security against vandalism, theft, and deterioration of state property. Employees or volunteers residing in state-owned housing may provide other services, including dispensing information to the public, reporting illegal activities, and picking up litter. Most of the properties discussed in this chapter are in Fish and Game's North Coast Region.

FISH AND GAME PROVIDED FREE HOUSING TO EMPLOYEES AND VOLUNTEERS

Fish and Game allowed employees and volunteers to reside on state property without charging them rent, providing them with a gift of public funds of over $87,000.

We identified at least six employees in Fish and Game's North Coast Region who lived on state property at some point between January 1984 and December 2005 without paying rent, resulting in a gift of public funds to the employees and a loss to the State exceeding $73,000. We also identified seven volunteers in Fish and Game's North Coast Region who lived on state property rent free, resulting in a gift of public funds to the volunteers and a loss to the State of almost $14,000.

State law provides that the salary fixed by law for each state officer is compensation in full for that office and for all services rendered in any official capacity, and the employee cannot receive for his

or her own use any fee or perquisite for the performance of any official duty. Similarly, state law governing volunteerism in state government provides that a volunteer is an individual who offers goods or services to any state agency without any financial gain. In addition, the California Constitution prohibits the use of public funds for a purely private purpose. The use of public funds for a purely private purpose is known as a "gift of public funds." Because the employees' wages are considered full compensation and volunteers are not expected to benefit from their positions, any additional benefit provided to employees or volunteers, in the form of free rent, is considered a gift of public funds in violation of state law. Table 1 shows the gift of free or reduced rent Fish and Game provided to 13 employees and volunteers in its North Coast Region between January 1984 and December 2005.

TABLE 1

Gifts of Public Funds and Rental Revenues Lost by the State January 1984 to December 2005

Resident	Months Resided With No Rent	Monthly Rental Value as Determined by Fish and Game*	Gift Given to Resident; Amount Lost by the State
Employee A	120	$200	$24,000
Employee B	131	162	21,222
Employee C†	254	34	8,636
Employee D	40	200	8,000
Employee E	31	200	6,200
Employee F	49	107	5,243
Gift to employees			**73,301**
Volunteer A	25	220	5,500
Volunteer B‡	36	134	4,824
Volunteer C	11	220	2,420
Volunteer D	8	55	440
Volunteer E	7	55	385
Volunteer F	3	55	165
Volunteer G	3	55	165
Gift to volunteers			**13,899**
Combined gift to employees and volunteers	718		$87,200

* As of the issuance of this report, Employee D and all the volunteers listed continue to reside on state property at no charge. Employee F no longer resides on state property, and Employees A, B, C, and E reside on state property but pay the rents listed in the "Monthly Rental Value as Determined by Fish and Game" column.

† Employee C resides in a dormitory; all others reside in homes.

‡ No prior tenant information was available for Volunteer B's residence, so we used the lowest rate charged for a comparable home in Fish and Game's North Coast Region.

Employee A resided on state property for more than 10 years without paying rent. This represents a gift of state funds and a loss to the State of $24,000.

Employee A, a permanent intermittent employee who works for Fish and Game approximately nine months of the year, resided on state property, rent free, for more than 10 years. That arrangement represents a gift of state funds to Employee A and a total loss to the State of $24,000 over the 10-year period. Further, a document found in his personnel file indicates that Employee A may have resided on state property for an additional five years without paying rent; however, because of Fish and Game's poor record keeping, we could not determine the veracity of the document.

An official at Fish and Game told us that Employee A volunteers when he is not working and for many years was the only Fish and Game presence in the area; however, the state regulations governing the application of rental rates to state-owned housing do not include a provision allowing departments to waive rent to any employee. An exception to that regulation is granted only if the employee is entitled to receive housing as compensation for services, which is not the case with Employee A or any other employee or volunteer mentioned in this report.

Based on our review of records provided by Fish and Game, it appears that Employee C, who lives in a dormitory, resided on state property without paying rent for more than 20 years. The official told us that free rent is provided in many instances because the homes and dormitories are in very poor condition and Fish and Game needs a security presence at remote locations. However, state regulations indicate that it is the DPA's responsibility to reduce the rent on essential state property that is deemed to be substandard. State regulations also allow departments, in limited circumstances, to reduce rental rates for substandard essential state properties; however, departments must do so in accordance with state housing regulations, which, as previously stated, do not allow employees or volunteers to reside on state property rent free. Further, the regulations provide that DPA is responsible for reviewing any special rental problems when the regulations cannot be reasonably or equitably applied. Because Fish and Game allowed the 13 residents we identified to live on state property rent free, but charged rent to others who formerly or currently reside on the same properties, it does not appear as though Fish and Game has applied state housing regulations in an equitable manner. When asked, the official acknowledged that he had not sought DPA's approval to reduce rental amounts.

FISH AND GAME FAILED TO REPORT THE FRINGE BENEFIT REALIZED BY RENTERS PAYING LESS THAN FAIR MARKET VALUE

All of the employees and volunteers living on Fish and Game property throughout the State, not just those in the North Coast Region, pay less than the fair market value in rent for their residences. Federal tax regulations provide that gross income generally includes fringe benefits, such as residing on employer-provided property while paying rent that is below the fair market value. The difference between the fair market value and the rental amount the employee or volunteer pays represents a taxable fringe benefit to the resident unless residency on state property is a condition of employment. State policy requires state agencies to report that fringe benefit to the State Controller's Office on a monthly basis. However, Fish and Game has not reported state-housing fringe benefits for any of its employees since 2001.

Because Fish and Game failed to report housing fringe benefits for any of its employees from 2002 through 2005, state and federal tax authorities were unaware of $1.3 million in potential taxes over this period.

State regulations provide that departments shall review the monthly rental and utility rates every year and report those rates to DPA. Based on a review of state-owned housing conducted by DPA, as well as on information provided by the department to DPA, it appears that Fish and Game may have understated its employees' wages by as much as $867,000 each year from 2002 through 2005 because it did not report any fringe benefits for its employees who reside on state property at below-market rates. As a result, over the four-year period, state and federal tax authorities were unaware of the potential $1.3 million in taxes associated with a total of nearly $3.5 million in potential housing fringe benefits.[3]

This $3.5 million also represents a potential loss in rental revenue that the State may have received if Fish and Game had required its employees to pay rent at the fair market value. Since housing fringe benefits exist when the rental rate charged is less than the fair market rate, no taxable fringe benefit would exist if Fish and Game required its employees to pay fair market rates. A representative of Fish and Game told us that it has not reported any housing fringe benefits for its employees since 2000 because it lacks the funding necessary to obtain fair market values for its properties. The representative added that Fish and Game considers residency to be a condition of employment for 105 of the 154 positions held by the employees who currently reside on

[3] This amount is an extrapolation based on 2003 data reported to DPA. Because Fish and Game was unable to produce accurate fair market rental values for its homes, DPA determined fair market values based on the Department of Housing and Urban Development's 2003 value for a one-bedroom home in the same county.

state property; however, when reporting rental information to DPA, Fish and Game indicated that it considered residency to be a condition of employment for virtually all of the positions held by employees and volunteers who reside on state property.

FISH AND GAME FAILED TO ADEQUATELY DEMONSTRATE THAT RESIDENCY IS A CONDITION OF EMPLOYMENT

Although the information Fish and Game reported to DPA indicated that virtually all of the 158 employees and volunteers residing in its homes are doing so as a necessary condition of employment, Fish and Game records maintained at the North Coast Region headquarters fail to corroborate that assertion. For example, North Coast Region records show that it considers residency a condition of employment for only 29 of its 52 employees and volunteers residing in state-owned homes in that region. As we mentioned earlier, when lodgings are furnished at below fair market rates as a condition of employment, the value received by the resident is not considered a taxable fringe benefit. In these instances, departments are not required to report taxable fringe benefits for housing. Internal Revenue Service guidelines clarify that to meet the condition-of-employment test, an employee's residence must be the same place in which he or she conducts a significant portion of his or her business. The regulations further explain that for housing to be considered a condition of employment, employees must be required to accept on-site lodgings to perform their duties because the housing is indispensable to the proper discharge of their assigned duties. State reporting guidelines provided to Fish and Game representatives clarify that departments must demonstrate and document the need for an employee to live on the premises to satisfy the condition-of-employment test.

It appears that most of Fish and Game's properties may not meet the condition-of-employment test and fringe benefits should have been reported.

Based on our review of applicable federal tax law criteria for determining residency as a condition of employment, it appears that most of the Fish and Game properties mentioned in this report may not have met those criteria and that housing fringe benefits should have been reported. Further, although we would have expected Fish and Game to document, in employee personnel files or job descriptions, that residency was a condition of employment, it often failed to do so.

Although we were able to find information related to residency as a condition of employment in the personnel files of two of the six employees mentioned in Table 1 on page 7 of this

report, Employees B and C, Fish and Game's determination that these two employees meet the condition-of-employment test seems arbitrary. Both employees' personnel files contained Fish and Game employee residency forms. Each form, signed by the employees' supervisor in April 2005, states that their residency in a state-owned home is a condition of employment. However, both employees began working in their current positions more than five years ago, and we found nothing in either employee's personnel file indicating that their job duties had changed recently in a way that would require them to reside on state property or that residency was a condition of employment prior to April 2005. As a result, we question Fish and Game's determination because it appears that for more than five years these employees were able to discharge their duties adequately without being required to reside on the properties and, therefore, did not meet the condition-of-employment test. Because Fish and Game did not properly document whether living on state property was a condition of employment, and because it did not demonstrate that each employee met the condition-of-employment test, we are left to rely on the conclusion in DPA's report that Fish and Game failed to report as much as $867,000 annually in taxable housing fringe benefits provided to its employees statewide.

OTHER STATE DEPARTMENTS HAVE ALSO FAILED TO REPORT HOUSING FRINGE BENEFITS

In 2003 state departments may have failed to report housing fringe benefits of as much as $7.7 million, depriving tax authorities of almost $3 million in potential tax revenues for that year.

Although we focus on Fish and Game's management of state-owned housing in this report, the DPA housing review shows that other state departments that own employee housing may be underreporting or failing to report housing fringe benefits. For example, Table 2 on the following page shows that in 2003 state departments may have failed to report housing fringe benefits totaling as much as $7.7 million, depriving state and federal tax authorities of almost $3 million annually in potential tax revenues. Additionally, because state departments have chosen to charge employees rent that is well below market rates, the State may have lost as much as $8.3 million in potential rental revenue in that year.[4]

[4] As we mentioned previously, taxable fringe benefits exist when the rental rate charged is less than the fair market rate. Thus, no fringe benefit exists when employees pay fair market rates.

TABLE 2

Potential Income and Benefits Related to Rental Housing Units Held by State Departments 2003

Department	Rental Units	Annual Income If Rented at Fair Market Value (FMV)	Annual Rent Charged*	Lost State Revenue (Difference Between FMV and Rent Charged)†	Taxable Fringe Benefit Reported	Unreported Taxable Fringe Benefits‡
Department of Parks and Recreation	487	$4,778,496	$ 763,488	$4,015,008	$373,198	$3,641,810
Department of Corrections and Rehabilitation	176	2,139,972	909,732	1,230,240	0	1,230,240
Department of Developmental Services	99	1,254,360	309,240	945,120	5,728	939,392
Department of Fish and Game	168	1,124,532	257,316	867,216	0	867,216
Department of Forestry and Fire Protection	72	559,332	218,400	340,932	53,078	287,854
Department of Mental Health	40	366,720	125,472	241,248	34,031	207,217
Division of Juvenile Justice	51	371,760	136,740	235,020	69,152	165,868
Department of Transportation	42	294,984	144,324	150,660	17,300	133,360
Department of Veterans Affairs	22	235,224	97,512	137,712	9,240	128,472
Santa Monica Mountains Conservancy	9	82,512	0	82,512	0	82,512
California Highway Patrol	6	41,184	12,732	28,452	0	28,452
Department of Food and Agriculture	5	29,184	5,844	23,340	0	23,340
California Conservation Corps	4	36,888	20,748	16,140	3,058	13,082
Totals	**1,181**	**$11,315,148**	**$3,001,548**	**$8,313,600**	**$564,785**	**$7,748,815**

Source: 2003 Department of Personnel Administration Departmental Housing Survey.

* To determine annual rent charged, DPA multiplied by 12 what departments reported as monthly rent charged.

† This amount represents what should have been reported to taxing authorities as a taxable fringe benefit.

‡ Taxable housing fringe benefits exist when the rental rate charged is less than the fair market rate. Thus, no taxable fringe benefit exists when employees pay fair market rates.

AGENCY RESPONSE

Fish and Game reported that it disagrees with the amount we show as being reportable housing fringe benefits and the associated potential tax revenues. Specifically, Fish and Game believes our report overstates the alleged taxable fringe benefits and associated potential tax revenues because it has determined that a majority of its resident employees meet the condition-of-employment test, and that the fair market values used in the DPA review do not accurately reflect the values of its properties.

Based on our review of applicable tax law and the records we reviewed at Fish and Game's North Coast Region, we determined Fish and Game did not properly document and demonstrate that

a majority of its employees met the condition-of-employment test. Further, although we acknowledge that the fair market values used in DPA's review may not reflect the actual value of all department holdings, DPA was unable to use actual fair market values because Fish and Game failed to determine and report to DPA the fair market value rates for any of its properties—rates it also needed to determine to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees. Fish and Game also reported that current budget constraints prohibit it from obtaining appraisals to determine the most accurate fair market values, but that it is considering requesting funding to do so. However, Fish and Game charges its employees rent at less than 25 percent of the fair market rates used by DPA. If current appraisals were to value the properties at half the values used by DPA, and if it were to raise rental rates to those fair market values, it appears that Fish and Game could recover the cost of such appraisals within one or two months.

In addition, Fish and Game reported that it disagrees with our conclusion that certain personnel cannot live rent free on state property because our report incorrectly presumes that Fish and Game is obligated to charge fair market rates for all of its housing and it is Fish and Game's understanding that rental rates are fixed and limited by state law, regulations, and employee collective bargaining agreements.

Our conclusion in the report that Fish and Game's provision of rent-free housing resulted in a loss of over $87,000 is not based on a comparison to fair market values as Fish and Game asserts. Rather, the amount we report is based on a comparison of free rent, shown in Table 1, versus the nominal rate Fish and Game charges when it requires its employees to pay rent, which appears to be well below fair market value. Additionally, we disagree with Fish and Game's assertion that rental rates are fixed by state law, regulations, and employee collective bargaining agreements. DPA is the agency responsible for administering state housing regulations, and state law provides that the director of DPA shall determine the fair and reasonable value of state housing. Using information reported by Fish and Game for DPA's 2003 survey, DPA directed Fish and Game to raise rental rates to fair market value and acknowledged that it should do so in accordance with employee collective bargaining agreements, which allow Fish and Game to raise rental rates by 25 percent annually. Additionally, our review of records in the North Coast Region found that Fish and Game has in fact

adjusted the amount of rent it charges residents on numerous occasions in the past, thus demonstrating that rates it charges its residents are not "fixed."

Finally, Fish and Game reported that it has been working with DPA for several years as part of its commitment to ensure that it is in compliance with laws and regulations applicable to its properties and is committed to continuing to do so. Fish and Game added that part of this commitment included providing updated information regarding housing-related reporting and withholding requirements to its employees and administrative personnel in July 2002 and again in August 2003. However, as we previously mentioned, Fish and Game has not reported a state-housing fringe benefit for any of its employees since 2001 and it appears it is not in compliance with IRS regulations governing reportable housing fringe benefits despite Fish and Game's assertion that it is committed to doing so.

OTHER AGENCY RESPONSES

Department of Parks and Recreation

The Department of Parks and Recreation (Parks and Recreation) believes that state regulations relevant to state-owned housing for employees not represented by collective bargaining agreements (nonrepresented employees) do not allow it to raise rental rates beyond those listed in the regulations and stated that nonrepresented employees reside in approximately one-third of its properties. However, after reviewing the information Parks and Recreation submitted to DPA, it appears that nonrepresented employees reside in less than one-tenth of its inhabited properties. Regardless, Parks and Recreation believes that in order for it to raise rental rates for its nonrepresented employees and not violate state regulations, it believes DPA must update the rates listed in state regulations. Parks and Recreation added that many of the collective bargaining agreements under which most of its remaining employee residents work limit its ability to raise rental rates. However, DPA, the agency responsible for administering state housing regulations, has specifically given Parks and Recreation direction to raise rental rates to fair market value and acknowledges that it should do so in accordance with employee collective bargaining agreements, which, generally, allow Parks and Recreation to raise rental rates by 25 percent annually up to fair market value. After receiving this direction, Parks and Recreation responded to DPA, requesting that DPA

provide clear authority and policy direction to departments, and inform employee unions of this direction; however, DPA has not responded to this request.

Parks and Recreation also reported that it believes the fair market values used in DPA's review do not fairly represent the true value of its homes. We acknowledge that the fair market values used in DPA's review may not reflect the actual value of all department holdings; however, DPA was unable to use the actual fair market values because Parks and Recreation failed to determine and report to DPA accurate fair market value rates for all of its properties—rates it also needed to determine to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees. Parks and Recreation also contends that it provided fair market values for its properties when it responded to DPA. However, after reviewing the information it submitted to DPA, it appears that it provided fair market determinations for only 298 of the 817 properties it owns. Moreover, Parks and Recreation failed to indicate when the last appraisal was conducted for all but 90 of the 298 properties and had conducted appraisals on only 14 of these properties in the previous 10 years, thus demonstrating that it did not report accurate, up-to-date fair market rates to DPA. Additionally, when responding to DPA's survey, Parks and Recreation indicated that residents in almost 300 of its 487 inhabited units were paying rent at or above fair market values; however, our review of the information it sent to DPA shows that just six of those units were rented at or above fair market value.

Parks and Recreation also takes issue with the amounts identified by DPA as losses in state revenue and underreported fringe benefits because many of its employees live on state property as a condition of employment and, therefore, there is no loss in rental revenue to the State or fringe benefit to report. However, after reviewing the information provided to DPA, it appears that Parks and Recreation did not clearly indicate which, if any, of its residents resided on state property as a condition of employment. Specifically, even though the survey guidelines instructed Parks and Recreation to indicate the reason for occupancy for each of its properties, it did not list condition of employment as the reason for occupancy for any of its properties.

Department of Corrections and Rehabilitation

The Department of Corrections and Rehabilitation (Corrections) reported that it last established fair market value rates for all its properties in 1999 and that it subsequently raised rents to

the 1999 fair market value rates for properties at all but one of its institutions. Corrections added that it has since raised rates at the remaining institution and is committed to hiring a consultant within six months to begin obtaining current fair market value appraisals.

Department of Developmental Services

The Department of Developmental Services (Developmental Services) reported that it believes the fair market rates used by DPA do not accurately reflect the true value of its properties because many of its units are single rooms without kitchens and in some cases residents share bathrooms. We acknowledge that the fair market rates used in the DPA review may not reflect the actual value of all department holdings; however, DPA was unable to use the actual fair market rates because Developmental Services failed to determine and report to DPA the fair market value rates for any of its properties—rates it also needed to determine to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees.

Developmental Services also reported that it has initiated steps to obtain fair market appraisals for all its properties and will follow provisions in applicable collective bargaining agreements to increase rental rates commensurate with the fair market appraisals once they are established.

Department of Forestry and Fire Protection

The Department of Forestry and Fire Protection (Forestry) reported that it has taken several steps to resolve state housing issues since it reported information to DPA for its review in 2003. Specifically, Forestry reported that it now reviews rental rates annually and rents that are below fair market value will be raised by 25 percent annually in accordance with applicable collective bargaining agreements. It also reported that it currently reports taxable fringe benefits for residents in Forestry housing on a monthly basis. In addition, Forestry reported that the fair market rates used by DPA do not accurately reflect the true values of its properties because most are located within the boundaries of conservation camps primarily occupied by prison inmates; however, it acknowledged that annual appraisals are necessary to document the accurate value of each unit. Finally, due to increased rental rates and additional vacancies, Forestry reported that the difference between fair market value and actual rental income for all of its properties in 2005 was $32,805 and that by increasing rents 25 percent each year, the difference will continue to decline.

Department of Mental Health

The Department of Mental Health (Mental Health) reported that it believes the fair market rates used in DPA's review do not accurately represent the values of its properties but acknowledged that many, if not all of its state hospitals have been using outdated fair market values. Mental Health also reported that it will update its special order addressing employee housing to include performing annual fair market value determinations and timely reporting of housing fringe benefits. The special order will be distributed to each of its four state hospitals and Mental Health will monitor the hospitals for ongoing compliance. Mental Health added that for certain purposes, such as the recruitment and retention of interns, its state hospitals charge less than fair market value and in these instances Mental Health will ensure that the hospitals report the housing fringe benefits in accordance with state and federal regulations.

Division of Juvenile Justice

The Division of Juvenile Justice reported that it last obtained fair market value appraisals for all of its properties in 1995 and that it subsequently raised rental rates to the 1995 fair market value rates.

Department of Transportation

The Department of Transportation (Caltrans) reported that it believes the fair market rates used by DPA do not accurately reflect the true value of its properties because all of its properties are located in remote areas situated within Caltrans maintenance facilities. Caltrans also reported that its policies require that it charge fair market value for all employee housing and that it update fair market values annually; however, Caltrans was unable to explain why it did not report fair market values to DPA. Although we did not validate its analysis, Caltrans reported that based on its most recent fair market value determinations, the loss of state revenue in 2003 was only $19,356 and the amount of underreported fringe benefits was much less than what DPA identified in its review.

Department of Veterans Affairs

The Department of Veterans Affairs (Veterans Affairs) reported that it conducted fair market assessments of its properties in September 2005 and that it submitted its corrected housing information to DPA in October 2005. Veterans Affairs also

reported that it established new rental rates based on the assessments and informed its residents that the new rates will go into effect March 1, 2006.

Santa Monica Mountains Conservancy

The Santa Monica Mountains Conservancy reported that it has only six employees, none of whom live on state property. It added that in lieu of rent, it currently allows nonstate employees to reside on eight of its properties to provide and ensure resource protection, site management, facilities security and maintenance, and park visitor services.

California Highway Patrol

The California Highway Patrol (Highway Patrol) reported that it determines rental rates in accordance with applicable state regulations and that because all of its employees reside on state property as a condition of employment, it has not underreported housing fringe benefits. The Highway Patrol added that it is in the process of obtaining appraisal reviews for its properties and is updating its policies and procedures to reflect that assignments to its resident posts are classified as "condition of employment."

Department of Food and Agriculture

The Department of Food and Agriculture (Food and Agriculture) reported that its employees currently reside on two state properties as a condition of employment. As a result, there is no fringe benefit to report for those residents. Food and Agriculture added that because these properties are located near popular resort areas, fair market values are not comparable to values of homes in surrounding communities.

California Conservation Corps

The California Conservation Corps (Conservation Corps) reported that it will be conducting new appraisals to determine updated fair market values for its properties and that rental rates will be increased to the extent allowed by law and applicable collective bargaining units. Conservation Corps also reported that employees residing on its properties will be taxed on the fringe benefit amount—the difference between the rent charged and the fair market value determined by these new appraisals—and has informed affected employees of this fact. ■

CHAPTER 2

Department of Corrections and Rehabilitation: Gift of Public Funds

ALLEGATION I2005-0781

The Department of Corrections and Rehabilitation (Corrections) failed to exercise its management controls, resulting in a gift of public funds at the Sierra Conservation Center (center).

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegation. According to the collective bargaining agreement between the State and the American Federation of State, County, and Municipal Employees (Union A), which covers health and social services professionals, all employees exempt from the Fair Labor Standards Act (exempt employees) accrue holiday credits when they are required to work on holidays.[5] However, the agreement specifically provides that they do not accrue holiday credits on days they do not work.

Contrary to the terms in the collective bargaining agreement, when a holiday fell on a scheduled day off, the center allowed exempt Union A employees to accrue holiday credits for later use, even though they had not worked. For example, between January 2002 and May 2005, the center improperly allowed Employee E to accrue 48 hours of holiday credit for holidays that she was not scheduled to work, resulting in a $1,653 gift of public funds to that employee. Table 3 on the following page shows the total gift of public funds to the nine exempt Union A employees as a result of allowing them to accrue holiday credits to which they were not entitled. Overall, the center improperly allowed exempt Union A employees to accrue 516 hours, resulting in gifts of public funds totaling $17,164 between January 2002 and May 2005.

[5] For a more detailed description of the laws, regulations, and employee contracts discussed in this chapter, see Appendix B.

TABLE 3

The Cost to the State of Allowing Nine Corrections Employees to Improperly Accrue Holiday Credits

Year	Holiday Credit Hours Improperly Accrued	Gifted Public Funds
2002	56	$1,913
2003	106	3,446
2004	240	7,997
2005*	114	3,808
Totals	**516**	**$17,164**

* The information for 2005 covers January through May.

In addition, the collective bargaining agreement for Union A requires exempt employees to post leave only in eight-hour increments (or their fractional equivalent depending on their time bases) for each full day of work missed. At the same time, the center allowed nine exempt employees to work alternate schedules. For example, five employees worked four 10-hour days instead of five eight-hour days. This presents a problem when these employees take a day off, because the center charges only eight hours against their leave balances for each day they are absent, although they are missing 10 hours of work per day. For example, Employee E, who was scheduled to work four 10-hour days per week, was required to post only eight hours of leave for each full day's absence. Similarly, when a holiday fell on a scheduled workday and Employee E did not work, the center allowed Employee E to charge only eight holiday hours against her leave balance, rather than the full 10-hour workday. Consequently, from January 2002 through May 2005, the center failed to charge more than 198 hours against Employee E's leave balance for days she did not work, resulting in a gift of public funds to her totaling $6,831.

Union A's collective bargaining agreement specifies that exempt employees are expected to work the hours necessary to accomplish their assignments and defines their workload as normally averaging 40 hours per week over a 12-month period. However, because these exempt employees charge eight hours for each missed 10-hour workday and the center does not require them to make up the additional two hours, we fail to see how the employees could average 40 hours per week over a 12-month period. For example, after missing one workday, an exempt

employee working an alternate work schedule can account for only 38 hours of work that week. When asked, Employee A, who is one of the employees listed in this report and the supervisor of the other eight employees, confirmed that none of the affected employees, including himself, had to make up the two-hour differences by extending their workdays or by coming in on days they were not scheduled to work.

Table 4 shows the total hours unaccounted for, by calendar year, for the nine employees with alternate work schedules, including hours for holidays. Overall, the center did not charge 1,460 hours to the leave balances of Union A employees who work alternate schedules, resulting in a gift of public funds of $49,094. Therefore, we believe the center's decision to allow exempt Union A employees to work alternate schedules is unreasonable and that its failure to eliminate alternate work schedules results in wasted state funds.

TABLE 4

Hours Not Charged and the Cost to the State

Year	Hours Not Charged			Gifted Public Funds
	For Holidays	To Leave Balances	Total	
2002	106	146	252	$ 8,551
2003	134	280	414	13,821
2004	214	364	578	19,235
2005*	60	156	216	7,487
Totals	**514**	**946**	**1,460**	**$49,094**

* The information for 2005 covers January through May.

To investigate the allegation, we reviewed the State's current collective bargaining agreement with Union A and compared it to the State's bargaining agreement with the Union of American Physicians and Dentists (Union B), because Union B also represents employees in the health care field who are exempt from the Fair Labor Standards Act. Additionally, we reviewed employee time sheets from January 2002 through May 2005 and certain communications between the center and Corrections. We also interviewed center and Corrections employees, including the center's former acting warden. We then gave each person a written summary of the interview and asked him or her to review the statement and to make any necessary changes. We

also asked each of these individuals to sign the statement under penalty of perjury to ensure accuracy. The center's former acting warden met with us and responded to our inquiries, but refused to sign his statement. Although we report our understanding of what he told us, as witnessed by two investigators, we have less confidence in the accuracy of our understanding of his statements because of his unwillingness to confirm the statement and to certify it under penalty of perjury. The center's health care manager provided us with a signed statement but omitted and altered relevant information he gave to us during the interview. Nonetheless, we report our understanding of what he told us, as witnessed by two investigators.

Seven employees continue to work alternate schedules and charge only four to eight hours of leave when absent from a 10-hour workday.

Although our investigation was limited to the center, Union A represents 2,062 exempt employees throughout the State. Therefore, this condition could be occurring in other regions of the State and, as a result, the total cost to the State could be significantly higher. As of the date of this report, seven of the nine employees continue to work alternate schedules and charge only four to eight hours of leave when absent from a 10-hour workday, depending on their time bases. One of the employees has retired, and another transferred to a correctional facility that does not allow its exempt Union A employees to work alternate schedules.

BACKGROUND

The current collective bargaining agreement between the State and Union A (Union A agreement), which is effective through July 1, 2006, specifically states that exempt employees accrue holiday credits when they are required to work on holidays. Further, it specifies that exempt employees can charge leave balances only in increments of eight hours, regardless of actual hours worked each day when leave credits are charged. The Union A agreement also requires the State to reasonably consider employees' requests to work alternate schedules. Alternate work schedules include, but are not limited to, working four 10-hour days in one week. The center allows both full- and part-time exempt employees represented by Union A to work alternate schedules. For example, a full-time employee can work four 10-hour days, a three-quarter-time employee can work three 10-hour days, and a half-time employee can work two 10-hour days to perform the requisite number of work hours in one week.

Under the Union A agreement, exempt employees who work four 10-hour days per week charge only eight hours against their leave balances for each 10-hour workday missed. Half-time and three-quarter time employees charge leave according to their time base. For example, half-time employees charge four hours of leave and three-quarter time employees charge six hours of leave for each full day missed.

The State's agreement with Union B, which like Union A covers professionals in the health care field, similarly allows exempt employees to work alternate schedules. However, in contrast to the Union A agreement, the Union B agreement states that exempt employees cannot charge leave in less than "whole-day increments." Thus, a Union B employee who works 10-hour days charges 10 hours of leave for each day of work missed.

THE CENTER'S DECISION TO ALLOW EMPLOYEES TO WORK ALTERNATE SCHEDULES PROVIDES A GIFT OF PUBLIC FUNDS AND IS WASTEFUL

The center's decision to allow alternate work schedules made it more likely that exempt employees would have a scheduled day off that fell on a holiday. In such cases, the center improperly allowed nine exempt Union A employees to accrue holiday credits they were not entitled to, even though the State's collective bargaining agreement with Union A clearly states that exempt employees are entitled to holiday credit only when they are scheduled to work on a holiday. By improperly allowing those employees to accrue holiday credits on regularly scheduled days off, the center provided gifts of public funds totaling $17,164 to exempt Union A employees from January 2002 through May 2005, as shown in Table 5 on the following page.

TABLE 5

Gifts of Public Funds Resulting From the Center's Decision to Allow Exempt Union A Employees Working Alternate Schedules to Accrue Holiday Credits on Holidays They Did Not Work

	Holiday Hours and Dollars Improperly Accrued									
	2002		2003		2004		2005*		Total	
Employees	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars
Full-Time Employees										
Employee A	†	†	8	$ 287	48	$1,812	24	$ 953	80	$ 3,052
Employee B	40	$1,367	16	547	8	273	0	0	64	2,187
Employee C	†	†	8	212	32	897	24	696	64	1,805
Employee D	†	†	0	0	24	846	24	859	48	1,705
Employee E	8	273	32	1,094	8	286	0	0	48	1,653
Part-Time Employees										
Employee F	0	0	14	477	42	1,473	12	429	68	2,379
Employee G	†	†	16	419	40	1,076	24	656	80	2,151
Employee H	8	273	12	410	30	1,054	6	215	56	1,952
Employee I	‡	‡	‡	‡	8	280	0	0	8	280
Totals	**56**	**$1,913**	**106**	**$3,446**	**240**	**$7,997**	**114**	**$3,808**	**516**	**$17,164**

* The information for 2005 covers January through May.

† This employee did not work at the center during the indicated period.

‡ This employee's approved time sheets were not available for review for the indicated time period.

According to a payroll specialist at the center, she was directed by department personnel to allow the nine exempt employees to accrue holiday credits when holidays fell on their regularly scheduled days off. In a July 2004 e-mail, a department personnel analyst advised the center's personnel staff that exempt employees working alternate work schedules should accrue holiday credits on their regularly scheduled days off, as per state policy. However, this policy applies only to six specific unions and is not applicable to Union A employees. As a result, the center appears to have mistakenly applied this policy to exempt Union A employees, allowing them to receive $17,164 in holiday credits to which they were not entitled.

In addition to improperly allowing the nine exempt Union A employees working alternate schedules to accrue holiday credit for days they did not work, the center charged only eight hours against an employee's leave balance when the employee was absent from work, including when a state holiday fell on

a scheduled workday and the employee did not work. If the employee was scheduled to work 10 hours on that day, this resulted in a two-hour discrepancy. As a result of this practice, the State paid these employees $49,094 for 1,460 hours they did not work from January 2002 through May 2005. Table 6 shows the gift of public funds each employee received as a result of the center's decision.

TABLE 6

Gift of Public Funds Resulting From the Center's Decision to Allow Exempt Union A Employees to Work Alternate Schedules

	Hours Unaccounted for When Leave Balances Are Not Charged for Full 10-Hour Days									
	2002		2003		2004		2005*		Total	
Employees	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars
Full-Time Employees										
Employee A	†	†	10	$ 359	16	$ 603	6	$ 239	32	$ 1,201
Employee B	44	$1,503	72	2,461	70	2,441	30	1,073	216	7,478
Employee C	†	†	12	318	28	766	12	348	52	1,432
Employee D	†	†	42	1,436	58	2,031	20	716	120	4,183
Employee E	70	2,392	62	2,119	42	1,461	24	859	198	6,831
Part-Time Employees										
Employee F	80	2,674	158	5,289	100	3,425	16	572	354	11,960
Employee G	†	†	18	472	88	2,354	22	602	128	3,428
Employee H	58	1,982	40	1,367	56	1,946	8	286	162	5,581
Employee I	‡	‡	‡	‡	120	4,208	78	2,792	198	7,000
Totals	**252**	**$8,551**	**414**	**$13,821**	**578**	**$19,235**	**216**	**$7,487**	**1,460**	**$49,094**

* The information for 2005 covers January through May.

† This employee did not work at the center during the indicated period.

‡ This employee's approved time sheets were not available for review for the indicated time period.

The center has discretion to determine whether it will allow employees to work alternate schedules, as the collective bargaining agreement with Union A provides that management must reasonably consider employees' requests to work alternate schedules. Given the restrictive language of the collective bargaining agreement, which requires that only eight hours of leave be charged when a 10-hour workday is missed, we believe that allowing exempt Union A employees to work alternate schedules is unreasonable and that the center's failure to eliminate the alternate work schedules is wasteful.

EMPLOYEE GRIEVANCES LED TO THE DECISION TO CONTINUE ALLOWING ALTERNATE SCHEDULES

In January 2004, a payroll specialist, employing a practice used at the institution where she formerly worked, began charging the leave balances of the exempt employees working alternate schedules for the actual work hours they missed. In May 2004, an associate warden at the center issued a memorandum informing the health care manager at the time that exempt Union A and Union B employees would have their leave balances charged 10 hours for each 10-hour workday missed, and that both Union A and Union B exempt employees working alternate schedules would have to enter into agreements with the center to ensure that the employees' leave balances were charged appropriately.

The alternate work schedule agreements were to be signed by each affected employee and approved by the employee's immediate and secondary supervisors, the center's health care manager or division head, and the chief deputy warden. However, the nine exempt Union A employees identified in our report refused to sign agreements; therefore, it appears that the center's management never officially approved the employees' alternate work schedules. Nevertheless, the center continues to allow these exempt Union A employees to work alternate schedules.

After the May 2004 memorandum was issued, five center employees represented by Union A filed grievances, contending that only eight hours of leave should be charged for absences even when the missed workday is scheduled to be 10 hours. The employees' direct supervisor and the acting warden at the center both denied the grievances; however, department management approved the grievances in July 2004. After the department's decision, the center's management expressed concern and stated to the department's Labor Relations Office and its regional administrator that the center might need to deny exempt employees the ability to work alternate schedules; however, center management has made no such denials. As a result, full-time exempt Union A employees continue to receive gifts of public funds of as much as six hours' pay when missing three days in a workweek comprising four 10-hour days, as shown in Table 7.

TABLE 7

Hours Charged Against Leave When a Full-Time Exempt Union A Employee Misses Work

Days Missed Per Week	Scheduled Work Hours (Cumulative)	Leave Hours Charged (Cumulative)	Difference (Cumulative)
1	10	8	-2
2	20	16	-4
3	30	24	-6
4	40	40*	0

* The center reviewed time sheets for several employees and revised leave records to account for the department's grievance decision and determined that when an employee misses a full workweek, the employee is charged 40 hours of leave, starting in January 2004.

The loss to the State and the gift of public funds realized by employees is even greater for employees who work on a fractional basis. For example, when a half-time employee misses one 10-hour workday, the employee's leave balance is charged only four hours, resulting in a gift of six hours' pay. Of the nine employees affected by the department's decision, four work half-time or three-quarter time. Table 8 shows the impact on the State for employees who work on a fractional basis.

TABLE 8

Hours Charged Against Leave When a Part-Time Exempt Union A Employee Misses Work

Days Missed Per Week		Scheduled Work Hours (Cumulative)		Leave Hours Charged (Cumulative)		Difference (Cumulative)	
½ Time	¾ Time	½ Time	¾ Time	½ Time	¾ Time	½ Time	¾ Time
1	1	10	10	4	6	–6	–4
2	2	20	20	*	12	*	–8
N/A	3	N/A	30	N/A	*	N/A	*

N/A = not applicable.

* The center recently reviewed time sheets for several employees and revised leave records to account for the department's grievance decision. As a result, starting in January 2004, when an employee working one-half or three-quarter time misses a full workweek, the employee is charged 20 or 30 hours of leave, respectively.

THE DEPARTMENT AND THE CENTER CAN DISALLOW ALTERNATE WORK SCHEDULES

State law requires agencies to maintain effective systems of internal control to minimize fraud, errors, abuse, and waste of government funds. By maintaining internal accounting and administrative controls, state agencies gain reasonable assurance that measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. Further, state law requires that detected weaknesses be corrected promptly and asserts that waste and inefficiency in state government undermine Californians' confidence in government and reduce the state government's ability to address vital public needs.

We believe that the center and the department can decide to disallow exempt Union A employees from working alternate schedules, especially considering that allowing this practice already has cost the State more than $66,000 for time not worked, including holiday time, since 2002. Continuing to allow these employees to receive gifts of public funds for time not worked on holidays and on regular workdays is unreasonable, as well as unfair to the State and employees working under other union contracts. Further, we believe that by allowing the practice, the department has violated state law prohibiting the gift of public funds.

The center has the ability to discontinue providing gifts of public funds to its employees by initiating the process to eliminate alternate work schedules.

According to the department's chief of labor relations, the center can proceed with taking away alternate work schedules as long as it makes the department aware of its intention to do so. The center's current health care manager supports the ability to work an alternate schedule because he believes it offers the center increased flexibility in providing health care coverage, particularly by mental health professionals. However, as this report discusses, the use of alternate work schedules by exempt Union A employees has resulted in a loss of 1,976 hours available for patient health coverage at the center. Thus, we fail to see how allowing this practice has benefited the mental health patients. The center's health care manager also stated that the ability to work alternate schedules is a recruitment tool used to attract applicants and, although he agrees that employees should not receive gifts of public funds, he believes the flexibility outweighs the gift of public funds. After we gave him his statement, he added that this is a contract issue and he does not have the authority to eliminate alternate work schedules. However, as the center's current health care manager, he is responsible for all medical issues at the center and has the authority to start the process to eliminate alternate work schedules if he chooses.

AGENCY RESPONSE

Corrections reported that the issues identified in our report are labor relations issues and has forwarded our report to its Labor Relations Office (LRO). As of the date of this report, the LRO has not reported its corrective action. ■

Blank page inserted for reproduction purposes only.

CHAPTER 3

Department of Forestry and Fire Protection: Improper Overtime Payments

ALLEGATIONS I2005-0810, I2005-0874, AND I2005-0929

We received allegations under the California Whistleblower Protection Act that several Department of Forestry and Fire Protection (Forestry) employees improperly received overtime payments.

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegations. A Forestry supervisor authorized improper overtime for five air operations officers working as pilots, which resulted in overtime payments totaling more than $58,000. He also approved 80 hours of questionable overtime, resulting in nearly $3,907 in pay, for two air operations officers working in maintenance when they reported working 24 hours a day on their time sheets. Although the State's collective bargaining agreement with CDF Firefighters (firefighters' union), which includes air operations officers, does allow around-the-clock pay for certain employees when responding to a fire, it does not allow air operations officers to receive this pay.[6] Moreover, department policy limits pilots to flying seven or eight hours per day and to working 14 hours per day. Because air operations officers recorded 24 hours for each day worked rather than the actual hours worked when working as pilots, our calculation of the overpayment is based on hours paid in excess of the 14-hour limit.

We also found that a heavy fire equipment operator at another Forestry location received more than $16,000 in questionable or improper overtime payments by taking advantage of a lack of oversight by his direct supervisor and a lack of communication among all battalion chiefs with authority to sign time sheets. In this lax environment, the heavy fire equipment operator was able to claim enough overtime over a two-year period to effectively increase his average monthly salary from $3,903 to $7,566. Although we acknowledge that efficient and effective firefighting is a critical

[6] For a more detailed description of the laws, regulations, and employee contract discussed in this chapter, see Appendix B.

responsibility of Forestry, the emergency circumstances do not relieve Forestry of the responsibility to maintain adequate payroll controls related to overtime.

To investigate these allegations, we reviewed the State's collective bargaining agreement with the firefighters' union and relevant portions of Forestry's procedures manual, interviewed an official at the Department of Personnel Administration (DPA) and Forestry staff, and reviewed employee time sheets.

BACKGROUND

Forestry's mission is to protect the people of California from fires; to respond to emergencies; and to protect and enhance forest, range, and watershed values, thus providing social, economic, and environmental benefits to citizens. Forestry's firefighters, fire engines, heavy fire equipment, and aircraft respond to an average of 5,700 fires each year. The firefighters' union represents the air operations officers and heavy fire equipment operators. The air operations officers mentioned in this report work in maintenance or flight operations. Their main responsibilities include training Forestry pilots as well as flying helicopters when there is a shortage of fire pilots. Heavy fire equipment operators typically operate equipment such as bulldozers, heavy-duty transports, and trucks used to suppress fires.

THE AIR OPERATIONS SUPERVISOR APPROVED IMPROPER OVERTIME PAY FOR EMPLOYEES

Five air operations officers working as pilots received more than $58,000 in improper overtime payments.

From January 2003 through July 2005, five air operations officers working as pilots received more than $58,000 for overtime hours charged in violation of either department policy or their union agreement. In addition, two air operations officers working in maintenance received nearly $3,907 for overtime hours that it is not clear they actually worked.

The State's collective bargaining agreement with the firefighters' union provides for around-the-clock compensation when certain employees are assigned to a fire, but does not include air operations officers among those eligible for this type of compensation. According to the chief of labor relations at DPA, air operations officers should be compensated only for hours worked rather than for all hours assigned to a fire. Forestry's procedures manual limits the number of hours its pilots are able to fly per day to seven or eight hours, depending on whether a copilot is present, and limits the total number of work hours per day for pilots to 14 hours.

Because the air operations officers' reported overtime hours involved pilot coverage, these employees were subject to Forestry's 14-hour workday for pilots. Forestry establishes no such limitation for air operations officers working in maintenance.

We reviewed time sheets for five air operations officers who worked as pilots during fires and identified 1,063 hours in excess of 14 hours per day for which they were compensated improperly. Table 9 shows the improper payments to these employees, separated according to whether the employees reported 24 hours per day or 15 to 23 hours per day on their time sheets. We were not able to accurately determine the number of actual hours worked when air operations officers charged 24 hours per day because they appear to have recorded the time they were assigned to a fire, rather than actual hours worked, on their time reports. For those instances when air operations officers working as pilots charged more than 14 hours but less than 24 hours per day, we were similarly unable to determine whether they charged for hours not worked or worked in excess of allowable hours. In either case, the payments were in violation of department policy.

TABLE 9

Improper Overtime Payments
January 2003 Through July 2005

	Round-the-Clock Pay		Pay for More Than 14 Hours but Less Than 24 Hours	
Employee	Hours	Payments	Hours	Payments
Employee A*	470	$25,026	39	$2,087
Employee B	310	16,741	29	1,602
Employee C†	150	9,216	19	1,167
Employee D†	30	1,324	0	0
Employee E‡	0	0	16	858
Subtotals	**960**	**$52,307**	**103**	**$5,714**
Total Hours	**1,063**			
Total Payments	**$58,021**			

* This employee also improperly received $517 for 10 hours of time when he incorrectly reported a 34-hour day rather than a 24-hour day. These hours are not included in this table.

† These employees' 2003 time sheets were not available for review.

‡ This employee also received payments totaling $3,020 for 67 hours of time between January 2005 and June 2005 that the employee did not charge and the supervisor did not approve. We did not review this employee's time sheets for 2003 and 2004 for this recording error. Forestry is responsible for accurately reporting overtime to the State Controller's Office, which issues payroll warrants based on the information Forestry reports. These hours are not included in this table.

The supervisor of air operations officers indicated that he mistakenly believed they were all entitled to around-the-clock pay when assigned to a fire. Even though Forestry helicopters do not fly at night, he did not question the overtime hours related to fires. According to the supervisor, in June 2004, a Forestry headquarters time clerk raised concerns about Employee A's time sheet for May 2004. The supervisor indicated that he then informed the air operations officers verbally that they were not entitled to around-the-clock pay and at least one employee subsequently took a voluntary demotion to a lower classification that is entitled to around-the-clock pay.

Similar to the air operations officers working as pilots we just discussed, maintenance officers are also not entitled to claim around-the-clock pay. Thus, overtime payments should reflect only actual hours worked. Therefore, we question 80 hours of overtime for which two maintenance officers received $3,907. Specifically, we found that one maintenance officer claimed five consecutive 24-hour workdays and the other maintenance officer claimed three consecutive 24-hour workdays, resulting in 80 total hours of overtime. Although Forestry's procedures manual does not limit the maintenance officers to a 14-hour day, as it does pilots, we question the hours because it does not seem reasonable to expect an individual to work three or five consecutive 24-hour workdays without a break for sleep. Further, these air operations officers charged 24 hours per day during the period in which their supervisor believed they were entitled to charge all the time they were assigned to a fire incident, not just the hours they actually worked. We did not question overtime that air operations officers working in maintenance reported on days when they recorded more than 14 hours but less than 24 hours of work.

The supervisor indicated he did not attempt to recover any of the improper payments he authorized.

The supervisor indicated that he did not attempt to recover any of the improper payments, because it was his understanding that he did not have the authority to recover payroll overpayments. However, the supervisor stated that he notified his supervisor and believed that Forestry's Human Resources staff was aware of the overpayments.

A LAX CONTROL ENVIRONMENT ALLOWED ANOTHER EMPLOYEE TO CHARGE EXCESSIVE AND QUESTIONABLE OVERTIME

Between January 2004 and December 2005, Forestry paid Employee F, who works at a different location than the air operations officers, approximately $87,900 for 3,919 overtime

hours, effectively raising his average salary over that period from $3,903 per month to $7,566 per month. Of the approximately $87,900 of overtime paid over this two-year period, we identified approximately $12,588 that is questionable and another $3,445 that is improper, as shown in Table 10. In claiming the questionable and improper overtime, Employee F took advantage of a lack of effective oversight by his direct supervisor, a lack of communication among various battalion chiefs with the authority to sign his time sheets, and inherent control weaknesses during emergency situations. Although we acknowledge that efficient and effective firefighting is a critical responsibility of Forestry, the emergency circumstances do not relieve Forestry of its responsibility to maintain adequate payroll controls.

TABLE 10

Questionable and Improper Overtime Hours for Employee F

Questionable and Improper Actions	Questionable or Improper Overtime Hours	Questionable or Improper Payments
Reported excessive hours (improper)	120	$ 2,769
Reported incorrect hours (improper)	27	676
Reported hours for covering the shift of another employee who was scheduled to work these hours (questionable)	449*	10,443
Reported hours for working the shift of another employee who was not scheduled to work (questionable)	92	1,953
Other (questionable)	8	192
Totals	**696**	**$16,033**

* After completing our fieldwork, we were informed by Employee F's supervisor that Employee F worked 401 of the 449 hours we identified as questionable and that Employee G may have falsified his time sheets. The supervisor informed us that Employee G was not at work and should have charged leave credits for those days. Nonetheless, because the approved time sheets we reviewed do not indicate that Employee G charged any leave credits, the hours indicated here are still questionable; however, it is unclear now whether Employee F or Employee G is responsible for the hours we identified.

As opposed to the air operations officers we discussed previously, Employee F is a heavy fire equipment operator and is entitled to around-the-clock compensation when he is assigned to a fire. The California Government Code, Section 11813, declares that waste and inefficiency in state government undermine Californians' confidence in government and reduce the state government's

ability to address vital public needs adequately. Further, the Financial Integrity and State Manager's Accountability Act of 1983 (integrity and accountability act) contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and are designed to minimize fraud, abuse, and waste of government funds. In addition, by maintaining these controls, agencies gain reasonable assurance that the measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. The integrity and accountability act also states that the elements of a satisfactory system of internal accounting and administrative controls shall include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and spending. Further, the integrity and accountability act requires that state agencies act promptly to correct weaknesses when they detect them.

Employee F received $2,769 he was not entitled to by improperly reporting 24-hour shifts, even though his direct supervisor instructed him to report 12-hour shifts.

Of the more than $16,000 in questionable and improper overtime payments, Employee F received $3,445 by claiming hours to which he was not entitled. The State's collective bargaining agreement with the firefighters' union provides that heavy fire equipment operators working Employee F's schedule work a 12-hour day on the last day of their duty week. Employee F improperly claimed 120 hours of overtime by reporting 24-hour shifts on the last day of his duty week, despite being counseled by his supervisor regarding ongoing problems with his time reporting and being specifically told that he should report only 12 hours on the last workday of his duty week. By reporting these hours, Employee F received $2,769 to which he was not entitled. In addition, Employee F improperly claimed 27 hours related to training, receiving $676 for hours he did not work. As a result, Employee F received a total of $3,445 to which he was not entitled.

Additionally, Employee F received $10,443 for 449 hours of overtime that he claimed to have spent covering a coworker's shift, even though the other employee's time sheet indicates that he did not take leave and was at work for the same hours Employee F claimed for overtime. According to the employees' direct supervisor, when Employee F reports that he is covering for a coworker's shift, only one of the two employees should report time worked on the time sheets. If the other employee was scheduled to work but was not at work, that employee should charge his leave credits. Employee F also received $1,953 for 92 hours during which

he claimed he was covering a coworker's shifts that the coworker was not even scheduled to work. When we reviewed these time sheets with the direct supervisor, he acknowledged that he should have been more thorough when verifying the authorization and the hours worked by Employee F.

The employee's direct supervisor acknowledged that he should have been more diligent when approving Employee F's time sheets.

Although the direct supervisor acknowledged that he was not as diligent as he could have been when approving these time sheets, he pointed out that when other battalion chiefs approve Employee F's or his coworker's time sheets, he does not review those sheets for accuracy, and he is unable to compare the two employees' time sheets. Although up to nine people have the authority to approve these employees' time sheets, we observed that four individuals other than the direct supervisor signed Employee F's time sheets. Regardless, state law requires that each appointing power keep complete and accurate time and attendance records for each employee employed within the agency.

The absence of strong, appropriate administrative controls in his unit, including the direct supervisor's lack of diligence in reviewing time sheets and the lack of communication among battalion chiefs, enabled Employee F to charge questionable and improper overtime. Further, allowing as many as nine battalion chiefs to approve Employee F's time sheets impaired the ability of his direct supervisor to monitor the accuracy of those time sheets.

AGENCY RESPONSE

As of the date of this report, Forestry's review was still ongoing. ■

Blank page inserted for reproduction purposes only.

CHAPTER 4

Victim Compensation and Government Claims Board and Department of Corrections and Rehabilitation: Overpayments on an Employee's Claims, Mismanagement

ALLEGATIONS I2004-0983 AND I2005-1013

We received allegations under the California Whistleblower Protection Act that the Victim Compensation and Government Claims Board (Board) improperly awarded payments to a physician at the California Department of Corrections and Rehabilitation (Corrections).

RESULTS AND METHOD OF INVESTIGATION

We investigated and substantiated the allegations. In January 2000, pursuant to the terms in a court order, Corrections began paying a $2,700 per month recruitment and retention bonus to Corrections' employees in the classification of chief psychiatrist (psychiatrist bonus). Between October 2000 and May 2002, a physician employed by Corrections filed claims with the Board and with Corrections, stating that he was entitled to the bonus because he claimed he regularly devoted a portion of his work time to psychiatry. The physician received payments from both the Board and Corrections for essentially the same claim and ultimately received at least $25,950 more than he was entitled to because of the duplicate payments. Further, although Board staff and Corrections were aware that the physician was about to receive state funds to which he was not entitled before receiving his final payment, neither adjusted the physician's final claim nor recovered the overpayment.

To investigate the allegations, we reviewed relevant state laws and regulations and case files and database reports maintained by the Board.[7] We also interviewed representatives from the Department of Personnel Administration (DPA), Corrections, and the Board.

[7] For a more detailed description of the laws and regulations discussed in this chapter, see Appendix B.

BACKGROUND

The Board is a three-member panel consisting of the State and Consumer Services Agency secretary or his or her designee, the state controller, and one member appointed by the governor.[8] Its mission is to process and resolve claims for monetary relief against the State in a prompt and equitable manner. As a general rule, filing a claim with the Board is a jurisdictional prerequisite to filing an action in court. Board staff members review claims to ensure that they are complete and meet legal requirements and then usually refer them to the involved agencies, which recommend to the Board that a claim be rejected, approved in full, or partly approved. The positions of the involved state agencies, as well as the recommendations of Board staff members, are presented to the Board, which then rules on the claim at a public meeting. Approved claims, such as those awarded to the physician, are included in one of two omnibus claims bills submitted to the Legislature each year or are paid out of the budget of the involved department.

THE BOARD AND CORRECTIONS MADE DUPLICATE PAYMENTS ON THE PHYSICIAN'S CLAIMS

While waiting for his payment from the Board, the physician filed a grievance with Corrections for virtually the same claim.

In response to a court order issued January 3, 2000, awarding a recruitment and retention bonus to Corrections' psychiatrists, the physician filed a claim with the Board in October 2000 requesting a $2,700 monthly bonus, retroactive to January 2000, the effective date of the bonus program for chief psychiatrists. In May 2001 the Board approved this claim for the period from January 2000 through May 2001, but informed the physician that he would likely not receive the payment it had awarded until fall 2002, because the claim would be paid through a subsequent legislative appropriations bill. In September 2002 the physician received more than $49,000 from the Board, which represents payment for the full amount of the bonus for the period from January 2000 through May 2001 plus more than $3,000 in interest.

While payment from the Board was pending, the physician filed a grievance with Corrections seeking monetary relief for virtually the same claim. DPA, as the administrative agency charged with administering the grievance process on behalf

[8] At the time the physician filed his claims, the Board was comprised of the director of the Department of General Services, the state controller, and a governor's appointee. The composition of the Board changed in 2004 when the Board began reporting to the State and Consumer Services Agency.

of the employing agency, determined that the physician was entitled to 50 percent of the monthly bonus for the period from January 2000 through June 2002, based on the percentage of time he regularly devoted to psychiatry. In April 2002, based on DPA's determination, Corrections paid the physician $43,500, representing 50 percent of the bonus for the period from January 2000 through June 2002.

In May 2002, the physician submitted a second claim with the Board, and in November 2003 he received more than $18,000 from the Board, which represents payment for the full bonus for the period from June 2001 through June 2002, plus more than $700 in interest. Table 11 on the following page lists the payments made by the Board and Corrections.

Based on DPA's determination, the physician received $67,397 more than he was entitled to—the total amount awarded by the Board.

Therefore, for the period from January 2000 through June 2002, the physician received full payment from the Board for the bonus and also received 50 percent of the bonus amount for that same time period from Corrections. Assuming that the physician was entitled to full payment of the bonus during this period, he received $25,950 more than he was entitled to. However, as the state agency charged with making determinations related to salary and wages, DPA's determinations are generally controlling in this area. Thus, based on DPA's determination that the physician was entitled to only 50 percent of the bonus for the same time period, he received $67,397 more than he was entitled to—the total amount awarded by the Board.[9]

Although DPA later determined that effective July 1, 2002, the physician was entitled to 100 percent of the bonus, it appears that this decision may have been influenced by the Board's involvement in the case. Specifically, in its request to DPA that it grant the physician the other half of the bonus, Corrections noted that the Board had approved the full bonus amount since January 1, 2000, and also noted that Board staff had informed Corrections that the Board would continue to approve the physician's claims as they are submitted.

[9] This amount includes $3,947 in interest awarded to the physician.

TABLE 11

Payments to the Physician

Period Covered	Amount Paid by the Board*	Amount Paid by Corrections	Total Amount Paid by Both Entities
January 2000 through May 2001	$45,900	$24,650	$ 70,550
June 2001 through June 2002	17,550	18,850	36,400
Totals	**$63,450**	**$43,500**	**$106,950**
Maximum bonus amount allowed for the period of January 2000 through June 2002			$81,000
Amount paid to the physician in excess of the maximum allowed			$25,950

* The Board also awarded the physician interest totaling $3,947, which is not reflected in the amounts shown here.

When we asked about its efforts to recover the overpayment, the Board responded that it is the employing agency's responsibility—Corrections in this case—to recover any overpayment. Nonetheless, the Board had numerous opportunities to prevent the overpayment from occurring in the first place by reducing either of the two claims the physician submitted to the Board. In fact, on three separate occasions, the physician himself specifically requested that the Board reduce his claim to account for the payment he had received from Corrections, but it failed to do so.

In April 2002, five months before he received his first payment for his initial claim with the Board, the physician received his payment from Corrections. He subsequently requested that the Board reduce its award to him by $24,650 (the amount he believed he was overpaid at that time). Although Board records indicate that it intended to reduce the physician's initial claim, it did not, at least in part because of poor communications among its staff. The Board also did not reduce the physician's second claim, even though it was aware that it had not amended the first claim.

Board records indicate that Board staff notified representatives from Corrections on several occasions that the physician was overpaid. Similarly, it appears that Corrections intended to recover the overpayment, but because of poor communications both internally and with the Board, it failed to do so until our office questioned Corrections staff about the overpayment. When a state department determines that an overpayment has been made to an employee, it is required to initiate collection within three years of the date of overpayment, through methods specified in state law.

Further, in doing so, the department must notify the employee of the overpayment to give the employee an opportunity to respond before the agency takes action to recoup the overpayment.

THE BOARD'S EXERCISE OF AUTHORITY WAS QUESTIONABLE

DPA and Board staff advised the Board that it lacked legal authority in this case.

When the Board considered the physician's claims and made a determination regarding the amount to which he was entitled, it relied on legal authority that allows it to hear claims when no statute or constitutional provision provides for a settlement. It relied on this legal authority despite the fact that there was a statutory provision that provided for the settlement of this claim and there were funds available to otherwise satisfy this claim, as demonstrated by the fact that DPA directed Corrections to satisfy this claim and it did so out of its general operating funds. The Board reviewed the physician's claims and determined the amount to which he was entitled in disregard of the advice of its own staff and notices from DPA that the Board lacked legal authority in this case. Moreover, the Board's second decision to grant relief to the physician came a month after the physician was actually paid by Corrections.

After receiving the physician's first claim, the Board followed its standard procedure and requested that Corrections and DPA, as the involved state departments, provide their recommendations as to whether the claim should be allowed or rejected. In its response to the Board's request, DPA informed the Board that, by law, salary issues are subject to a specific state law and must be agreed upon through the collective bargaining process. DPA also informed the Board that the Board lacked the authority to address the issues in this case, and Corrections also argued that the Board should reject the claim. It is well established that DPA is the state agency that has authority related to the salaries and other entitlements of state employees, such as the retention bonus at issue here. Further, Board staff recommended that it reject the claim for lack of authority to order Corrections to reclassify the physician's position.

When it reviewed the physician's second claim, DPA again recommended that the Board reject the claim, and Corrections reiterated its position. Board staff also recommended rejecting the second claim, stating "it has been established that DPA fully considered the facts and made a decision within its jurisdiction to authorize a special differential for claimant, and there appears to be no compelling reason for the Board to intrude." Nonetheless, the Board heard the physician's claims,

and it indicated to us that it did so under the legal authority mentioned earlier. When reviewing and awarding claims against the State, Board members are not required to follow the recommendations of the affected state agencies or Board staff.

Board members are not required to follow the recommendations of the affected state agencies or even its own staff.

The Board heard and approved the physician's claim despite the fact that statutory relief was available to the physician, as clearly demonstrated by the fact that he also filed a grievance for essentially the same claim with Corrections and was awarded relief for that claim out of the department's general operating fund. When we pointed out to the Board that statutory relief was available and granted to the physician, the Board reiterated its position that it heard the claim using its "equitable powers" to hear claims for which no statutory or constitutional relief exists.

The legal authority relied on by the Board allows it to hear claims against the State for money or damages under various circumstances including claims for which no appropriation has been made or for which no fund is available for the settlement of the claim but the settlement has been provided for by statute or constitutional provision. In this case, DPA had clear statutory authority to determine this claim, and did so before the Board made its payment to the physician. Moreover, when DPA directed Corrections to pay the claim there were funds available to settle this claim, and Corrections satisfied this claim out of its general operating fund. The Board made its determination to settle this claim before the physician filed his grievance with DPA and before DPA directed Corrections to pay the claim.

However, a significant window of time elapsed between the time the Board made its decision and the time the Board made its payment to the physician. During this time the Board could have sought a reduction in the amount of the appropriation it was seeking to settle this claim before that appropriations bill was signed, but it did not do so. Additionally, even after the appropriations bill was signed, the Board could have taken administrative steps to prevent the duplicate payment, but did not do so. Although a reviewing court would give great deference to the Board's interpretation of the statutes it is charged with administering, in this case it is difficult to understand how the Board believed that it had equitable power to grant relief to the physician, particularly when it granted his second claim and it knew that he had received relief from both the Board and Corrections for his first claim.

A manager at the Board told us that the Board currently hears claims related to state employees who may be required to perform duties outside of their classification (out-of-class), but its current practice requires its staff to consult with the affected departments and with Board counsel to ensure that it hears only those portions of the out-of-class claims not under the jurisdiction of other authorities. The manager acknowledged that this procedure was not followed for the physician's claim.

In response to our report, the Board maintains that in accordance with the provisions of California Government Code, Section 905.2, the Board generally hears all claims for monetary damages against the State, regardless of whether the relief is available elsewhere as was the case here. However, legislative changes made in 1980 transferred the authority to review and settle these claims, within one year of filing, from the former Board of Control (now the Board) to the State Personnel Board. Subsequent changes made in 1985 transferred control of these issues from the State Personnel Board to DPA. Accordingly, the only authority that remains with the Board is the authority to settle these claims when they are more than one year old. In addition, as we mentioned earlier, Board members are not required to adhere to the recommendations of its staff or affected agencies. Consequently, we are concerned about what appears to be such a broad interpretation of the Board's jurisdiction, given that the Legislature transferred the authority to hear out-of-class claims for relief in the year preceding the filing of the claim to DPA in 1985. Although the Board retains authority to hear out-of-class claims that are over one year old, it appears that the Board lacks the controls necessary to prevent it from hearing other claims. Although the focus of this investigation was on the handling of the physician's claim, we are concerned that, given the Board's very broad interpretation of its authority, the Board may have lacked jurisdiction on other claims.

It appears the Board lacks the controls necessary to prevent it from hearing claims over which it lacks authority.

AGENCY RESPONSE

The Board reported that it believes it had jurisdiction to hear the physician's claims and again stated it did so under state law that allows the Board to hear claims when no statute or constitutional provision provides for a settlement. However, as previously mentioned, the fact that the physician also filed a grievance for essentially the same claim with Corrections and was awarded relief for that claim, clearly demonstrates that statutory relief was available in this case. Moreover, funds were readily available to pay this claim and the Board was informed of this fact prior to its payment of the physician's claim.

The Board reported that it has undergone significant management and organizational changes since it began reporting to the State and Consumer Services Agency in 2004 and has implemented practices that will prevent it from making overpayments in the future. Specifically, the Board believes the overpayment was caused in part by its prior administration's longstanding practice of paying state employee claims through bills approved through the Legislature. Under its current practices, when a state employee claim is approved, the Board determines whether the involved department, through an existing appropriation, can pay the claim or if it must be paid via the Legislature. Additionally, the Board created an Accounting Division, which is designed to provide a check and balance on program payouts and facilitate resolution of any potential duplicate payments. The Board believes that these changes will improve communications with involved departments and prevent duplicate payments from being made on future state employee claims.

After we informed Corrections of the overpayment, it initiated action to attempt to recover the $25,950 overpayment from the physician. As of the date of this report, Corrections reported it has recovered $2,000 from the physician and is in the process of requiring him to reimburse the State approximately $2,700 per month—the maximum amount allowed by law—until the total overpayment is collected. ■

CHAPTER 5

Department of Corrections and Rehabilitation: Time and Attendance Abuse, Failure to Perform Duties

ALLEGATION I2004-0884

An employee at the Department of Corrections and Rehabilitation (Corrections) engaged in time and attendance abuse and failed to perform his duties adequately.

RESULTS AND METHOD OF INVESTIGATION

We asked Corrections to assist us in conducting the investigation, and we substantiated the allegation as well as other improprieties. To investigate the allegation, Corrections obtained the employee's time sheets and compared these records with departmental sign-in logs for his state job as well as time sheets maintained by the employee's nonstate employer. Corrections also interviewed the employee's supervisor and coworkers at his state job. The employee refused to be interviewed and resigned from the State in June 2005. In addition, we reviewed state law related to incompatible activities, false claims, and causes for discipline.

Corrections identified almost 150 instances in which department sign-in logs at his state job or timekeeping records maintained by the employee's nonstate employer indicated that the employee falsified his time sheets to inflate the actual number of hours he worked at his state job. By falsifying his state time sheets, the employee violated state law and received $2,875 in wages for hours he did not work. Further, Corrections found at least 14 instances in which the employee called in sick or simply did not show up but worked at his second job. This improper use of 134 hours of leave resulted in payments to the employee totaling $3,960.

From September 30, 2003, through May 14, 2005, Corrections identified 92 instances in which the employee inflated his work hours on his monthly time sheets by more than 34 hours when compared with his actual arrival and departure times as reflected on department sign-in logs, resulting in the employee

receiving wages of $1,013 for hours he did not work. Corrections also found 56 instances in which timekeeping records from his secondary employer demonstrated that the employee claimed wages for 63 additional hours of state time he did not work because he was working for his nonstate employer during those hours. As a result, the employee received an additional $1,862 in state wages for hours he claimed to be working for the State when he was actually working for his secondary employer.

The employee received $1,862 in state wages for hours he claimed to be working for the State when he was actually working for his secondary employer.

Because the employee claimed to be working for the State during the same hours he was working for his nonstate employer, he violated state law prohibiting employees from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.[10] One such incompatible activity is not devoting one's full time, attention, and efforts to state employment during hours of duty as a state employee. In addition, state regulations require departments to keep complete and accurate time and attendance records for each employee. Further demonstrating that the employee's outside employment was incompatible with his state job, Corrections identified at least 14 instances in which the employee missed work, using 134 hours of state sick leave or other leave while still working for his secondary employer either during his missed work hours or on the evening of the missed workday.

In addition, this public employee intentionally claimed hours that he did not work, so there is reasonable cause to believe that he violated state laws prohibiting a person from submitting a false claim for payment to the State. Under these laws, a person may be subject to both civil and, in some cases, criminal sanctions.

In addition to reviewing the employee's timekeeping records, Corrections interviewed the employee's coworkers. Several stated that they witnessed the subject doing the following:

- Arrive one to two hours late on several occasions.
- List inaccurate arrival and departure times on his state time sheet and department sign-in sheets.
- Sleep during his work hours.
- Play video games on a hand-held electronic device during his work hours.

[10] For a more detailed description of the laws and regulations discussed in this chapter, see Appendix B.

- Watch movies on a DVD player during work hours.
- Fail to carry his share of the workload.

State law outlines causes for discipline of a state employee, including inefficiency, incompetency, inexcusable neglect of duty, and dishonesty. Corrections found that the employee's supervisor was aware of the employee's misconduct. The supervisor failed to correct the employee's inappropriate behavior despite having received numerous complaints from several of the employee's coworkers. The supervisor retired from the State in May 2005, before Corrections completed its investigation.

AGENCY RESPONSE

Corrections took no action against the employee or his supervisor because they no longer are employed by the State. We acknowledge that the employer cannot take adverse action against an employee once an employee resigns. However, the agency can include documentation in an employee's personnel file that describes and acknowledges the specific circumstances leading to the employee's resignation. That way, a future employer can be aware of the person's past conduct. ■

Blank page inserted for reproduction purposes only.

CHAPTER 6

Employment Development Department: Misuse of State Resources

ALLEGATIONS I2004-1121 AND I2004-1137

An Employment Development Department (EDD) employee used her state phone and computer to make excessive personal calls and send and receive excessive personal e-mail messages on state time.

RESULTS AND METHODS OF INVESTIGATION

We asked EDD to assist us in the investigation, and it substantiated the allegations. To conduct the investigation, EDD reviewed the employee's personnel file, telephone bills for the employee's state telephone, and e-mail messages from the employee's state computer. EDD also called each phone number listed on the employee's phone log to ascertain whether the calls were of a personal nature and interviewed staff and management in relation to these allegations.

EDD found that, from July 2004 through October 2004, the employee made 420 personal telephone calls, or 77 percent of all her calls, totaling 21 hours and 10 minutes. This is a violation of state law prohibiting state employees from using state resources for private gain, for personal advantage, or for an outside endeavor not related to state business.[11] If the use of state resources is substantial enough to result in a gain or advantage for which a monetary value may be estimated, or a loss to the State for which a monetary value may be estimated, the employee may be liable for a civil penalty not to exceed $1,000 for each day on which a violation occurs, plus three times the value of the unlawful use of state resources.

In addition, EDD substantiated that the employee inappropriately used her state computer for personal purposes. It found that of the 1,229 e-mail messages stored on her state computer, 1,012, or 83 percent, were of a personal nature.

[11] For a more detailed description of the laws and regulations discussed in this chapter, see Appendix B.

AGENCY RESPONSE

EDD reported that the employee resigned from state service before the completion of its investigation, so it could not take any action against her. However, EDD has included documentation in the employee's personnel file that describes and acknowledges the specific circumstances leading to the employee's resignation. ■

CHAPTER 7

Update of Previously Reported Issues

CHAPTER SUMMARY

The California Whistleblower Protection Act requires an employing agency or appropriate appointing authority to report to the Bureau of State Audits (bureau) any corrective action, including disciplinary action, that it takes in response to an investigative report no later than 30 days after the bureau issues the report. If it has not completed its corrective action within 30 days, the agency or authority must report to the bureau monthly until it completes that action. This chapter summarizes corrective actions taken on three cases since we last reported them.

CALIFORNIA MILITARY DEPARTMENT CASE I2004-0710

We reported the results of this investigation on September 21, 2005. A supervisor in the California Military Department (Military Department) used Social Security numbers belonging to former military personnel and others to initiate payments to individuals with names corresponding to those of his family members; he deposited most of these payments into his personal bank account. The supervisor also failed to stop payments to a retired service member who was deceased and then stole the individual's retirement checks. In total, the supervisor embezzled at least $132,523 in state funds over an eight-year period, including $111,507 from emergency state active-duty payroll, $12,393 from the Military Department's revolving fund, and $8,620 from the retired state active-duty system.

The Military Department reported that it enacted internal control measures to prevent further and/or future embezzlement of state funds and to eliminate the fraudulent manipulation of its payroll and payment system. After we informed the Military Department of our findings, it requested that the California Highway Patrol (Highway Patrol) investigate the allegations. The supervisor admitted embezzling state funds when questioned by Highway Patrol investigators, who later issued an arrest warrant for the supervisor and two of his family members.

Updated Information

The supervisor was charged with and convicted on two felony counts, including grand theft and embezzlement, and was ordered by the Sacramento Superior Court (Court) to pay court costs and fees of $410 and to make restitution to the State in the amount of $132,523, the amount we identified that he embezzled. Finally, the Court sentenced the supervisor to 16 months in state prison.

DEPARTMENT OF HEALTH SERVICES CASE I2003-1067

We reported the results of this investigation on March 22, 2005. An employee with the Department of Health Services (Health Services), whose duties require her to travel regularly throughout the State to monitor and provide training to retail businesses, improperly received $3,068 by submitting false claims for wages and travel costs. We determined that, by misrepresenting her departure and return times on her travel and attendance reports, the employee was paid $1,895 for overtime and regular hours she did not work. We also found that the employee claimed and was paid $1,173 for expenses related to her travel that she either did not incur or was not entitled to receive. Specifically, the employee claimed $253 for parking expenses that she acknowledged to us she did not incur. The employee also improperly claimed $151 in mileage reimbursements by routinely overstating the distance to and from the airport when conducting state business. Because the employee presented false information on her travel claims, she also received $259 for meal expenses that she was not entitled to receive. Finally, the employee improperly received $510 for travel expenses that she claimed on days she did not work or that otherwise were not allowed.

Health Services reported that based on its preliminary review, the employee's supervisor should have identified and denied many of the inappropriate charges on the employee's travel claims. Health Services also reported that it will provide training to all its supervisors working in the employee's branch so that they can better understand their responsibilities for reviewing travel claims and overtime requests from those under their supervision.

Updated Information

Health Services reduced the employee's pay by 5 percent for three months for inexcusable neglect of duty, dishonesty, and willful disobedience. Health Services reassigned the employee into a position with no travel responsibilities and required her to reimburse Health Services $943 for her improper parking expenses, excessive mileage claimed, and other improper expenses the employee claimed.

DEPARTMENT OF CORRECTIONS AND REHABILITATION CASE I2004-0745

We reported the results of this investigation on March 22, 2005. Two employees with the Department of Corrections and Rehabilitation (Corrections) falsified their time sheets to receive approximately $3,900 in overpayments. In addition, the employees' manager failed to monitor the employees adequately. Corrections found that both employees used their state computers to shop and make other transactions not related to their state jobs and both employees falsified their time sheets by indicating they were at work when surveillance indicated they were not. Further, the employees' manager did not confirm the hours worked by the two employees when approving their time sheets and failed to implement proper procedures to monitor employee attendance or investigate the employees' activities, despite receiving numerous complaints from other employees.

Corrections reported that it had not yet determined the appropriate disciplinary or corrective actions.

Updated Information

Corrections reported that it suspended one employee without pay for 79 workdays and required her to repay $2,160 to the State for overpayments she improperly received. Corrections suspended the other employee for 30 workdays and required her to repay $1,737 to the State for overpayments she improperly received. In addition, this employee requested and was granted 45 days leave without pay.

We conducted this review under the authority vested in the California state auditor by Section 8547 et seq. of the California Government Code and applicable investigative and auditing standards. We limited our review to those areas specified in the results and method of investigation sections of this report.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

Date: March 22, 2006

Investigative Staff: Ken L. Willis, Manager, CPA
Siu-Henh Ung
Mike Urso, CFE

Audit Staff: Lois Benson, CPA

APPENDIX A

Activity Report

The Bureau of State Audits (bureau), headed by the state auditor, has identified improper governmental activities totaling $23.8 million since July 1993, when it reactivated the Whistleblower Hotline (hotline), formerly administered by the Office of the Auditor General. These improper activities include theft of state property, false claims, conflicts of interest, and personal use of state resources. The state auditor's investigations also have substantiated improper activities that cannot be quantified in dollars but that have had a negative social impact. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Although the bureau investigates improper governmental activities, it does not have enforcement powers. When it substantiates allegations, the bureau reports the details to the head of the state entity or to the appointing authority responsible for taking corrective action. The California Whistleblower Protection Act (Whistleblower Act) also empowers the state auditor to report these activities to other authorities, such as law enforcement agencies or other entities with jurisdiction over the activities, when the state auditor deems it appropriate.

The individual chapters describe the corrective actions that agencies took on cases in this report. Table A.1 on the following page summarizes all the corrective actions that agencies have taken between the time the bureau reactivated the hotline in 1993 until June 2002. Table A.1 also summarizes departments' corrective actions since July 2002, when the law changed to require all state departments to annually notify their employees about the bureau's hotline. In addition, dozens of agencies have modified or reiterated their policies and procedures to prevent future improper activities.

TABLE A.1

Corrective Actions
July 1993 Through December 2005

Type of Corrective Action	Number of Incidents July 1993 Through June 2002	Number of Incidents July 2002 Through December 2005	Totals
Referrals for criminal prosecution	73	4	77
Convictions	7	2	9
Job terminations	46	25	71
Demotions	8	6	14
Pay reductions	10	38	48
Suspensions without pay	12	4	16
Reprimands	135	126	261

New Cases Opened Between July 2005 and December 2005

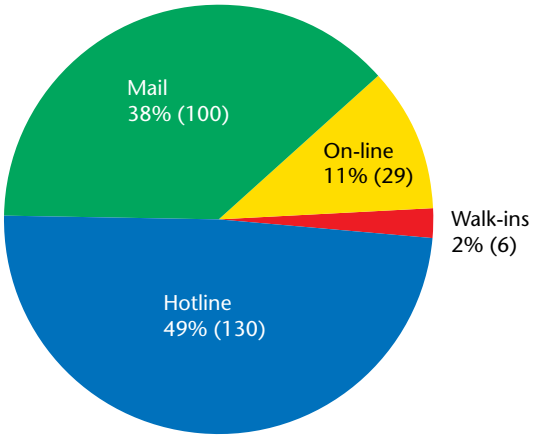
From July 1, 2005, through December 31, 2005, the bureau opened 265 new cases.

The bureau receives allegations of improper governmental activities in several ways. Callers to the hotline at (800) 952-5665 reported 130 of our new cases in this time period.[12] The bureau also opened 100 new cases based on complaints it received in the mail, 29 through our Web site, and six based on complaints from individuals who visited the office. Figure A.1 shows the sources of all the cases opened from July 2005 through December 2005.

[12] In total, the bureau received 2,196 calls on the hotline from July 2005 through December 2005. See Appendix C for a description of the types of calls we receive and how we handle them.

FIGURE A.1

Sources of 265 New Cases Opened
July 2005 Through December 2005



Work on Investigative Cases
July 2005 Through December 2005

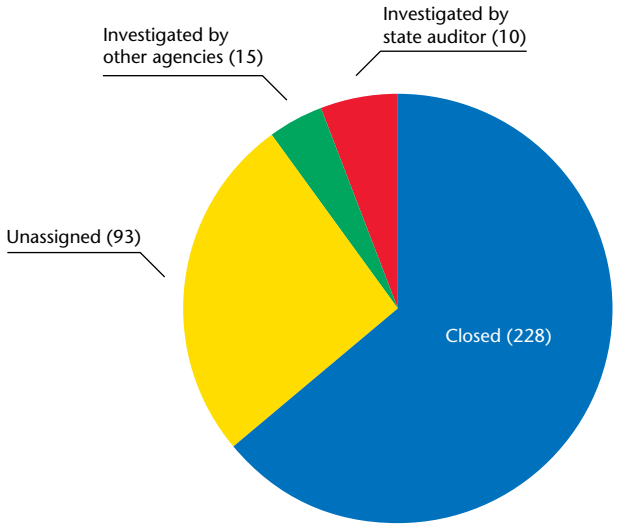
In addition to the 265 new cases opened during this six-month period, 69 previous cases awaited review or assignment as of July 1, 2005; another 12 were still under investigation by this office or by other state agencies or were awaiting completion of corrective action. Consequently, 346 cases required some review during this period.

After examining the information gathered from complainants and preliminary reviews, the bureau concluded that 228 cases did not warrant complete investigation because of lack of evidence.

The Whistleblower Act specifies that the state auditor can request the assistance of any state entity or employee in conducting an investigation. From July 1, 2005, through December 31, 2005, state agencies assisted the bureau in investigating 27 cases and substantiated allegations on three (20 percent) of the 15 cases completed during the period. In addition, the bureau independently investigated 10 cases and substantiated allegations on seven of the 10 completed during the period. Figure A.2 on the following page shows the disposition of the 346 cases the bureau worked on from July 2005 through December 2005. As of December 31, 2005, the bureau had 93 cases awaiting review or assignment.

FIGURE A.2

Disposition of 346 Cases
July 2005 Through December 2005



APPENDIX B

State Laws, Regulations, and Policies

This appendix provides more detailed descriptions of the state laws, regulations, and policies that govern employee conduct and prohibit the types of improper governmental activities described in this report.

CAUSES FOR DISCIPLINING STATE EMPLOYEES

The California Government Code, Section 19572, lists the various causes for disciplining state civil service employees. These causes include incompetence, inefficiency, inexcusable absence without leave or neglect of duty, insubordination, dishonesty, misuse of state property, and other failure of good behavior, either during or outside of duty hours, that is of such a nature that it causes discredit to the appointing authority or the person's employment.

CRITERIA COVERING COMPENSATION AND TAXABLE FRINGE BENEFITS

Chapter 1 reports on compensation and taxable fringe benefits.

The California Government Code, Section 18000, states that the salary fixed by law for each state officer is compensation in full for that office and for all services rendered in any official capacity or employment, and he or she shall not receive for his or her own use any fee or perquisite for the performance of any official duty.

Section 3111(a) of the California Government Code defines a volunteer as any person who of his own free will provides goods or services without any financial gain to any state agency.

The California Code of Regulations, Title 2, Section 599.640, governs the valuation of employee housing and services. It states that the following are the only exceptions to the statute:

- Employees on travel status.
- Employees whose pay and allowances are computed according to federal military pay regulations, provided such employees actually do not receive a quarters' allowance when assigned to state-owned employee housing.

- Employees entitled to receive housing as compensation for services.

- Accommodations acquired by the State for eventual disposal that are rented to employees on the same basis as to private tenants and are not primarily provided for employee housing.

The California Code of Regulations, Title 2, Section 599.642(c), states that when essential housing is substandard, the Department of Personnel Administration (DPA) may reduce the rental rate to a lower category. The California Code of Regulations, Title 2, Section 599.644(b) and (c), states that the DPA may review and adjust the monthly rate of any state-owned housing unit when there is evidence that the prescribed monthly rate is inequitable. Further, at the direction of the DPA, and pursuant to its delegation of such statutory authority, the appointing powers shall review the monthly rental and utility rates every year and report the rates to the DPA. Finally, Section 599.646(a)(1) of the same title states that each state agency that provides housing accommodations for employees is delegated the authority and responsibility to apply rental rates in accordance with these regulations and to adjust rates as required by changes in age and other factors.

The Code of Federal Regulations, Title 26, Section 1.119(b), states that the value of lodging furnished to an employee by the employer shall be excluded from the employee's gross income if three tests are met: lodging is furnished for the convenience of the employer, the employee's residence is the same place in which he or she conducts a significant portion of his or her business, and the employee is required to accept on-site lodgings to perform their duties because the housing is indispensable to the proper discharge of their assigned duties. For example, the lodging may be furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required unless he or she is furnished with such lodging.

The State Controller's Office (SCO) Payroll Procedures Manual, Section N135, reiterates the Code of Federal Regulations, Title 26, Section 1.119(b). Specifically, it states that the value of employer-provided housing is excluded from taxation as a working condition fringe benefit when the housing is provided:

- On the business premises of the employer.

- For the convenience of the employer.

- As a condition of employment.

A condition of employment means that the employee is required to accept the housing to properly perform the duties of the job. It is not sufficient that an employee is compelled by the employer to live on the premises. He or she must be required to do so because the on-site housing is indispensable to the proper discharge of assigned duties.

The SCO Payroll Procedures Manual further states that the value of housing not meeting all three criteria is regulated by the Internal Revenue Service (IRS), Code Section 61, which states that "gross income means all income from whatsoever source derived including . . . fringe benefits." IRS Regulations, Section 1.61-21(b), requires that fair market value, less any amount paid by the recipient, be included in the employee's gross income. California law defines gross income in the same way that the federal law does.

The DPA issued a memo to Personnel Management Liaisons (94-18) regarding state-owned housing and taxable fringe benefits in March 1994. The memo provides guidance to appointing authorities on housing administration and reporting of any taxable fringe benefit generated from the difference between fair market value and rents actually paid. It states that appointing authorities should:

- Timely and aggressively apply the housing/lodging requirements of Internal Revenue Code (IRC) Section 119-1(b), including the "criteria" and the "definitions" contained within.

- Document the department's interpretation and application of Section 119-1(b), including full justification and explanation of "business premises," "convenience of the employer," and "condition of employment."

- When taxable, report timely to the state controller regarding the difference between determined fair market value of rental properties occupied by employees and actual rents paid.

- Consistent with memoranda of understanding and state regulations, adjust all rents under the jurisdiction of the appointing authority.

Section 19822(a) of the California Government Code provides the director of DPA with the authority to determine the fair and reasonable value of maintenance, living quarters, housing,

lodging, board, meals, food, household supplies, fuel, laundry, domestic servants, and other services furnished by the State as an employer to its employees.

CRITERIA FOR EMPLOYEES EXEMPT FROM THE FAIR LABOR STANDARDS ACT

Chapter 2 reports on improper overtime payment to exempt employees.

The Fair Labor Standards Act (FLSA), codified in Title 29 of the United State Code, Section 201 et seq., establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than $5.15 per hour. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek. The minimum wage and overtime compensation provisions of the FLSA apply to most but not all state employees. For example, those employees in an executive, administrative, or professional capacity generally are exempt from FLSA. Employees to whom the minimum wage and overtime compensation provisions of the FLSA apply are generally referred to as "nonexempt employees," and employees to whom those provisions do not apply are referred to as "exempt employees."

Section 6.1(B)(1) of the State's collective bargaining agreement with unit 19 states that workweek group E includes classes that are exempt from coverage under the FLSA because of the "white collar" (administrative, executive, professional) exemptions. To be eligible for this exemption, a position must meet both the "salary basis" and the "duties" test. Consequently, workweek group E applies to classes and positions with no minimum or maximum number of hours in an average workweek. Exempt employees are paid on a salaried basis, and the regular rate of pay is full compensation for all hours worked to perform assigned duties. However, these employees receive up to eight hours of holiday credit when ordered to work on a holiday. Section 6.1(B)(5) states that employees exempt from the FLSA are expected to work the hours necessary to accomplish their assignments or fulfill their responsibilities. Their workload will normally average 40 hours per week over a 12-month period. However, inherent in their job is the responsibility and expectation that workweeks of longer duration may be necessary. Management can require employees exempt from the FLSA to work

specified hours. However, subject to prior notification and approval, employees exempt from the FLSA have the flexibility to alter their daily and weekly work schedules.

Section 6.1(B)(7)(a) of the same agreement states that bargaining unit 19 employees exempt under the FLSA shall be charged leave only in minimum and maximum increments of eight hours, regardless of the actual hours worked per day, when leave credits are charged. Fractional employees would have minimum and maximum amounts equal to their fractional status.

Section 6.4(A) of the agreement states that alternate work schedules include, but are not limited to variable daily work hours, flex-time, adjusted weekly work schedules, 9-8-80, and/or 4-10-40. Subsection C provides that an individual may request an alternate work schedule and that these requests will be reasonably considered by the State. The State is not required to grant the alternate work schedule request of a probationary employee.

Article 7.6 (C)(6) of the State's collective bargaining agreement with unit 16 states that unit 16 employees shall not be charged paid leave or docked for absences in less than whole-day increments. Less than full-time employees shall be charged time proportionate to their scheduled hours of work. Record keeping for accounting, reimbursements, or documentation relative to other applicable statutes, such as the Family Medical Leave Act, is permitted.

The DPA issued a memo to personnel management liaisons in April 1995 (PML-95-023) intended to assist state departments in implementing the work policy for employees exempt under the FLSA who are either excluded from collective bargaining or represented by units 1, 3, 7, 11, 20, or 21. Represented exempt employees in other bargaining units are not affected at this time as the meet-and-confer process is not yet complete. Specifically, this memo states that exempt employees shall receive holiday credit for the holiday according to their time base, up to a maximum of eight hours for a full-time employee.

CRITERIA FOR OVERTIME PAYMENTS

Chapter 3 reports on improper overtime payments to Department of Forestry and Fire Protection (Forestry) employees.

Section 8.14 of the State's collective bargaining agreement with the CDF Firefighters states that fire protection employees who are assigned to a fire incident outside the assigned duty location

will be placed on immediate response status (response status). While on response status, employees will be compensated for all hours assigned to the incident from the time of dispatch to the time at which the incident is declared controlled. Section 8.2 of the same agreement covers all classifications in bargaining unit 8 not covered by Sections 8.1, 8.3, or 8.4. These employees are referred to as "fire protection employees." Fire protection employees are those who (1) have been trained and have the legal authority and responsibility to engage in the prevention, control, or extinguishment of a fire of any type; and (2) perform activities that are required for and are directly concerned with the prevention, control, or extinguishment of fires, including dispatch and such incidental nonfirefighting functions as housekeeping, equipment maintenance, lecturing, attending training drills, and conducting inspections. Typically, this includes most Unit 8 employees. Section 8.2.4 identifies the available duty week schedules for heavy equipment operator, of which shift schedule 2 defines the schedule as one week comprising two 24-hour days followed by a 12-hour day, and the following week consisting of three 24-hour days followed by a 12-hour day. Section 8.4 of the agreement covers other employees and identifies those classifications:

- Air Operations Officer I, II, and III
- Air Operations Officer I, II, and III (maintenance)
- Fire Prevention Officer I and II
- Forester I (nonsupervisory)
- Fire Prevention Assistant
- Fire Prevention Specialist I and II
- Forestry Logistics Officer I

Finally, Section 8362.7.1 of the Forestry 8300 Procedures Manual, which defines pilot flight and duty limitations, states that a pilot of a single-pilot aircraft is limited to seven hours of flight time in one duty day. Pilots of aircraft with a required copilot are limited to eight hours of flight time in one duty day. A duty day is any day on which a flight is made or any work is performed. Further, a duty day may not be longer than 14 consecutive hours. Within any 24-hour period, pilots must have a minimum of 10 consecutive hours off duty.

The California Government Code, Section 19838, provides that if the State overpays an employee, the State shall seek reimbursement by following agreed-upon collection methods but prohibits the State from taking action unless the action is initiated within three years from the date of overpayment.

CRITERIA FOR IMPROPER PAYMENTS RESULTING FROM A CLAIM AGAINST THE STATE

Chapter 4 reports on duplicate and improper payments.

The California Government Code, Section 3512, provides a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the State and public employee organizations. Section 19818.6 of the same code provides the director of the DPA with the authority to administer the Personnel Classification Plan of the State of California, including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions shall be included in the same class if:

- The positions are sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used.
- Substantially the same requirements as to education, experience, knowledge, and ability are demanded of incumbents.
- Substantially the same tests of fitness may be used in choosing qualified appointees.
- The same schedule of compensation can be made to apply with equity.

Section 905.2 of the California Government Code applies to claims against the State filed with the California Victims Compensation and Government Claims Board (Board). Further, Subpart b lists the following cases in which claims for money or damages against the State should be reviewed by the Board:

- Ones for which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

- Ones for which the appropriation made or fund designated is exhausted.

- Ones for money or damages on express contract, or for an injury for which the State is liable.

- Ones for which settlement is not otherwise provided for by statute or constitutional provision.

The California Code of Regulations, Title 2, Section 599.859, defines a grievance as a dispute of one or more excluded employees involving the application or interpretation of a statute, regulation, policy, or practice that falls under the jurisdiction of the director of the DPA.

The California Government Code, Section 19838, provides that if the State overpays an employee, the State shall seek reimbursement by following agreed-upon collection methods, but prohibits the State from taking action unless the action is initiated within three years from the date of overpayment.

CRITERIA COVERING FALSE CLAIMS AND ACCURATE TIME REPORTING

Chapter 5 reports on false claims.

The California Penal Code, Section 72, states that every person who, with intent to defraud, presents for payment any false or fraudulent claim, bill, account, voucher, or writing is punishable by imprisonment in the county jail for a period of not more than one year, by a fine not exceeding $1,000, or by imprisonment and a fine, or by imprisonment in state prison, by a fine not exceeding $10,000, or both imprisonment and a fine.

The California Government Code, Section 12650, defines a claim as any request or demand for money, property, or service made to any employee, officer, or agent of the State. Further, it defines a person knowingly, with respect to information, does any of the following:

- Has actual knowledge of the information.

- Acts in deliberate ignorance of the truth or falsity of the information.

- Acts in reckless disregard of the truth or falsity of the information.

Chapters 3 and 5 report on inaccurate time reporting.

The California Code of Regulations, Title 2, Section 599.665, requires that each appointing power keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install, and supervise a modern and complete accounting system for state agencies.

CRITERIA GOVERNING STATE MANAGERS' RESPONSIBILITIES

Chapters 2 and 3 report on weaknesses in management controls.

The Financial Integrity and State Manager's Accountability Act of 1983 (integrity and accountability act) contained in the California Government Code, beginning with Section 13400, requires each state agency to establish and maintain a system or systems of internal accounting and administrative controls. Internal controls are necessary to provide public accountability and are designed to minimize fraud, abuse, and waste of government funds. In addition, by maintaining these controls, agencies gain reasonable assurance that the measures they have adopted protect state assets, provide reliable accounting data, promote operational efficiency, and encourage adherence to managerial policies. The integrity and accountability act also states that the elements of a satisfactory system of internal accounting and administrative controls shall include a system of authorization and record-keeping procedures adequate to provide effective accounting control over assets, liabilities, revenues, and spending. Further, the integrity and accountability act requires that state agencies act promptly to correct weaknesses when they detect them.

GIFT OF PUBLIC FUNDS

Chapters 1 and 2 report on gift of public funds.

The California Constitution, Section 6, Article XVI, prohibits the giving of any gift of public money or thing of any value to any individual for a private purpose. This constitutional prohibition is designed to ensure that the resources of the State will be devoted to public purposes.

INCOMPATIBLE ACTIVITIES DEFINED

Chapter 5 reports on incompatible activities.

Section 19990 of the California Government Code prohibits a state employee from engaging in any employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee. This law specifically identifies certain incompatible activities, including using state time, facilities, equipment, or supplies for private gain or advantage. In addition, Section 19990 requires state employees to devote their full time, attention, and efforts to their state office or employment during their hours of duty as state employees.

PROHIBITIONS AGAINST USING STATE RESOURCES FOR AN OUTSIDE ENDEAVOR NOT RELATED TO STATE BUSINESS

Chapter 6 reports on personal use of state resources.

The California Government Code, Section 8314, prohibits state officers and employees from using state resources such as land, equipment, travel, or time for personal enjoyment, private gain, or personal advantage or for an outside endeavor not related to state business. If the use of state resources is substantial enough to result in a gain or advantage to an officer or employee for which a monetary value may be estimated, or a loss to the State for which a monetary value may be estimated, the officer or employee may be liable for a civil penalty not to exceed $1,000 for each day on which a violation occurs plus three times the value of the unlawful use of state resources.

WASTE AND INEFFICIENCY

Chapters 2 and 3 report on waste and inefficiency in state government.

The California Government Code, Section 11813, declares that waste and inefficiency in state government undermine Californians' confidence in government and reduce the state government's ability to address vital public needs adequately.

APPENDIX C

State and Federal Referral Numbers

The Bureau of State Audits (bureau), in accordance with the California Whistleblower Protection Act contained in the California Government Code, Section 8547 et seq., receives and investigates complaints of improper governmental activities by state departments and state employees. To enable state employees and the general public to report these activities, the bureau maintains a toll-free whistleblower hotline at (800) 952-5665 or (866) 293-8727 (TTY). Between July and December 2005, we received 2,196 calls, of which 1,165 were outside of the bureau's jurisdiction. In these instances, the bureau refers callers to various local, state, and federal entities.

Listed below are the telephone numbers for state and federal entities that the bureau generally refers callers to, as well as the issues that these entities can address.[13] In addition, the Department of Technology Services has state information officers at (800) 807-6755 who can direct callers to any state department. The federal government also has a federal information number that can direct callers to, and provide information about, all federal agencies at (800) 688-9889.

Telephone Numbers for State Departments

Aging, Department of	(916) 419-7500	• Public information
	(800) 231-4024	• Long-Term Care Ombudsman—nursing homes, drug treatment facilities, mental facilities, emergency referrals
Air Resources Board	(800) 952-5588	• Air pollution violations
	(800) 363-7664	• Legal information and vehicle emissions
Attorney General, Office of	(800) 952-5225	• Public inquiries and consumer complaints, private sector retaliation, business opportunity scams
	(916) 445-2021	• Registry of Charitable Trusts (nonprofit organizations)
	(800) 722-0432	• Bureau of Medi-Cal Fraud and Elder Abuse
	(213) 897-8065	• Travel fraud
California State University	(562) 951-4425	Complaints regarding university employees

continued on next page

[13] In addition to referring callers to state and federal entities, the bureau also refers callers to local entities such as local school boards, county controllers, and private businesses such as the Better Business Bureau.

Telephone Numbers for State Departments

Chancellor's Office, Community Colleges	(916) 445-8752	Questions and/or issues related to community colleges
Child Support Services, Department of	(866) 249-0773	Questions about individual child support services cases
Consumer Affairs, Department of	(800) 952-5210	• The Consumer Information Center takes complaints about: accountants, appliances, athletics, automobile repairs, barbers, beauty salons, cemeteries, contractors, cosmetologists, dentists & dental hygienists, engineers, funeral directors and embalmers, geologists and geophysicists, hearing aid dispensers, home furnishings, home improvements, landscape architects, marriage/family counselors, nurses, optometrists, pest control operators, pharmacists, private investigators and private patrol operators, repossessors, veterinarians, and other consumer issues.
	(800) 321-2752	• Contractors' State License Board
	(800) 633-2322	• Medical Board—complaints about physicians, questions about licensing or disciplinary actions
	(866) 785-9663	• Office of Privacy Protection - identity theft
Controller, Office of the State	(916) 445-2636	• Public information
	(800) 952-5661	• Senior citizen's property tax postponement
	(800) 992-4647	• Unclaimed property
Corporations, Department of	(800) 347-6995	• Escrow and title companies, finance lenders, mortgage bankers
	(866) 275-2677	• Investment counselors
Corrections and Rehabilitation, Department of	(877) 424-3577	Office of Internal Affairs—to report misconduct by employees
Emergency Services, Office of	(800) 852-7550	Hazardous materials spills
Employment Development Department	(916) 653-0707	• Public information
	(800) 229-6297	• Unemployment and disability insurance fraud
	(800) 528-1783	• Tax or payroll fraud
Energy Commission	(800) 822-6228	Public information
Equalization, Board of	(800) 400-7115	• Customer & Taxpayer Information Center
	(888) 334-3300	• Tax Evasion Hotline
	(916) 324-1874	• To report improper conduct by department employees
Fair Employment and Housing, Department of		Racial or sexual discrimination in:
	(800) 884-1684	• Employment
	(800) 233-3212	• Housing
Fair Political Practices Commission	(916) 322-5660	• Public information
	(800) 561-1861	• Violations of ethics and campaign laws
Finance, Department of	(916) 445-3878	• Public information
	(916) 322-2263	• Statistical research—economics, finance, transportation, housing
	(916) 323-4086	• Demographics
Financial Institutions, Department of	(800) 622-0620	State-licensed banks, savings and loans, foreign banks, traveler's checks, industrial loans, credit unions
Fish and Game, Department of	(800) 952-5400	Poaching
Food and Agriculture, Department of	(916) 229-3000	Weights and measures enforcement

Telephone Numbers for State Departments

Franchise Tax Board	(800) 852-2753	• Public information
	(800) 338-0505	• Fast Tax (refunds and order forms)
	(800) 852-5711	• Tax fraud
Governor's Office	(916) 445-2841	Main number
Health Services, Department of	(916) 445-4171	• Hospital licensing
	(800) 554-0354	• Nursing home complaints
	(800) 822-6222	• Medi-Cal fraud
	(916) 445-2684	• Office of Vital Records—birth and death certificates
Housing and Community Development, Department of	(800) 952-5275	• Mobile home complaints
	(800) 952-8356	• Mobile home registration and title information
Industrial Relations, Department of	(415) 703-4810	• Private sector complaints involving discrimination, wages. overtime, and other workplace issues (Labor Commissioner)
	(800) 321-6742	• To report accidents, unsafe working conditions, or safety and health violations (OSHA)
Inspector General, Office of	(916) 830-3600	• Main number
	(800) 700-5952	• To report improper activities within the Department of Corrections and Rehabilitation
Insurance, Department of	(800) 927-4357	Consumer complaints
Judicial Council	(415) 865-4200	• Courts
	(866) 865-6400	• Illegal or improper acts by judicial branch employees
Judicial Performance, Commission on	(415) 557-1200	Judicial misconduct and discipline
Lottery Commission	(800) 568-8379	• Public information
	(888) 277-3115	• Problem Gambling Help Line
Managed Health Care, Department of	(888) 466-2219	Health Maintenance Organization (HMO) complaints
Motor Vehicles, Department of	(800) 777-0133	• Public information
	(916) 657-8377	• Complaints about automobile dealers
Parks and Recreation, Department of	(800) 444-7275	Camping reservations in state parks
Personnel Administration, Department of	(916) 324-0455	Information about state employees' wages and benefits
Personnel Board, State	(916) 653-1705	• Public information
	(916) 653-1403	• Whistleblower retaliation complaints
Public Employees' Retirement System	(916) 795-1251	• Public information
	(888) 225-7377	• Benefits for retired members
Public Utilities Commission	(800) 848-5580	• Public information
	(800) 649-7570	• Complaints about cable, telephone, and utility bills or service
Real Estate, Department of	(916) 227-0864	• Complaints regarding real estate licensees
	(916) 227-0931	• Real estate licensing information
Rehabilitation, Department of	(800) 952-5544	• Client assistance
	(916) 263-8981	• Public affairs

continued on next page

Telephone Numbers for State Departments

Secretary of State	(916) 657-5448	• Public information
	(916) 653-2318	• Corporate filings
	(916) 653-3595	• Notary public section
Social Services, Department of	(800) 952-5253	• Public inquiry and client assistance
	(800) 344-8477	• Welfare fraud
State Compensation Insurance Fund*	(888) 786-7372	Worker's Compensation Fraud Hotline
Technology Services, Department of	(800) 807-6755	State information officers provide information about state agencies, departments, and employees
University of California	(800) 403-4744	University of California whistleblower hotline
Veterans Affairs, Department of	(800) 952-5626	CalVet loans
Victim Compensation and Government Claims Board	(800) 777-9229	• To file a claim as a victim of a crime
	(800) 955-0045	• To file a claim against the government

Telephone Numbers for Federal Departments

Agriculture, Department of	(800) 424-9121	Temporary Assistance to Needy Families (TANF) and food stamp fraud
Central Intelligence Agency	(703) 482-0623	Public Affairs Office
Commerce, Department of (Office of the Inspector General)	(800) 424-5197	To report fraud, waste, abuse, or other violations of law
Defense, Department of (Office of the Inspector General)	(800) 424-9098	To report violations of ethical standards and/or the law, including but not limited to fraud, waste, abuse of authority, potential leaks of classified information, or potential acts of terrorism.
Environmental Protection Agency	(888) 546-8740	• General information
	(888) 372-9378	• Environmental Protection Agency law violations
	(800) 368-5888	• Ombudsman for small business disputes
Federal Bureau of Investigation	(202) 324-3444	Washington, D.C.
Federal Communications Commission (Office of the Inspector General)	(888) 863-2244	To report fraud, waste, and abuse
Federal Deposit Insurance Corporation	(877) 275-3342	FDIC banks and credit laws
Federal Election Commission	(800) 424-9530	Campaign financing
Federal Emergency Management Agency	(800) 462-9029	• Disaster assistance
	(800) 638-6620	• Flood insurance information
Federal Trade Commission	(877) 382-4357	• Charity solicitations, collection agencies, Internet sales, interstate consumer issues, telemarketing
	(877) 438-4338	• Identity theft
	(877) 987-3728	• Consumer Advise Center
Government Accountability Office	(800) 424-5454	Fraud, waste, and abuse involving federal employees or contractors

* The State Compensation Insurance Fund is a state-operated entity that exists solely to provide workers' compensation insurance on a nonprofit basis. However, it is not a state department.

Telephone Numbers for Federal Departments		
Health and Human Services, Department of	(800) 633-4227	• For Medicare information or Medicare fraud
	(800) 786-2929	• Runaways can call this number to leave messages for parents
Homeland Security Headquarters	(202) 282-8000	Main number
Internal Revenue Service	(800) 829-1040	• Public information
	(800) 829-0433	• Tax fraud hotline
	(800) 829-3676	• To order forms and publications
Labor, Department of (Employee Benefits Security Administration)		Information on retirement plans
	(415) 975-4600	• San Francisco regional office
	(626) 229-1000	• Los Angeles regional office
National Aeronautics and Space Administration (NASA) – (Office of Inspector General)	(800) 424-9183	To report waste, fraud, and abuse by NASA employees and contractors
National Fraud Information Center	(800) 876-7060	Postal and telemarketing fraud
National White Collar Crime Center	(800) 221-4424	For information and research on preventing economic and cyber crime
Securities and Exchange Commission	(800) 732-0330	• Fraud hotline
	(800) 289-9999	• Investor complaint center
Social Security Administration	(800) 269-0271	Identity theft and other fraud
Transportation, Department of	(888) 327-4236	• Vehicle safety hotline
	(800) 424-8802	• National Response Center to report oil and chemical spills
	(800) 424-9071	• Office of the Inspector General to report waste, fraud, and abuse
Treasury, Department of	(800) 842-6929	The Office of Thrift Supervision regulates all federally chartered and many state-chartered thrift institutions, including savings banks and savings and loan associations

Blank page inserted for reproduction purposes only.

INDEX

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press