

Investigations of Improper Activities by State Agencies and Employees

Waste of State Funds, Misuse of State Resources, Falsification of Records, Inexcusable Neglect of Duty, Failure to Monitor Time Reporting, and Other Violations of State Law

July 2010 Through March 2011

August 2011 Report I2011-1



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August 25, 2011

Investigative Report I2011-1

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

Dear Governor and Legislative Leaders:

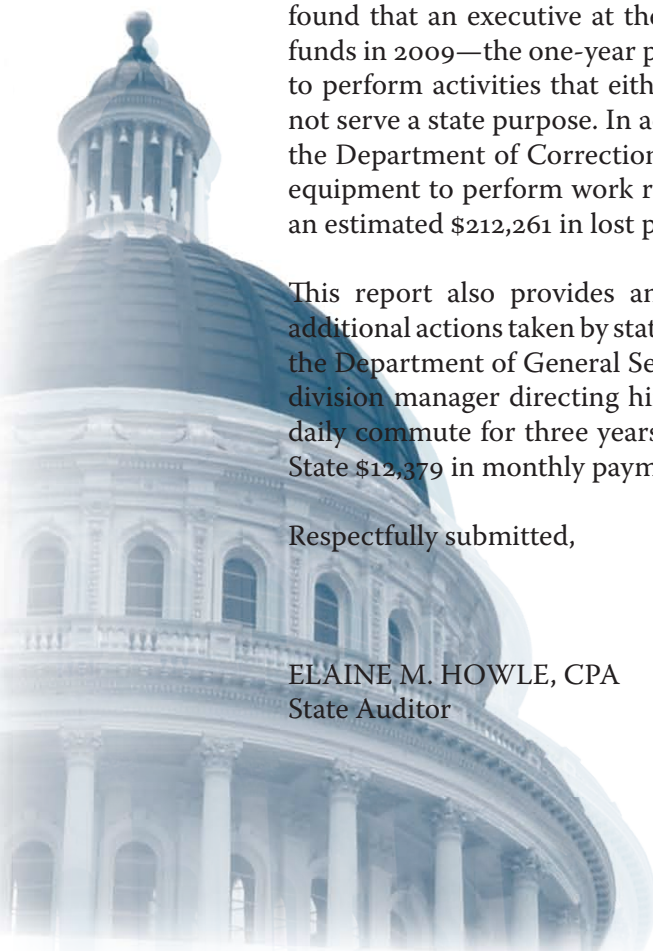
Pursuant to the California Whistleblower Protection Act, the Bureau of State Audits presents its investigative report summarizing investigations completed between July 2010 and March 2011 concerning allegations of improper governmental activities.

This report details seven substantiated allegations involving several state departments. Through our investigations, we found waste of state funds, misuse of state resources, falsification of records, inexcusable neglect of duty, and failure to monitor time reporting. As an example, we found that an executive at the Department of Mental Health wasted at least \$51,244 in state funds in 2009—the one-year period that we examined—by employing a longtime senior official to perform activities that either were undertaken on behalf of a nonstate organization or did not serve a state purpose. In addition, a chief psychologist at a correctional facility operated by the Department of Corrections and Rehabilitation used his state-compensated time and state equipment to perform work related to his private psychology practice, costing the State up to an estimated \$212,261 in lost productivity over nearly five years.

This report also provides an update on previously reported investigations and describes additional actions taken by state departments to correct the problems we identified. For example, the Department of General Services signed an agreement in June 2011 with a now-retired fleet division manager directing him to reimburse the State for his misuse of state vehicles for his daily commute for three years. The terms of the agreement require the manager to repay the State \$12,379 in monthly payments from June 2011 through August 2016.

Respectfully submitted,

ELAINE M. HOWLE, CPA
State Auditor



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Summary

Results in Brief

The California Whistleblower Protection Act (Whistleblower Act) empowers the Bureau of State Audits (bureau) to investigate and report on improper governmental activities by agencies and employees of the State of California (State). Under the Whistleblower Act, an *improper governmental activity* is any action by a state agency or employee related to state government that violates a law, is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.¹

This report details the results of seven particularly significant investigations completed by the bureau or undertaken jointly by the bureau and other state agencies between July 1, 2010, and March 31, 2011. This report also outlines actions taken by state agencies in response to the investigations of improper governmental activities described here and in previous reports. The following paragraphs briefly summarize the investigations and the state agencies' actions, which are discussed more fully in the individual chapters of this report.

Department of Mental Health

An executive at the Department of Mental Health (Mental Health) wasted at least \$51,244 in state funds in 2009, the one-year period that we examined, by employing a longtime senior official to perform activities that either were undertaken on behalf of a nonstate organization or did not serve a state purpose. In fall 2010 the executive directed the senior official to discontinue using state-compensated time for activities that we found did not benefit the State. Soon thereafter, the executive retired from state service, and the senior official began using leave while he awaited new work assignments.

Department of Corrections and Rehabilitation

The chief psychologist at a correctional facility operated by the Department of Corrections and Rehabilitation (Corrections) used his state-compensated time and state equipment to perform work related to his private psychology practice, costing the State up to an estimated \$212,261 in lost productivity over nearly five years.

Investigative Highlights . . .

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

- » *An agency wasted at least \$51,244 in state funds during 2009 by employing a senior official to perform activities that did not benefit the State.*
- » *A chief psychologist misused state time and equipment by performing work for his private practice, costing the State an estimated \$212,261.*
- » *A personnel specialist and an employee falsified time and attendance records to enable the employee to receive at retirement, a benefit estimated at \$6,589 more than allowed.*
- » *A supervisor neglected to supervise the work of a subordinate employee, resulting in the employee receiving compensation for which the State lacked assurance that it received adequate work in return.*
- » *A manager improperly directed an employee to use a state vehicle for her commute at a cost of \$8,282 and improperly reimbursed the employee \$595 for lodging and meal expenses.*

¹ For more information about the bureau's investigations program, please refer to the Appendix.

California Energy Commission

An employee and a personnel specialist at the California Energy Commission falsified time and attendance records to enable the employee—at the time of her retirement—to receive a payment for unused annual leave that was higher than the amount to which she was entitled, costing the State an estimated \$6,589.

Department of Transportation

For nearly three years, a transportation planning supervisor for the Department of Transportation neglected his duty to supervise the work of a subordinate transportation planner, resulting in the transportation planner receiving compensation, including overtime pay, for which the State lacked assurance that the transportation planner performed adequate work to justify the compensation.

Department of Fish and Game

A manager at the Department of Fish and Game improperly directed an employee under his supervision to use a state vehicle for commuting between her home and work locations at a cost to the State of \$8,282 over a nine-month period. In addition, the employee improperly requested—and the manager improperly approved—reimbursement for \$595 in lodging and meal expenses incurred by the employee near her work headquarters.

Department of Industrial Relations

An official and a supervisor at a district office of the Department of Industrial Relations failed to monitor adequately the time reporting of four subordinate employees from July 2007 through June 2009.

State Controller's Office

An employee with the State Controller's Office failed to report an estimated 322 hours of absences over an 18-month period. Because her supervisor, a high-level official, failed to monitor adequately her time reporting, the State paid the employee \$6,591 for hours she did not work.

Update on Previously Reported Investigations

In addition to conveying our findings about investigations completed from July 2010 through March 2011, this report summarizes the status of certain findings described in our previous reports. Chapter 8 details the actions taken—or declined to be taken—by the respective agencies for seven previously reported investigations. The following updates have particular significance:

- The Department of General Services (General Services) signed an agreement in June 2011 with a now-retired fleet division manager directing him to reimburse the State for his misuse of state vehicles for his daily commute. Our January 2011 report had revealed that the manager improperly used state vehicles for his daily commute for nine years. We estimated that the cost of the misuse for the three years for which complete records were available totaled \$12,379. The terms of the agreement require the manager to repay the State the entire \$12,379 at \$200 a month from June 2011 through August 2016. The manager made his first installment payment in June 2011.
- The California State University, Office of the Chancellor (Chancellor's Office) has implemented four of the five recommendations we made in our December 2009 report, which found that the Chancellor's Office had reimbursed a former official \$152,441 for unnecessary expenses that did not further the best interests of the university or the State. The Chancellor's Office reiterated its assertion about the difficulty in implementing the remaining recommendation. This lack of action by the Chancellor's Office will permit its employees to continue an activity we identified as being wasteful and, therefore not in the State's best interests.

Table 1 on the following page summarizes the improper governmental activities appearing in this report, the financial impact of the activities, and their status.

Table 1
Issues, Financial Impact, and Status of Recommendations for Cases Described in This Report

| CHAPTER | DEPARTMENT | DATE OF OUR INITIAL REPORT | ISSUE | COST TO THE STATE AS OF MARCH 31, 2011* | STATUS OF RECOMMENDATIONS | | | |
|----------------------------------|--|----------------------------|---|---|---------------------------|-----------------------|---------|-----------------|
| | | | | | FULLY IMPLEMENTED | PARTIALLY IMPLEMENTED | PENDING | NO ACTION TAKEN |
| New Cases | | | | | | | | |
| 1 | Department of Mental Health | August 2011 | Waste of state funds, misuse of state resources. | \$51,244 | ● | | | |
| 2 | Department of Corrections and Rehabilitation | August 2011 | Misuse of state resources. | 212,261 | | ● | | |
| 3 | California Energy Commission | August 2011 | Falsification of time and attendance records. | 6,589 | | | ● | |
| 4 | Department of Transportation | August 2011 | Inexcusable neglect of duty. | NA | | ● | | |
| 5 | Department of Fish and Game | August 2011 | Misuse of state vehicle, improper travel reimbursements. | 8,877 | | | ● | |
| 6 | Department of Industrial Relations | August 2011 | Failure to monitor adequately employees' time reporting. | NA | | ● | | |
| 7 | State Controller's Office | August 2011 | Failure to report absences, failure to monitor adequately an employee's time reporting. | 6,591 | | ● | | |
| Previously Reported Cases | | | | | | | | |
| 8 | Department of Corrections and Rehabilitation | September 2005 | Failure to account for employees' use of union leave. | \$1,654,664 | | ● | | |
| 8 | Department of Fish and Game, Office of Spill Prevention and Response | April 2009 | Improper travel expenses. | 71,747 | | ● | | |
| 8 | California State University, Office of the Chancellor [†] | December 2009 | Improper and wasteful expenditures. | 150,538 | ● | | | ● |
| 8 | Department of Corrections and Rehabilitation | January 2011 | Improper overtime reporting. | 446 | | | | ● |
| 8 | California Conservation Corps | January 2011 | Failure to follow state contracting laws. | 84,478 | ● | | | |
| 8 | Department of General Services | January 2011 | Misuse of state resources. | 12,379 | ● | | | |
| 8 | Department of Corrections and Rehabilitation | January 2011 | Delay in reassigning an incompetent psychiatrist, waste of state funds. | 366,656 | | ● | | |

Source: Bureau of State Audits.

NA = Not applicable because the situation did not involve a dollar amount or because the findings did not allow us to quantify the financial impact.

* We have estimated the cost to the State as noted in individual chapters of this report.

† The California State University, Office of the Chancellor has implemented four of the five recommendations. However, it does not plan to implement the remaining recommendation.

Chapter 1

DEPARTMENT OF MENTAL HEALTH: WASTE OF STATE FUNDS, MISUSE OF STATE RESOURCES Case I2009-0644

Results in Brief

An executive at the Department of Mental Health (Mental Health) wasted state funds by employing a senior official to perform activities, most of which did not provide any benefit to the State. In 2009 alone, the one-year period that we examined, the State paid at least \$51,244 in salary to the senior official to perform activities that either were undertaken on behalf of a nonstate organization or did not serve a state purpose. In fall 2010, during the course of our investigation, the executive directed the senior official to stop using state-compensated time to perform activities that we found did not benefit the State. Soon thereafter, the executive retired from state service, and the senior official began using leave while awaiting new work assignments from the executive's successor.

Background

Mental Health, as the state department entrusted with providing leadership for California's mental health system, bears responsibility for administering a host of programs related to ensuring the availability of mental health services and otherwise improving the lives of individuals afflicted with mental illness. Its most visible responsibility is to administer the treatment of individuals with mental illness at five state mental hospitals. Another responsibility is to administer the Mental Health Services Act, which calls for the establishment of programs for a "reduction in [the] stigma associated with either being diagnosed with a mental illness or seeking mental health services" and a "reduction in discrimination against people with mental illness."² Toward that end, Mental Health adopted a California Strategic Plan on Reducing Mental Health Stigma and Discrimination, but due to funding constraints it has not taken action to implement the plan.

Government Code section 8547.2, subdivision (c), provides that any activity by a state agency or employee that is economically wasteful is an improper governmental activity. In addition,

² Welfare and Institutions Code section 5840, subdivision (b) (3)-(4).

Government Code section 8314 prohibits any state employee from using state resources, including state-compensated time, for purposes unrelated to state employment.

Upon receiving an allegation that a senior official at Mental Health was engaging in activities that constituted a waste of state resources, we initiated an investigation.

Facts and Analysis

In 1998 the governor, who was about to leave office, contacted the Mental Health executive and asked him whether he had a position at Mental Health that he could fill with the senior official. The executive told the governor that he had such a position, and the governor appointed the senior official to that position, which was under the executive's direct supervision.

The senior official was acquainted with many Southern California celebrities, including a number of celebrities in the entertainment field. The senior official also had many contacts in the law enforcement community, having worked in the security industry and having been appointed to several boards and commissions related to law enforcement.

The executive originally assigned the senior official to work on security issues at Mental Health. The senior official's primary duty became serving as Mental Health's liaison to Southern California law enforcement agencies, an assignment that included little interaction with state hospitals but involved serving as the department's point of contact for county sheriffs and chiefs of police, as well as representing the department at select law enforcement functions. Later, the executive expanded the senior official's duties to include using his access to celebrities to try to enlist them to serve as spokespeople supporting the department's efforts to reduce the stigma and discrimination associated with mental illness and mental health treatment.

During his tenure at Mental Health, the senior official reported directly to the executive and worked almost exclusively from his home in Southern California. The executive provided the senior official with a state vehicle outfitted as a police car for traveling to meetings and other events because the executive felt that the car gave the senior official credibility when dealing with law enforcement personnel, and he felt that it created a perception problem for the senior official to arrive at meetings in his personal luxury vehicle. The executive afforded the senior official significant discretion in deciding the activities in which he would engage. The senior official told us that his work hours varied substantially

The executive provided the senior official with a state vehicle outfitted as a police car for traveling to meetings and other events.

from week to week and that he did not maintain a regular work schedule. The senior official stated that he spoke with the executive by telephone once or twice per week to keep him apprised of his activities.

Throughout his employment at Mental Health, the senior official has held positions with two other organizations. One position is president and chief executive officer (CEO) of a nonprofit organization whose mission is to provide support for the officers and families of a Southern California police department and for the children in the communities that the officers serve. The other position is as a volunteer serving as senior special advisor to a county sheriff. In this position, the senior official serves as a reserve deputy sheriff.

The Senior Official Spent Most of His State-Compensated Time on Activities Unrelated to His State Job

When we conducted this investigation in 2010, we asked Mental Health to provide us with evidence of the work that the senior official performed in 2009. In response to our request, Mental Health did not provide us with any work products, but instead gave us a “work summary” prepared by the senior official, which purported to describe his work activities on each of his workdays in 2009.

Based on the information provided in the work summary, we found that most of the senior official’s stated work activities were unrelated to his job at Mental Health. For example, the senior official’s nonprofit organization hosts a large gala each year for celebrities and local law enforcement officials to raise funds for the nonprofit organization. The senior official claimed as state work activities his attendance at numerous meetings for planning the gala, meetings with potential presenters and honored guests for the gala, and participation in various fundraising and social events to solicit attendees for the gala. In one instance, the senior official attended a famous comedian’s funeral. In his work record, the senior official stated that his reason for attending the funeral was “to meet celebrities . . . and enlist support and attendance for the [nonprofit organization’s] gala.”

In addition, the senior official claimed as state work activities his attendance at meetings and social events that related primarily to his duties as a senior special advisor to a county sheriff. As Figure 1 on page 9 shows, these events included attending a ballet fundraiser, the sheriff’s birthday party, and four sheriff-sponsored golf tournaments.

We found that most of the senior official’s stated work activities were unrelated to his job at Mental Health. In one instance, the senior official attended a famous comedian’s funeral.

Further, the senior official's work summary cited attendance at meetings and social events that, while not appearing to be related to his nonprofit organization or to his work with the sheriff's office, also were not related to his state job. These events included attendance at fundraisers for various political candidates and retirement parties for local officials.

When we interviewed the senior official and the executive about the senior official's participation at these events, they each provided a different perspective. The senior official claimed that his participation in these activities fell within his Mental Health duties. He asserted that his involvement with different organizations did not conflict with or detract from his work at Mental Health. In fact, the senior official claimed that everything he did was focused on helping Mental Health. However, he could not demonstrate how his participation in the events directly benefitted Mental Health.

In contrast, the executive asserted that the senior official's efforts related to fundraising for the nonprofit organization should not have been counted as Mental Health work activities. Further, the executive stated that work completed for the sheriff's office was not part of the senior official's Mental Health assignments and that the senior official should not have claimed this work as Mental Health work activities.

Comparing the information we received from the executive with the senior official's work summary for 2009, we concluded that most of the senior official's activities in 2009 were for his nonstate endeavors. Of the 227 days that the senior official reported he had worked, we found that on 125 of those days (55 percent), his only stated work activities were to attend meetings and social events that clearly related to his nonprofit organization, the county sheriff, or other groups.³ As the official earned \$76,484 during 2009, we estimated that at least \$42,066 of his state salary during that year improperly paid for work performed for nonstate organizations. Figure 1 identifies examples of the activities the senior official improperly claimed as work related to his Mental Health position.

Although the senior official used a state vehicle to travel to events unrelated to his state job, such as those listed in Figure 1, and this practice constituted misuse of the vehicle, we were unable to determine how much of the mileage on the state vehicle could be

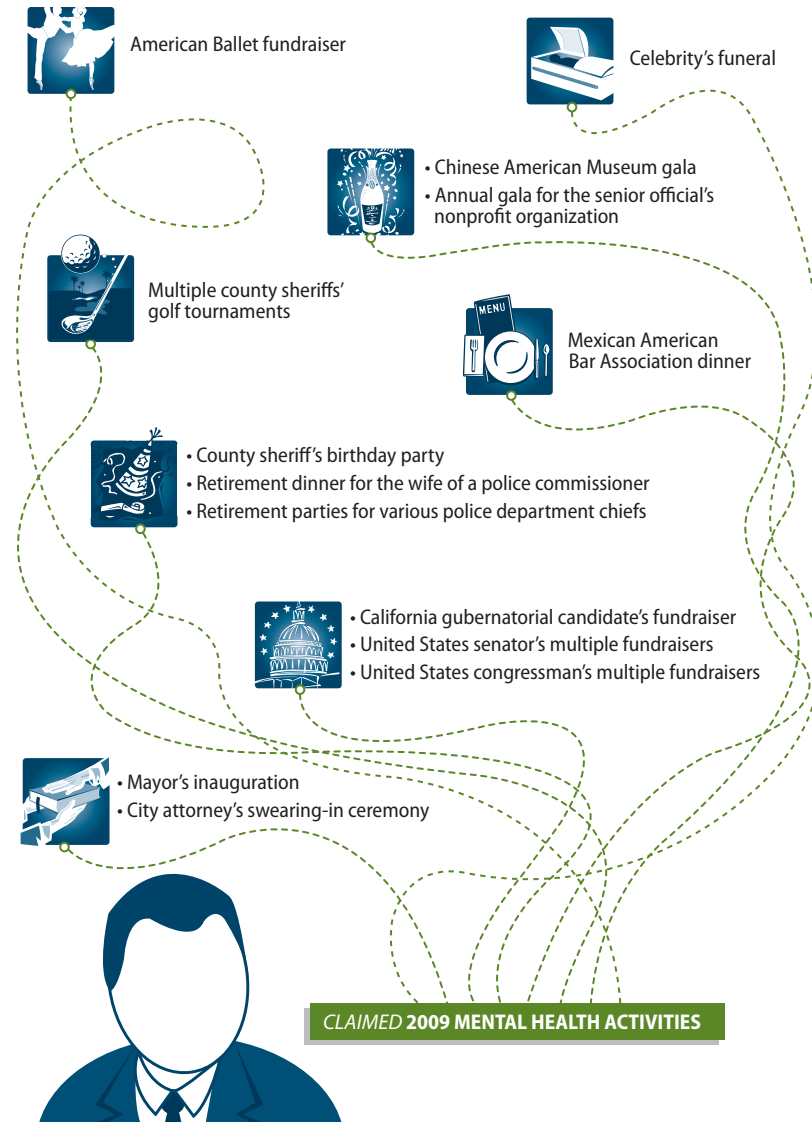
As the official earned \$76,484 during 2009, we estimated that at least \$42,066 of his state salary during that year improperly paid for work performed for nonstate organizations.

³ Because the senior official worked in an exempt job classification, on days that the senior official reported engaging in activities unrelated to his state employment, we counted the entire day as a day spent performing work for Mental Health if the senior official also claimed to have engaged in activities related to his state employment.

attributed to his attending these events. Therefore, we were unable to determine the cost to the State associated with the misuse of the state vehicle.

By using his state-compensated time and state vehicle to engage in activities unrelated to his state job, the senior official misused state resources in violation of section 8314 of the Government Code.

Figure 1
Examples of 2009 Activities the Senior Official Identified as Mental Health Activities



Source: Bureau of State Audits' analysis of the senior official's work summary.

A Significant Portion of the Senior Official's Activities on Behalf of Mental Health Did Not Benefit the State

As previously noted, one of the senior official's primary duties was to use his access to celebrities to try to enlist them to serve as spokespeople in support of Mental Health's efforts to reduce the stigma and discrimination associated with mental illness and mental health treatment. However, this anti-stigma program was at a standstill due to a lack of funding, so the senior official's work in this area—as described by the executive—was to interact with celebrities who sometime in the future might be willing to participate in the anti-stigma program by doing public service announcements for Mental Health.

To facilitate this interaction, the senior official attended many high-profile meetings and social events in order to “cultivate and maintain relationships” with celebrities and other famous individuals. Some of the events that the senior official attended in the name of promoting Mental Health's anti-stigma program were the Golden Globe Awards, the World Magic Awards, and a Julio Iglesias concert. See Figure 2 for a sample of the events that the employee stated he attended on behalf of Mental Health's anti-stigma program.

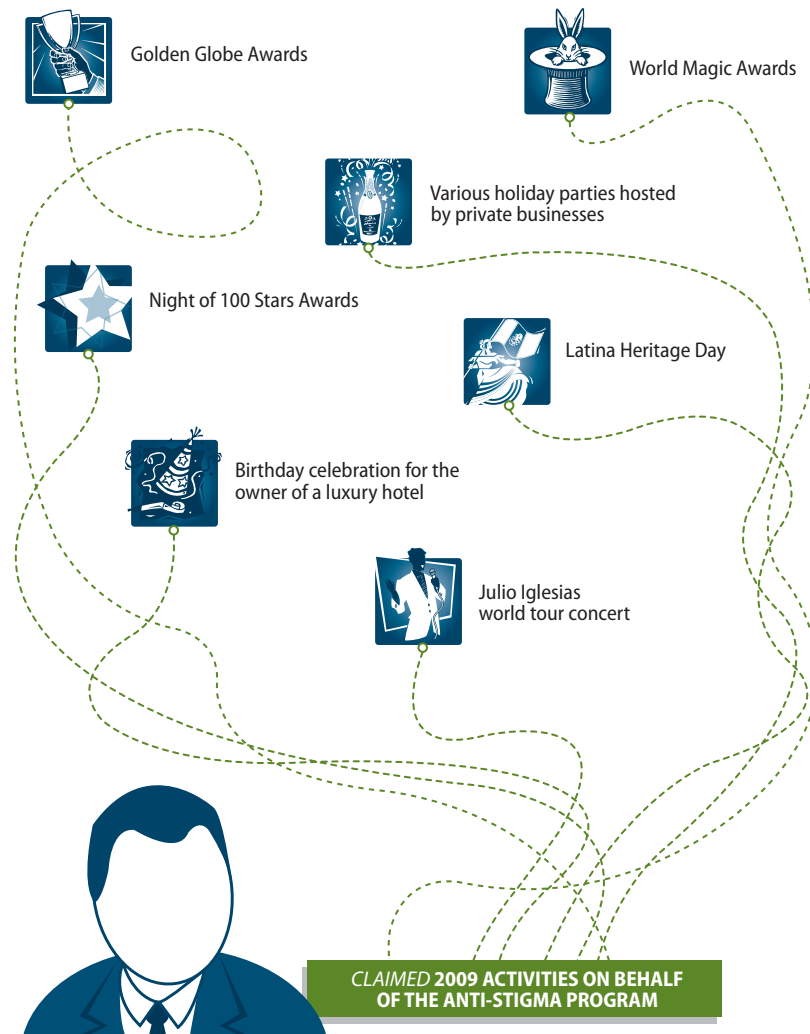
When we asked the senior official why he considered his attendance at the awards ceremonies as a duty of his state employment, he stated that his attendance enabled him to interact directly with many celebrities and their handlers, managers, and agents so that he could gather support for the anti-stigma program. In response to questioning about his attendance at the concert, the senior official stated that the singer is a close friend, and he went to the concert to ask him to participate in a possible concert for the anti-stigma program. Nevertheless, when we asked the executive about these events, the executive stated that the senior official did not ask him in advance whether he could attend these events as part of his Mental Health duties. Instead, the senior official told the executive after attending the events about the people he spoke with regarding Mental Health issues. The executive stated that he would count some of the time that the senior official spent at these events as legitimate work time, but not all of it. However, neither the senior official nor the executive could identify any measurable benefit that the State garnered as a result of the senior official's interaction with celebrities at social and entertainment events in the name of Mental Health's anti-stigma program.

Our investigation found that of the 227 days that the senior official reported working in 2009, on 27 of those days (12 percent) the senior official only listed as work activities his attendance at social and entertainment events to interact with celebrities. Because we

When we asked the executive about the senior official's attendance at certain events, the executive stated that the senior official did not ask him in advance whether he could attend these events as part of his Mental Health duties.

found that these activities had provided no benefit to the State, we concluded that the payment of \$9,178 in salary to the senior official for those workdays was wasteful.

Figure 2
Examples of Activities the Senior Official Attended in 2009 on Behalf of the Anti-Stigma Program



Source: Bureau of State Audits' analysis of the senior official's work summary.

The Executive Implemented Changes After Our Interview

During our investigation of this case, and, more specifically, after our interview of the executive in September 2010 regarding the senior official's work activities, the executive instructed the senior official not to claim as part of his Mental Health duties the time he spends on activities for his nonprofit organization and on activities for the county sheriff's office. The executive also reduced the senior official's role in promoting Mental Health's anti-stigma program by directing him to focus more time on conducting security audits at Mental Health's hospitals. Lastly, the executive told the senior official to provide him with more advance notice and information regarding the events he plans to attend on behalf of Mental Health. Finally, the executive told the senior official that whenever an event's applicability to Mental Health is questionable, the senior official should err on the side of caution and use leave to attend the event.

The executive retired from state service at the end of 2010 and instructed the senior official to ask the executive's replacement for new job assignments. While awaiting new job assignments from the executive's replacement, the senior official elected to use leave.

Recommendations

To address the waste and misuse of state resources, Mental Health should do the following:

- Evaluate the need for the senior official's position.
- If Mental Health determines that the senior official's position can provide a benefit to the State, clarify the job duties associated with the position and increase oversight of the position's activities to ensure that the State receives material benefits from the activities.
- Evaluate the senior official's workdays during the past three years to determine whether the senior official should have charged leave on workdays that he claimed to have worked but actually devoted himself to nonstate activities.
- Require the senior official to use leave for workdays on which he did not actually perform work for the State or to repay the State the amount of salary he received for those days.

Agency Response

In June 2011 Mental Health reported that in following our recommendations, it reevaluated the necessity of the senior official's position and concluded that the position was unnecessary. Mental Health stated that although a former administration created the position for desirable purposes, it determined that these functions were no longer essential and should not be maintained given current fiscal constraints. The senior official resigned from state service in May 2011, and Mental Health eliminated his position.

Mental Health agreed that the senior official's state employment overlapped with his volunteer service as a reserve deputy sheriff, his status as a special advisor to a county sheriff, and his role as the CEO of a nonprofit organization that supports law enforcement officers and their families. Moreover, Mental Health agreed that the official attended various police and entertainment events, some of which likely were unrelated to his state duties. However, Mental Health asserted that given the senior official's duties, it disagreed with our conclusion that his attendance at these events failed to benefit the State. Despite Mental Health's assertion, we maintain our position that the official's attendance at the events noted in our report provided no discernible benefit to the State.

Mental Health also reported that it was unable to evaluate fully the senior official's workdays during the past three years, as we had recommended, to determine whether the senior official should have charged more leave. Instead, Mental Health stated that it found scant evidence of how the senior official spent his workdays even though it tried to reconstruct his daily work activities. Mental Health thus concluded that compiling the necessary evidence would require extensive work by staff to evaluate daily activities that occurred "long ago."

Although we recommended that Mental Health require the senior official to use leave for workdays he did not actually perform work for the State or repay the State the amount of salary he received for those days, Mental Health stated that it is unlikely to recover any portion of the senior official's salary. In addition to its inability to evaluate the senior official's workdays, Mental Health stated that even though it expected a 40-hour workweek from the senior official, more or less than eight hours on individual days was permissible. Further, it stated that it had no documented evidence that the senior official failed to perform many of his duties. Finally, Mental Health indicated that even if it were able to determine the salary amount the senior official earned on workdays he did not actually perform work for the State, it could not seek to recover those costs since he no longer is employed by the State.

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Chapter 2

DEPARTMENT OF CORRECTIONS AND REHABILITATION: MISUSE OF STATE RESOURCES

Case I2009-1203

Results in Brief

The chief psychologist at a correctional facility operated by the Department of Corrections and Rehabilitation (Corrections) used his state-compensated time and state equipment to perform work related to his private psychology practice, costing the State up to an estimated \$212,261 in lost productivity.

Background

Inmates confined to a state correctional facility are legally entitled to receive necessary medical and psychological treatment during the time of their incarceration. Corrections therefore hires health professionals, including psychologists, to ensure that inmates receive adequate treatment while incarcerated.

Like other state employees, Corrections' psychologists must comply with state laws prohibiting the misuse of state resources and prohibiting state employees from engaging in activities that conflict with their state employment. Specifically, Government Code section 8314 prohibits state employees from using state resources, including state-compensated time and state equipment, for purposes unrelated to their employment. In addition, Government Code section 19990 prohibits state employees from engaging in any employment, activity, or enterprise that is clearly incompatible with their duties as state employees.

When we received information that a chief psychologist for a correctional facility was performing work for his private practice during state work hours, we initiated an investigation.

Facts and Analysis

Our investigation revealed that in June 2005 the chief psychologist began pursuing a private psychology practice in addition to working as a full-time employee of the State. In furtherance of his private practice, he performed psychological evaluations of individuals at his offices located in four cities. The chief psychologist performed many of these evaluations for private companies.

We estimated that from June 2005 through April 2010 the chief psychologist misused up to 3,454 hours of state-compensated time valued at \$212,261 to perform work for his private psychology practice.

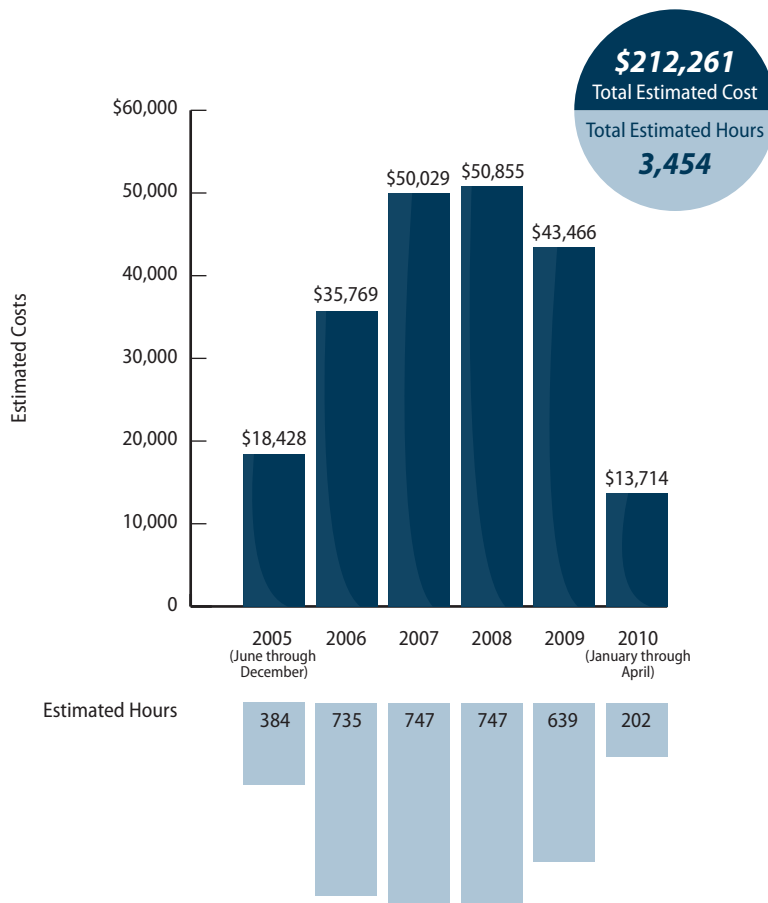
The chief psychologist unlawfully misused state resources when he used his state-compensated time to perform work for his private psychology practice. According to the chief psychologist, his scheduled work hours at the correctional facility were 6 a.m. to 2 p.m., but he typically left the facility by 1 p.m. each day to attend to his private practice. Thus, he regularly left work one hour earlier than the scheduled end of his shift. Moreover, the chief psychologist acknowledged that while he was at the facility, he dedicated approximately 30 percent of his time to work on his private practice. Based on these admissions, we estimated that from June 2005 through April 2010 the chief psychologist misused up to 3,454 hours of state-compensated time valued at \$212,261, as illustrated in Figure 3.

The chief psychologist attempted to justify his misuse of state-compensated time by arguing that he often worked outside his regular hours to respond to emergencies and other urgent matters. He also stated that he sometimes reported to the facility to perform a few hours of work on days when he reported using a full day of leave. A subordinate employee confirmed that the chief psychologist responded to emergencies. Several subordinates, while acknowledging the chief psychologist's tendency to leave early each day, told us that he had at one time or another responded to their e-mails or telephone messages after he left for the day. However, we were unable to capture any of this time in our \$212,261 estimate because specific evidence was not available for us to calculate the time that the chief psychologist asserted he spent on these activities after he had left the facility. Further, we do not believe that the additional time was significant because the chief psychologist admitted he likely did not average a 40-hour workweek. We therefore based our estimate for the lost productivity to the State on the various admissions by the chief psychologist that he did not dedicate his full time, attention, and efforts to his state position during his regular work hours.

The chief psychologist also used his state computer to perform work related to his private practice. He told us that he used his state computer to send and store documents and to perform research related to his private practice. We reviewed his state e-mail account, which largely contained e-mails from December 2009 through March 2010, and found 57 e-mails related solely to his private practice. The chief psychologist confirmed that the content of these e-mails was related exclusively to his private psychology practice.

By using his state-compensated time and his state computer to conduct business related to his private practice, the psychologist misused state resources in violation of Government Code section 8314, and engaged in activities that were incompatible with his state employment, in violation of section 19990 of the Government Code.

Figure 3
Estimated Costs of the Chief Psychologist’s Misuse of State Time From June 2005 Through April 2010



Sources: Bureau of State Audits’ analysis of the chief psychologist’s salary history, leave usage, and signed statement.

Recommendations

To ensure that the chief psychologist and other Corrections employees do not misuse state resources, Corrections should do the following:

- Take appropriate disciplinary action against the chief psychologist for misusing state resources.
- Require psychology staff at the correctional facility, including the chief psychologist, to specify hours of duty.
- Establish a system for monitoring whether psychology staff at the correctional facility, including the chief psychologist, are working during specified hours of duty.

Agency Response

After reviewing our draft report, Corrections commented in August 2011 that the chief psychologist classification is exempt from the federal Fair Labor Standards Act (act). It then noted that state employees who are exempt from the act are not hourly workers and are paid on a “salaried” basis. It further stated that exempt employees are expected to work “as many hours as is necessary, within reason, to provide the public services for which they are hired.”

Corrections’ comments suggest that it believes the chief psychologist’s misuse of an estimated 3,454 hours of state time— at a cost of \$212,261—over a nearly five-year period does not violate state law because the chief psychologist’s classification is a salaried position. However, as we described in our investigation, the chief psychologist regularly left work one hour earlier than the scheduled end of his shift and he acknowledged that while he was at the facility, he dedicated about 30 percent of his time to work on his private practice. Consequently, his actions clearly violate Government Code section 8314, which prohibits state employees from using state-compensated time for purposes unrelated to their employment, and Government Code section 19990, which prohibits state employees from engaging in any employment that is clearly incompatible with their state duties.

Notwithstanding its comments, Corrections reported in June 2011 that it planned to request disciplinary action against the chief psychologist for misuse of state equipment and resources. It also stated that in January 2011 the chief psychologist voluntarily demoted to a staff psychologist position. Corrections further stated that before his voluntary demotion, health care management

had attempted to make the chief psychologist comply with Corrections' policies and procedures regarding hours of work and secondary employment.

To ensure that psychology personnel at the correctional facility specify hours of duty, Corrections reported that it now requires each affected employee to have a signed duty statement, secondary employment approval, and documentation of work schedule in the supervisory files. It stated that it planned to issue a directive outlining the enforcement of these requirements in August 2011.

Corrections also stated that it planned to take several actions designed to monitor whether psychology staff are working the appropriate hours. In its August 2011 directive, it intends to include a description of proper time-reporting procedures and a statement about the consequences of failing to follow the procedures. Further, Corrections stated that it planned to train its managers, supervisors, and staff regarding proper time-reporting procedures. Finally, it stated that it planned to enter into labor negotiations about the use of time clocks but that it did not know when the negotiations would occur.

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Chapter 3

CALIFORNIA ENERGY COMMISSION: FALSIFICATION OF TIME AND ATTENDANCE RECORDS

Case I2010-0844

Results in Brief

An employee and a personnel specialist at the California Energy Commission (Energy Commission) falsified time and attendance records in order to enable the employee, at the time of her retirement, to receive a payment for unused annual leave that was higher than the amount to which she was entitled, costing the State an estimated \$6,589.

Background

Having primary responsibility for the State's energy policy and planning activities, the Energy Commission employs civil service employees who perform duties that include forecasting state energy needs, licensing power plants, promoting energy efficiency, supporting renewable energy resources, and performing routine administrative functions essential to the operation of a state agency.

State civil service employees receive a specified number of hours of paid leave every month they are employed by the State. Employees generally accrue paid leave each month in the form of eight hours of sick leave and a specified number of hours of vacation time based on the length of time they have been employed by the State. Unlike vacation time, which an employee may use at his or her discretion, California Code of Regulations, title 2, section 599.745 specifies that sick leave only may be used by an employee for absences from work that are necessary because the employee is ill, injured, has been exposed to a contagious disease, or requires medical treatment, or because a member of the employee's family is ill, injured, or has died. As further provided in this regulation and the collective bargaining agreements established between the State and the various employee bargaining groups, the amounts of sick leave that an employee may use per year due to family member illness, injury, or death is limited to a specified number of days. An employee may accrue or accumulate unused sick leave until the employee leaves state service. Upon the employee's retirement, unused sick leave is converted to a retirement service credit, with 2,000 hours of sick leave equaling one year of service credit. The amount of service credit an employee has accumulated at the time of retirement

is a part of what determines the amount of the pension the employee will receive from the California Public Employees' Retirement System (CalPERS).

As an alternative to receiving leave in the form of both sick leave and vacation time, most state employees can instead elect to receive annual leave. Like vacation time, an employee may use annual leave at his or her discretion, and not just for absences prompted by illness. The amount of annual leave an employee accrues per month depends on his or her length of state service, but always accrues at a higher rate than vacation time and at a lower rate than vacation time and sick leave combined. An employee may continue to accrue and accumulate annual leave until reaching a maximum of 640 hours of accumulated leave (unless exceptional circumstances justify an accumulation of more hours). When an employee retires from state service, the employee may receive a lump sum payment for the amount of unused annual leave he or she has accumulated, based on the employee's salary at the time of retirement.

An employee who accrues sick leave and vacation time generally has the option to stop accruing sick leave and vacation time and to start accruing annual leave instead. Upon enrolling in the annual leave program, any vacation time the employee has accumulated is converted to annual leave. However, any sick leave the employee has accumulated is not converted to annual leave. Instead, the sick leave simply remains available for the employee to use in the event the employee needs to be absent from work due to illness.

To ensure that state agencies correctly track the amount of leave accrued, accumulated, and used by their employees, California Code of Regulations, title 2, section 599.665 mandates that state agencies keep complete, accurate time and attendance records. To comply with this mandate, the Energy Commission requires each of its employees to submit a time sheet at the end of every month that marks the dates on which the employee is absent from work and that designates the kind of leave the employee is using to cover each absence, including annual leave, sick leave used because the employee is ill, and sick leave used because a family member is ill. After a supervisor approves the time sheet, the timekeeper for the employee's unit verifies its accuracy. The Energy Commission then uses the time sheet to post the employee's absences and earned benefits, such as annual leave, into the State's leave accounting system. In order for an employee to amend a previously submitted time sheet, the Energy Commission's policies require that the supervisor who approved the original time sheet authorize the amendment by signing the amended time sheet. Under Government Code section 19572, subdivision (f), state employees have a duty to behave honestly in dealing with their employer as acts of dishonesty constitute grounds for discipline.

When we received information that an employee at the Energy Commission, with the assistance of a personnel specialist, obtained an improper adjustment of her leave balances to inflate the amount of annual leave for which she received payment at the time of her retirement, we initiated an investigation.

Facts and Analysis

Our investigation revealed that the employee and the personnel specialist worked together to enable the employee to be overpaid for annual leave at the time of the employee's retirement. We found that the employee, who worked for the State for many years, at one time accrued paid leave as a combination of sick leave and vacation time, and then she made a switch to accrue paid leave as annual leave. Accordingly, the employee accumulated a bank of unused leave that included sick leave and annual leave.

During a 17-month period before her retirement, spanning May 2008 through September 2009, the employee used several hours of accumulated sick leave and more than 175 hours of accumulated annual leave to cover her absences from work during this period. Then in November 2009, with her planned retirement approaching at the end of the year, the employee had a discussion with the personnel specialist in which it was noted that if the employee had used sick leave rather than annual leave for the 175 hours of absences, she would have a larger accumulation of unused annual leave at retirement, for which she could receive payment.

Following this discussion, the personnel specialist provided the employee with the monthly time sheets that the employee had completed—and that the employee's supervisor had approved—throughout the 17-month period. The employee then altered the time sheets to report that 175 hours of annual leave she had taken during the period was taken as sick leave due to family member illness. The employee initialed each of these alterations. In conjunction with the employee altering the time sheets, the personnel specialist adjusted the employee's leave balances in the State's leave accounting system to restore the 175 hours of leave to her accumulated annual leave and to deduct 175 hours from the employee's accumulated sick leave. The personnel specialist made this adjustment even though doing so meant that the employee far exceeded the amount of sick leave she was entitled to use for family member illness in both 2008 and 2009, which under the collective bargaining agreement with the employee's bargaining unit was capped at eight days per year. Neither the employee nor the personnel specialist presented the amended time sheets to the employee's supervisor for approval. Moreover, neither of the

Our investigation revealed that the employee and the personnel specialist worked together to enable the employee to be overpaid for annual leave at the time of the employee's retirement.

The employee was improperly paid \$8,533 for 175 hours of annual leave that she already had used.

employees reported to her respective supervisor that they were redesignating the previously approved annual leave as sick leave. Because of this augmentation of the employee's unused annual leave balance, which was brought about by the alteration of time sheets and leave balances, the employee was improperly paid \$8,533 for 175 hours of annual leave that she already had used.

When we interviewed the employee and the personnel specialist about the alteration of the employee's time sheets and leave balances, they each provided somewhat different accounts of how the alterations came about. The employee stated that she and the personnel specialist were simply "work friends." She insisted that the personnel specialist was the one who initiated a conversation about the amount of sick leave the employee had used and suggested the time she had reported taking as annual leave could be converted to time taken as sick leave. The employee admitted that she had been aware she could use sick leave for family illnesses but that she had stopped using sick leave for her absences when other employees told her she could not use sick leave for long-term family illnesses. The employee also acknowledged that she did not have documentation to support that she used annual leave to care for family members on the days converted to sick leave. In fact, the employee admitted that when changing her time sheets to report taking sick leave instead of annual leave, the personnel specialist randomly selected dates to change on the employee's time sheets, altered the entries on those dates, and told her where to initial. The employee also stated that the personnel specialist assured her that she would notify the employee's supervisor of the changes.

In contrast, the personnel specialist stated that she and the employee became friends when she started helping the employee plan for her retirement. They discussed similar experiences of caring for ill family members. The personnel specialist claimed the employee had not been aware that she was permitted to use sick leave to care for ill family members and that the employee had asked about converting the annual leave she had used for this purpose to sick leave. The personnel specialist went on to state that the employee told her she had been caring for an ill family member on the days for which she had previously claimed annual leave and, because the personnel specialist believed the employee when she was told this, the personnel specialist changed the entries on the time sheets for the dates the employee indicated she had been taking care of an ill family member. The personnel specialist admitted that she did not follow the Energy Commission's procedures for amending time sheets, and that this was a mistake.

By altering her previously submitted time sheets to report that she used sick leave rather than annual leave for 175 hours of absences, the employee violated her duty of honesty toward her employer

under Government Code section 19572, subdivision (f), and she claimed more sick leave than she was entitled to take under California Code of Regulations, title 2, section 599.745 and the collective bargaining agreement with her employee bargaining unit. Similarly, by helping the employee alter her time sheets and changing the employee's leave balances based on those alterations, the personnel specialist aided this dishonesty, facilitated the employee's using more sick leave than she was entitled to take, and circumvented Energy Commission policies established to ensure that employee leave balances are accounted for properly, as required by California Code of Regulations, title 2, section 599.665.

Moreover, this improper alteration of time sheets and leave balances cost the State an estimated \$6,589 in overpayment to the employee. Had the personnel specialist and the employee not shifted improperly 175 hours from the employee's sick leave balance to her annual leave balance, the employee would not have been paid, upon her retirement, for the 175 hours of unused annual leave added to her leave balance. She instead would have received an additional service credit of 0.09 years for the 175 hours that had been listed as unused sick leave, and this credit would have resulted in her receiving an additional \$9.31 per month in retirement benefits. Multiplied by the number of months she could be expected to receive that payment according to an actuarial table used by CalPERS, this would have resulted in a projected cost to the State of \$1,944. However, because the 175 hours were shifted to the employee's annual leave balance, she received at retirement a lump sum payment of \$8,533 for those hours. Table 2 illustrates the additional cost to the State that resulted from this improper altering of the employee's leave balances.

Table 2
Estimated Loss to the State for the Adjustment of Annual Leave to Sick Leave

| TYPE OF LEAVE OR SERVICE CREDIT | COST TO THE STATE |
|--|-------------------|
| Annual leave lump sum payment related to the adjustment | \$8,533 |
| Less: Estimated total value of sick leave service credit | (1,944) |
| Loss to the State | \$6,589 |

Sources: Bureau of State Audits' analysis, State Controller's Office records, and California Public Employees' Retirement System records.

Recommendations

The Energy Commission should seek to recover the amount it improperly paid the retiring employee for unused annual leave hours. If it is unable to recover any or all of this reimbursement, the Energy Commission should explain and document its reasons for not obtaining recovery of the funds.

In addition, the Energy Commission should do the following:

- Take appropriate disciplinary action against the personnel specialist for making unauthorized changes to the retiring employee's leave balances.
- Monitor the personnel specialist's payroll and leave balance transactions to ensure that she follows Energy Commission policies.
- Provide training to employees responsible for managing leave balance and time-sheet transactions to ensure that they understand the Energy Commission's policies for safeguarding their accuracy and respecting the limitations on the use of sick leave for family member illness as specified by the law and applicable collective bargaining agreements.

Agency Response

The Energy Commission reported in July 2011 that it planned to seek reimbursement from the retired employee for leave hours used inappropriately. The Energy Commission stated that if the retired employee failed to respond to its requests for reimbursement, it would forward this information to the Franchise Tax Board to collect the overpayments from the retired employee's future tax returns. In addition, the Energy Commission stated that it planned to train personnel office staff about differences in bargaining unit language related to leave accounting, retirement, and proper procedures for amending time sheets. Finally, the Energy Commission reported that the personnel specialist retired in June 2011; thus, it was unable to take disciplinary action against her. However, we made Energy Commission staff aware of the personnel specialist's improper activities during our investigation. Therefore, the Energy Commission had ample opportunity to seek corrective or disciplinary action against the personnel specialist before her retirement. Consequently, at a minimum, the Energy Commission should consider placing in the personnel specialist's personnel file a memorandum describing the improper activities identified in our investigation in case she seeks reinstatement to state service sometime in the future.

Chapter 4

DEPARTMENT OF TRANSPORTATION: INEXCUSABLE NEGLECT OF DUTY Case I2008-0731

Results in Brief

During a nearly three-year period, a transportation planning supervisor for the Department of Transportation (Caltrans) neglected his duty to supervise the work of a subordinate transportation planner, resulting in the transportation planner's receiving compensation, including compensation for overtime, for which Caltrans lacked assurance the transportation planner performed adequate work to justify the compensation.

Background

As the department responsible for developing California's transportation system, Caltrans employs transportation planners who develop and analyze policy and data to prepare, administer, and monitor transportation projects. Caltrans also employs senior transportation planners having a duty to supervise the work of subordinate transportation planners assigned to their oversight in order to ensure that they perform the quantity and quality of work expected of them.

Caltrans employees, like other employees of the State, are required to exercise due diligence in performing their official duties. Inexcusable neglect of duty by a state employee is prohibited misconduct that constitutes grounds for discipline under Government Code section 19572, subdivision (d). In a precedential decision, the State Personnel Board has defined "inexcusable neglect of duty" as "an intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty."⁴

Government Code section 19851, subdivision (a), provides that it is the policy of the State to avoid the necessity for overtime work by its employees whenever possible. However, this same subdivision also provides that a state agency may extend an employee's working hours to include overtime work when it is necessary to properly carry on state business during a manpower shortage. In order to ensure that employees do not work overtime unnecessarily,

⁴ Jack Tolchin (1996) SPB Dec. No. 96-04, page 11, citing *Gubser v. Dept. of Employment* (1969) 271 Cal.App.2d 240, 242.

thus obligating the State to pay overtime compensation unnecessarily, the State Administrative Manual declares at section 8540 that as a general practice compensation for overtime, either as a cash payment or time off, should be based on prior written approval signed by a designated supervisor.

In 1994 the State instituted a telecommuting program which, according to Government Code section 14200.1, is intended to “encourage state agencies to adopt policies which encourage telecommuting by state employees.” Under this program, as provided in Government Code section 14201, every state agency must develop and implement a telecommuting plan in work areas where telecommuting by the agency’s employees is identified as being both practical and beneficial to the organization. As part of its telecommuting plan, Caltrans requires its supervisors to enter into telecommuting agreements with every employee that it allows to telecommute, setting forth the terms and conditions that shall be observed by both the telecommuting employee and his or her supervisor in order to ensure that while telecommuting the employee continues to perform work satisfactorily and the telecommuting arrangement does not adversely affect Caltrans’ operations. Caltrans’ telecommuting policy also provides that every telecommuting agreement must be reviewed at least annually to determine whether telecommuting by the employee remains feasible based on the operational needs of the agency, satisfactory employee performance, and the demonstrated ability of the employee to work independently.

When we received information that Caltrans had allowed one of its employees to telecommute full-time from home in conflict with her telecommuting agreement, we asked Caltrans to assist us in conducting an investigation.

Facts and Analysis

The investigation revealed that throughout the three-year period the senior transportation planner was assigned to supervise the transportation planner, he neglected his duty to supervise her performance by allowing her to work overtime hours that were not preapproved or monitored for their amount or necessity, allowing her to telecommute without complying with Caltrans’ policies governing telecommuting, and not making an adequate effort to ensure that the transportation planner was performing work when she was supposed to be working at home.

The senior transportation planner neglected his duty to supervise.

The Senior Transportation Planner Failed to Manage the Transportation Planner's Overtime

The transportation planner was transferred to the supervision of the senior transportation planner in August 2006. At that time, the transportation planner was scheduled to work 20 hours per week as a half-time employee of Caltrans. Because the transportation planner was living in Nevada and was not a resident of California, the senior transportation planner allowed the transportation planner to work almost entirely at her home as a telecommuter, despite not having a telecommuting agreement in place as required by Caltrans' telecommuting policy.

Our review of the transportation planner's time sheets and leave records indicated that she claimed to have worked 712.25 hours of overtime beyond the 20 hours per week she was scheduled to work during the period from August 2006 through July 2007. For this overtime work she was compensated with 739 hours of leave that she could either use during her state employment or be paid for when leaving her state employment. In August 2007 the transportation planner increased her scheduled work hours to become a full-time employee working 40 hours per week over four 10-hour days. During the year that followed, the transportation planner claimed to have worked 301.42 hours of overtime beyond the 40 hours per week that she was scheduled to work. For this overtime she was compensated \$9,934 in cash for months she worked some of the overtime and with 243.38 hours of leave for the remaining overtime.⁵

The senior transportation planner acknowledged that he had not preapproved the overtime the transportation planner claimed to have worked and admitted that he had not realized the amount of overtime she accumulated might be an issue. The senior transportation planner stated that he took the transportation planner's word for the fact that she was working the reported overtime and that the work was necessary.

The senior transportation planner acknowledged that he had not preapproved the overtime the transportation planner claimed.

The Senior Transportation Planner Permitted the Transportation Planner to Telecommute in Violation of Caltrans' Telecommuting Policy

As noted previously, when the transportation planner began working under the supervision of the senior transportation planner in August 2006, he allowed the transportation planner to work almost entirely at her home as a telecommuter despite

⁵ Some of the employee's overtime was compensated at a time-and-a-half rate, and some of it was compensated at a straight time rate depending on whether the employee worked more than 40 hours during a workweek.

The investigation found that the transportation planner was not in her office more than one day in any week and seldom stayed in the office for the required 10 hours per the telecommuting agreement.

her not having a telecommuting agreement in place as required by Caltrans' telecommuting policy. A year later, in August 2007, when the transportation planner increased her scheduled work hours to become a full-time employee working four 10-hour days per week, the senior transportation planner continued to allow the transportation planner to telecommute, but entered into a telecommuting agreement with her. The telecommuting agreement, extending for a year through July 2008, provided that the transportation planner was to work two of the 10-hour days at her Caltrans office and the other two days at home as a telecommuter. However, the investigation found that the transportation planner was not in her office more than one day in any week and seldom stayed in the office for the required 10 hours. Witnesses confirmed that despite the terms of the telecommuting agreement, the transportation planner was rarely in the office. When asked during the investigation about the transportation planner's general absence from the office, the senior transportation planner admitted that he did not require the transportation planner to be present in the office on the days she was scheduled to be in the office unless she needed to be present to attend a meeting.

Moreover, when the telecommuting agreement expired in July 2008, the senior transportation planner did not conduct a review as required by Caltrans' telecommuting policy to determine whether telecommuting by the employee remained feasible based on the operational needs of the agency, satisfactory employee performance, and the demonstrated ability of the employee to work independently. He also did not, as required by Caltrans' telecommuting policy, engage in the process of renewing the agreement with the transportation planner. He instead allowed the transportation planner to continue telecommuting, virtually every day, without a renewed agreement until February 2009 when an acting division chief terminated the transportation planner's telecommuting privilege.

The Senior Transportation Planner Did Not Ensure That the Transportation Planner Performed Work When She Was Supposed to Be Working at Home

While allowing the transportation planner to perform her assigned work almost entirely at home from 2006 to 2009, and permitting her to claim substantial amounts of overtime without pre-approval from August 2006 through July 2008, the senior transportation planner failed to require the transportation planner to demonstrate that she was performing an acceptable amount of work during this two-year period.

When asked, the senior transportation planner could only provide work items generated by the transportation planner for four of the 24 months from August 2006 through July 2008. In September 2008, the acting division chief, having concerns about the amount of work the transportation planner was producing as a telecommuter, insisted that the senior transportation planner require the transportation planner to submit weekly reports describing the work she had performed during the week. However, the senior transportation planner only collected 11 weekly reports during the 20 weeks from September 22, 2008, to February 5, 2009, when the telecommuting was terminated. The senior transportation planner admitted that he generally just took the transportation planner's word for having been busy working on things until she resigned from state service in June 2009.

Because the senior transportation planner neglected his duty to supervise the work of the transportation planner, Caltrans obtained no assurance that the State received adequate work for the salary that it paid her during the period we examined.

Recommendations

To address the improper governmental activity identified in this investigation and to prevent similar improper activities from occurring in the future, Caltrans should do the following:

- Take appropriate corrective action against the senior transportation planner for neglecting his duty to supervise the transportation planner.
- Institute training to ensure that all Caltrans employees are aware of the requirement that all overtime work be preapproved.
- Establish controls to ensure that Caltrans' telecommuting agreements are reviewed and renewed annually in order for an employee to be allowed to continue telecommuting.
- Revise Caltrans' telecommuting policy to require that employees participating in the telecommuting program provide regular documentation of the work they perform away from the office.

Agency Response

In June 2011 Caltrans reported that it issued a corrective memorandum to the senior transportation planner for neglecting to supervise his employee properly. Caltrans also stated that it placed a copy of the corrective memorandum in the senior transportation

planner's personnel file, but that it would be removed from the file after one year, provided the senior transportation planner does not engage in similar actions or otherwise fail in his duties.

In addition, Caltrans reported that it planned to update and/or reissue its overtime policy before September 2011 and would require its supervisors and managers to review the policy with all of their employees. Caltrans stated that these actions would ensure that its employees are aware of the requirement that overtime must be authorized in advance, except in emergencies, and that employees provide specific evidence of overtime, preapproval of overtime hours worked, the reason for overtime, and the products resulting from overtime.

Further, Caltrans stated that in February 2011 it revised its directive, which defines the responsibilities of managers and supervisors to ensure that telecommuting agreements are reviewed annually. It also stated that its telework unit would begin to distribute notifications to supervisors about the need to review telecommuting agreements nearing their expiration.

Finally, Caltrans reported that it had revised its *Telework Program Policy and Procedures* guidelines in March 2011. According to Caltrans, these guidelines require managers and supervisors to provide specific, measurable, and attainable performance expectations for their telecommuting employees. The agreements must define in writing detailed work tasks, corresponding deadlines, and expected work performance. The policy also requires managers and supervisors to review their expectations with their telecommuting employees at least quarterly.

Chapter 5

DEPARTMENT OF FISH AND GAME: MISUSE OF A STATE VEHICLE, IMPROPER TRAVEL REIMBURSEMENTS Case I2009-0601

Results in Brief

A manager at the Department of Fish and Game (Fish and Game) improperly directed a Fish and Game employee under his supervision to use a state vehicle for commuting between her home and work locations at a cost to the State of \$8,282 during a nine-month period. In addition, the employee improperly requested, and the manager improperly approved, reimbursement for \$595 in lodging and meal expenses incurred by the employee near her headquarters.

Background

Fish and Game performs its work through a management structure that divides the State into seven geographical regions. Within each of these regions, Fish and Game employs administrative staff, including personnel specialists and managers, to support the work of the department's employees.

Like other state employees, Fish and Game employees are subject to state laws governing the proper use of state-owned vehicles and the proper reimbursement of travel-related expenses. Specifically, Government Code section 19993.1 prohibits the use of a state vehicle for any purpose other than to conduct state business. California Code of Regulations, title 2, section 599.615 requires each state agency to determine the necessity for authorizing state-paid travel and for determining the method of travel. In deciding whether state-paid travel is necessary, additional regulations addressing state vehicle use and reimbursement for the distance driven in a private vehicle must be considered before determining if a business need exists. For example, California Code of Regulations, title 2, section 599.802 generally prohibits the use of a state vehicle for commuting to or from an employee's home, and California Code of Regulations, title 2, section 599.626, subdivision (d), prohibits reimbursement for the cost of an employee's commute to work in a private vehicle. In the event improper use of a state vehicle occurs, California Code of Regulations, title 2, section 599.803 declares that an employee is liable to the State for the actual cost of the misuse unless the misuse was directed by the employee's superior, in which case the superior is liable for the cost of the misuse.

In this case, the manager and employee also were subject to a collective bargaining unit agreement entered into between the State and the employee's bargaining unit (Unit 1). The agreement provides additional guidance regarding whether state-paid travel is appropriate. Specifically, the agreement states that when an employee is required to report to an alternative work location, the employee may be reimbursed only for the distance driven in excess of the employee's normal commute.

In addition, Fish and Game employees are subject to other travel-related regulations and requirements regarding management review of travel expense claims. Specifically, California Code of Regulations, title 2, section 599.616, subdivision (a)(1), prohibits employee reimbursement for per diem expenses, defined by subdivision (c)(1) as including meal and lodging expenses, incurred within 25 miles of an employee's headquarters. Finally, California Code of Regulations, title 2, section 599.638, subdivision (a), states that it is the responsibility of the officer approving a travel expense claim to ascertain the necessity and reasonableness of the travel expenses for which the employee is seeking reimbursement.

When we received information that an employee at Fish and Game was using a state vehicle to commute between her home and work locations, we initiated an investigation.

Facts and Analysis

Before February 2008 the employee occupied an administrative support position in San Diego, providing personnel services at a Fish and Game office in San Diego. However, in February 2008, a similar position at the Fish and Game office in Los Alamitos became vacant. To facilitate the Los Alamitos office continuing to provide personnel services despite the vacancy, the employee, while continuing to be headquartered at the San Diego office, provided personnel services at the Los Alamitos office two days per week. The employee did not work in both offices on the same day, but simply reported for work at the San Diego office and the Los Alamitos office on different days. The Los Alamitos office was further from the employee's home than the San Diego office, adding approximately 64 miles per day to her round trip commute.

On July 1, 2008, the employee transferred her headquarters from the San Diego office to the Los Alamitos office. When the employee transferred her headquarters, her manager at the Los Alamitos office obtained a state vehicle for the employee to use and directed her to use the vehicle to commute between her

home and the two offices where she worked. Just as she had done before transferring her headquarters, the employee reported for work at the San Diego office and the Los Alamitos office on different days and did not work at both offices on the same day. Aside from using the state vehicle to commute between her home and her two work locations, the employee did not use the vehicle except to travel to occasional meetings at another office in the same region as the Los Alamitos office. Therefore, the vehicle was used almost exclusively for the employee's commute between her home and work.

The employee continued to use the vehicle for nine months, until March 2009. In December 2008 Fish and Game filled the vacancy in the San Diego office that was created by the employee transferring to Los Alamitos, thus eliminating the need for the employee to report to the San Diego office. Nonetheless, the employee continued to use the state vehicle to commute between her home and the Los Alamitos office. The employee logged nearly 20,000 miles before she stopped using the state vehicle for her commute in March 2009.

The Manager Improperly Directed the Employee to Use a State Vehicle for Her Commute

As previously noted, California Code of Regulations, title 2, section 599.802 prohibits the use of a state vehicle for commuting to or from an employee's home. As such, the manager acted improperly when he directed the employee to use a state vehicle to commute to her two work locations.

When we asked the manager about obtaining a state vehicle for the employee to use for her commute to work, the manager stated that he obtained the state vehicle for the employee because she was working at two locations—the Los Alamitos office and the San Diego office. However, the mere fact that the employee was working at two offices on different days did not justify giving her a state car to commute to these two offices. As just stated, she was not entitled to use a state car to commute between her home and her headquarters in Los Alamitos because doing so constituted using a state car for her normal commute to work. Further, subsequent to July 1, 2008, she was not entitled to use a state car to commute between her home and her alternate work location in San Diego, as the collective bargaining agreement governing her compensation and benefits states that when an employee is required to report to an alternative work location, the employee is not entitled to have the State pay for her transportation

The vehicle was used almost exclusively for the employee's commute between her home and work.

By directing the employee to use a state vehicle for her commute to work, the manager authorized the misuse of a state resource at a cost of approximately \$8,282.

to the alternate work location if the commuting distance between the employee's home and the alternate work location is less than the employee's normal commute.

We also asked the manager about the employee's continued use of a state vehicle to commute between her home and Los Alamitos for an additional three months after she stopped working at the San Diego office. To this the manager replied that failing to require the employee to surrender the vehicle once she no longer was assisting the San Diego office was an oversight on his part.

By directing the employee to use a state vehicle for her commute to work, the manager authorized the misuse of a state resource at a cost of approximately \$8,282 based on the number of miles the employee drove the vehicle for commuting during the nine months that the vehicle was assigned to her. Moreover, according to California Code of Regulations, title 2, section 599.803, because the manager directed the employee to misuse the vehicle in this manner, he is liable to the State for the cost of the misuse.

The Employee Improperly Claimed and the Manager Improperly Approved the Employee's Lodging and Meal Expenses

In addition to commuting in a state vehicle at the State's expense, the employee submitted travel expense claims seeking reimbursement for \$595 in lodging and meal expenses incurred within two miles of her headquarters location in Los Alamitos. As provided in California Code of Regulations, title 2, section 599.616, subdivision (a)(1), a state employee is prohibited from receiving reimbursement from the State for meal and lodging expenses within 25 miles of the employee's headquarters. Additionally, the manager improperly approved the reimbursement despite this regulatory prohibition and the duty imposed upon managers by California Code of Regulations, title 2, section 599.638 to ascertain the necessity and reasonableness of travel-related expenses for which reimbursement is being requested by an employee. When asked about the reimbursements during the investigation, the employee asserted that all of the expenses she claimed were incurred as a direct result of conducting state business. The manager, however, acknowledged that these expenses should not have been reimbursed and stated that approving reimbursement for the expenses was an oversight on his part.

Recommendations

To recover the costs of the improper use of the state vehicle and improper travel reimbursements, Fish and Game should take the following actions:

- Follow the guidelines established in state regulations and initiate repayment from the manager for the costs associated with the misuse of the state vehicle.
- Seek recovery of the \$595 in lodging and meal reimbursements that were paid to the employee.
- Take appropriate disciplinary action against the manager for directing the misuse of a state vehicle.
- Provide training to the manager and the employee about state rules for the payment of employee travel expenses.

Agency Response

Fish and Game reported in June 2011 that it planned to prepare a corrective counseling memorandum for the manager detailing the improper direction he provided to the employee. In addition, it stated that it would provide him and other managers in the region with training detailing the proper rules and procedures for travel reimbursements and use.

In response to our recommendation that it provide training to the employee regarding state rules about the payment of employee travel expenses, Fish and Game reported that it would provide training to all senior staff in the manager's region. However, Fish and Game did not indicate that it intended to provide any training to the employee.

Finally, in response to our recommendations that it seek recovery from the employee and the manager for the improper travel reimbursements we identified, Fish and Game reported that it would follow the appropriate process to collect the improper reimbursements made to the employee and that it would follow guidelines established in state regulations and allow the manager to respond to our findings.

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Chapter 6

DEPARTMENT OF INDUSTRIAL RELATIONS: FAILURE TO MONITOR ADEQUATELY EMPLOYEES' TIME REPORTING Case I2008-0902

Results in Brief

An official and a supervisor at a Department of Industrial Relations (Industrial Relations) district office failed to monitor adequately the time reporting of four subordinate employees from July 2007 through June 2009.

Background

The mission of Industrial Relations is to improve working conditions and advance opportunities for California workers. District offices in its division of workers' compensation provide forums throughout the State in which injured workers' claims for compensation are heard by administrative law judges. The official was responsible for overseeing the district office, approving employees' time sheets and requests for alternate work schedules, and providing guidance to staff to ensure that time-keeping practices comply with legal requirements and Industrial Relations' policies. The supervisor monitored the attendance of clerical staff.

Like other state agencies, Industrial Relations must keep complete and accurate time and attendance records for its employees, as required by California Code of Regulations, title 2, section 599.665. In addition, Industrial Relations requires its supervisors to follow policies addressing proper authorization and reporting of overtime, absences, and alternate work schedule requests.

When we received an allegation that the district office was not keeping accurate time sheets, we asked Industrial Relations to assist us in conducting an investigation.

Facts and Analysis

The investigation determined that from July 2007 through June 2009, an official and a supervisor at a district office failed to ensure the accuracy of its clerical staffs' time sheets. Specifically, the official and the supervisor allowed the employees to maintain informal timekeeping records to track their overtime hours. The employees then could use the informal leave they accumulated by working the overtime to take time off without charging that time

against their official leave balances. In addition, without obtaining proper authorization for an alternate work schedule, the official and the supervisor allowed two of the employees, for a period of up to six months, to work overtime hours regularly throughout the week and then use the accrued time to take every other Friday off.

As a result of the informal timekeeping and the lack of oversight by the official and the supervisor, the employees' time sheets generally do not reflect the actual hours they worked. The official never verified the accuracy of the employees' time sheets and failed to require a satisfactory system of recordkeeping to provide assurance that the employees were working the hours reported on their time sheets. Although the supervisor tracked absences on a monthly calendar, she did not independently monitor or track the informal time. Instead, she relied on the employees to inform her of the days they were taking as informal time off without ever verifying that the employees had accrued sufficient overtime hours. Additionally, neither the supervisor nor the employees retained records of the actual hours worked by the employees. The supervisor's monthly calendar and the employees' self-monitored informal tracking logs generally were purged at the end of each month.

By neglecting their responsibility to ensure that the employees' timekeeping was accurate, the official and the supervisor violated state regulations and Industrial Relations' policies. Furthermore, as a result of the official's failure to ensure the accuracy of his employees' time reporting, Industrial Relations could not rely on the employees' time sheets to determine their actual attendance and thus could not hold the employees accountable for any inaccurate time reporting.

Following the investigation, Industrial Relations formally disciplined the official and the supervisor.

Following the investigation, Industrial Relations formally disciplined the official and the supervisor for failing to ensure that timekeeping practices were consistent with the department's internal policies and state regulations. Industrial Relations also removed attendance monitoring responsibilities from the supervisor,⁶ and in March 2010 provided the official and supervisor with time-reporting and record-keeping training. Further, Industrial Relations prohibited all informal timekeeping practices and required daily tracking of the actual start and end times of its rank-and-file employees' work shifts.

⁶ In 2003 Industrial Relations had previously reprimanded the supervisor for engaging in similar inappropriate timekeeping practices.

Recommendation

To ensure that employees at this district office follow time-reporting requirements in accordance with applicable state law and department policies, Industrial Relations should continue to monitor the time-reporting practices of the official and his staff.

Agency Response

In June 2011 Industrial Relations reported that it provided further time-reporting and record-keeping training to all of its managers and supervisors. In addition, a regional manager issued a memorandum about attendance and reporting requirements to some district offices. Industrial Relations also stated that it planned to distribute a memorandum on attendance requirements to its remaining district locations throughout the State. Finally, Industrial Relations stated that in August 2010 and March 2011, it provided training to all attendance reporting officers about the proper documentation of all hours worked and leave taken.

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Chapter 7

STATE CONTROLLER'S OFFICE: FAILURE TO REPORT ABSENCES, FAILURE TO MONITOR ADEQUATELY AN EMPLOYEE'S TIME REPORTING

Case I2009-1476

Results in Brief

An employee with the State Controller's Office (Controller's Office) failed to report an estimated 322 hours of absences over an 18-month period. Because her supervisor, a high-level official, failed to monitor adequately the employee's time reporting, the Controller's Office did not charge the employee's leave balance for the absences and consequently paid her \$6,591 for hours she did not work.

Background

The Controller's Office pays the State's bills, administers the State's payroll system, and prepares reports on the State's financial condition. In order to accomplish these tasks, the Controller's Office employs administrative staff to support its daily operations.

Like other state employees, employees of the Controller's Office are subject to state regulations governing appropriate timekeeping. Specifically, California Code of Regulations, title 2, section 599.665 mandates that state agencies are responsible for keeping complete and accurate time and attendance records for their employees. To comply with this mandate, the Controller's Office requires its employees to submit monthly time sheets documenting their absences and any overtime worked.

Supplementing the regulation cited above, the collective bargaining agreement between the State and the employee's bargaining unit (Unit 4) specifically prohibits employees from counting meal periods as part of their total hours worked. The agreement also prohibits the accumulation of breaks and an employee working during a break to "make up" for other time not spent working.

When we received an allegation that a Controller's Office employee was not working the hours she reported on her time sheets, we initiated an investigation.

Facts and Analysis

Our investigation revealed that over an 18-month period from October 2008 through March 2010, a Controller's Office employee did not report her absences from work, including her late arrivals and early departures, in an accurate manner. The supervisor overseeing the employee allowed her to track her time informally and did not provide the oversight necessary to ensure that the hours reported by the employee matched the hours she actually worked.

The Employee Failed to Report Absences From Work

During the period we investigated, the employee called coworkers on mornings when she expected to arrive to work late or when she needed to take an unexpected day off. Although the coworkers were not the employee's superiors, the employee called as a courtesy to the coworkers, as her time away from the office sometimes affected their workloads. The calls were a regular occurrence each month. For example, the employee called her coworkers 11 days in October 2009, nine days in November 2009, and eight days in December 2009 to report that she expected to be at least 90 minutes late. After receiving the calls, the coworkers sent e-mails to the official who supervised the employee, notifying him of the employee's late arrivals or full-day absences from the office.

When we compared the e-mails to the employee's time sheets, we repeatedly identified instances in which the employee did not charge leave. Specifically, we estimated that the employee missed full days of work but did not charge leave for a total of 61 hours.⁷ In addition, the employee failed to charge an estimated 149 hours when she arrived late or left early.

During our investigation, we asked the supervisor about the employee's absences and we learned that throughout the 18-month period we reviewed, the supervisor allowed the employee to track her time informally. This practice gave the employee the flexibility to "make up" for her time away from work by working through her breaks, including her lunch breaks, and by working on her regularly scheduled days off that she received as part of having an alternate work schedule. The supervisor also indicated that due to the responsibilities of his job, he had to be out of the office frequently attending to various matters, and therefore he could not physically observe when the employee arrived at work or whether she made up her time except when the employee was working at a time when the supervisor was in the office.

We estimated that the employee missed full days of work but did not charge leave for a total of 61 hours and failed to charge an estimated 149 hours when she arrived late or left early.

⁷ The employee missed work on five nine-hour workdays and two eight-hour workdays.

The employee confirmed that she tracked informally the time she took off from work and that she used her breaks, meal periods, and regularly scheduled days off to make up for her absences from work. However, she did not document her informal timekeeping. The employee indicated that she would come in early to make up time, but that she did not make up time at the end of the day because the last bus to her home left her work location at 5:30 p.m. She also said that she did not make up time by working on weekends. The employee stated that she did not take any breaks during the workday and that, during the most recent three-month period before our interview with her, she had not taken any lunch breaks. However, witnesses interviewed during the investigation indicated that the employee regularly took lunch breaks. Regardless, the employee's bargaining unit agreement required her to take an uncompensated meal period of at least 30 minutes per day.

Because of the employee's alternate work schedule and the required lunch break, she was required to work a 9.5-hour workday on most days. During our investigation, we asked both the supervisor and the employee for the employee's work hours Monday through Thursday during the 18-month period. We received a response of 7:30 a.m. to 4:30 p.m. from both the supervisor and the employee. As that schedule did not allow for the employee's lunch break, and witnesses told us that she routinely took a lunch break, the employee regularly worked 30 minutes less than required of her each day. As a result, the employee was paid for an estimated additional 112 hours she did not work.

In total, the employee's time sheets failed to account for 322 hours of absences from October 2008 through March 2010. As a result, the Controller's Office paid the employee \$6,591 for hours she did not work. Table 3 summarizes our estimate of the employee's absences and the associated cost to the State.

Table 3
Cost of the Employee's Unreported Absences From October 2008 Through March 2010

| TYPE OF ABSENCE | ESTIMATED HOURS | ESTIMATED COST |
|--|-----------------|----------------|
| Full-day absences | 61 | \$1,259 |
| Late arrivals or early departures | 149 | 3,048 |
| Early departures violating lunch break rules | 112 | 2,284 |
| Totals | 322 | \$6,591 |

Sources: Bureau of State Audits' analysis of the employee's time sheets and attendance records.

Our analysis took into account the regularly scheduled days off worked by the employee to make up for absences during the week. It also considered, among other things, the number of hours available to her to make up for hours given her reliance on the bus system, her work schedule that did not include any time for a lunch break, and the number of days the employee called her coworkers to report a late arrival or an unexpected full-day absence.

The Supervisor Failed to Monitor the Employee's Attendance Adequately

The supervisor failed to ensure that the employee accounted for all of her absences. As part of his regular duties, the supervisor was obligated to provide the level of supervision necessary to prevent the State from paying an employee for hours he or she did not work. Considering his knowledge of the employee's frequent absences from the office, the supervisor should have monitored the employee's time more closely and required her to keep accurate time sheets as opposed to allowing her to track the hours she worked informally.

The employee retired from state service in August 2010, during our investigation.

Recommendations

To address the employee's improper time reporting and the supervisor's failure to monitor her time adequately, the Controller's Office should do the following:

- Seek reimbursement from the employee for the wages she did not earn.
- Take appropriate disciplinary action against the supervisor.
- Provide training to the supervisor on proper time-reporting and supervisory requirements.

Agency Response

In June 2011 the Controller's Office reported that when it hired the employee she understood that her hours of work would be from 7:30 a.m. to 5 p.m., with one-half hour for lunch and every other Friday off. It also stated that the employee was informed she could make up partial day absences during the same month in which an absence occurred or the month immediately following. The Controller's Office further stated that it expected any time not made

up to be charged to the employee's leave hours. However, allowing the employee, on a regular basis, to make up time missed in a subsequent month fails to ensure complete, accurate time reporting each month. Coupled with the official's admission that he did not observe when the employee worked or made up the time unless he was in the office, the employee should not have been given the latitude to make up missed work hours in a subsequent month.

In addition, the Controller's Office stated that since the official had no reason to suspect that the employee failed to make up hours in the manner described previously, he approved her time sheets. However, our investigation found that the official received about 160 e-mails regarding the employee's absences, late arrivals, and early departures during the 18-month period we reviewed. This volume of e-mails certainly put the official on notice that there were issues regarding the employee's attendance and that properly supervising her attendance required closer monitoring than just accepting whatever she reported on her time sheets as accurate.

The Controller's Office also reported that before the employee's retirement in August 2010, it subtracted approximately 21 days from her leave balance, equaling \$3,613 in gross payments, and applied this leave to the employee's unauthorized time off. In addition, it established an accounts receivable for the balance of the unauthorized leave, and it notified the employee of the remaining \$2,978 owed to the State. In August 2011 the Controller's Office told us that the employee had repaid the amount owed.

Further, the Controller's Office informed us that management representatives counseled the official because it acknowledged that the official was responsible for monitoring the employee's time and that he provided insufficient oversight. As a result, its chief of Human Resources provided the official with additional training on proper time-reporting and related supervisory requirements. The Controller's Office also reported that because the official's busy schedule did not allow him to monitor adequately his support staff's time, his staff was placed under the direct supervision of an office manager effective August 2010.

Finally, the Controller's Office reported that it has developed training on proper time-reporting and related supervisory requirements. The Controller's Office stated that it anticipated all of its supervisors will complete the training in September 2011.

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Chapter 8

UPDATE OF PREVIOUSLY REPORTED ISSUES

Chapter Summary

The California Whistleblower Protection Act requires an employing agency or appropriate appointing authority for the State to report to the Bureau of State Audits (bureau) any corrective action or disciplinary action that it takes in response to an investigative report. The agency or authority must submit information regarding its actions implemented in response to recommendations made by the bureau no later than 60 days after the bureau notifies it about the improper governmental activities. If the agency or authority has not implemented the recommendations within this time, it must submit monthly reports to the bureau until it completes that implementation. This chapter summarizes actions that agencies and authorities implemented in response to seven previous investigations.

Department of Corrections and Rehabilitation Cases I2004-0649, I2004-0681, and I2004-0789

On September 21, 2005, we reported that the Department of Corrections and Rehabilitation (Corrections) had failed to track the total number of hours available in a release time bank (time bank) composed of leave hours donated by members of the California Correctional Peace Officers Association (union) for use by union representatives performing union business. Consequently, Corrections released employees to work on union-related activities without knowing whether the bank had sufficient balances to cover these releases. In addition, the reports that Corrections used to track time-bank charges did not capture 10,980 hours that three union representatives used from May 2003 through April 2005. Corrections appears to have paid these hours through regular payroll at a cost to the State of \$395,256. Following our report, Corrections did not attempt to obtain reimbursement for additional hours the three representatives spent conducting union activities in May 2005 and June 2005, resulting in an added cost to the State of \$39,151. In total, Corrections inappropriately paid these representatives \$434,407 from May 2003 through June 2005.

Corrections subsequently reported that it had been unable to reconstruct an accurate leave history for the three union representatives before July 2005. Thus, it decided it would not seek

recovery of the \$434,407 it improperly paid the representatives before this date. Instead, it directed its efforts toward the period beginning in July 2005, billing the union for \$1,078,193 for unreimbursed union work the three employees performed from July 2005 through June 2010.⁸ In June 2010 Corrections notified us that it had initiated litigation against the union to recover the unreimbursed costs for all Corrections employees on full-time union leave.

Updated Information

Corrections has provided monthly updates regarding its effort to obtain reimbursement for the cost of the union work hours of the three employees discussed in our report. As Table 4 shows, Corrections' most recent update shows that it has failed to collect \$1,654,664 for union activities conducted by the three representatives from May 2003 through March 2011.

Table 4
Unreimbursed Union Leave Costs From May 2003 Through June 2010 for Three Union Members

| TIME PERIOD | COST |
|--|--------------------|
| May 2003 through June 2005: Union work hours for which the Department of Corrections and Rehabilitation (Corrections) failed to seek reimbursement | \$434,407 |
| July 2005 through June 2010: Union work hours billed but not reimbursed to the State | 1,078,193 |
| July 2010 through March 2011: Union work hours billed but not reimbursed to the State | 142,064 |
| Total | \$1,654,664 |

Sources: Bureau of State Audits' analysis, State Controller's Office records, and invoices provided by Corrections.

Note: The cost of union work hours for which Corrections failed to seek reimbursement consists of the three union members' salaries. The cost of union work hours billed but not reimbursed includes the union members' salaries plus benefits as prescribed in the collective bargaining agreement with this union. The total unpaid cost of union-related activities for all Corrections' employees on full-time union leave—including the three union representatives in our report—for July 2005 through March 2011 was \$4,909,931.

⁸ In January 2008 one of the three union representatives returned to his full-time assignment at a correctional institution, thus ending his full-time union leave.

Department of Fish and Game, Office of Spill Prevention and Response Case I2006-1125

On April 28, 2009, we reported that Official A, formerly a high-level official with the Office of Spill Prevention and Response (spill office) of the Department of Fish and Game (Fish and Game), had received reimbursements to which she was not entitled for commute expenses between her official headquarters in Sacramento and her Southern California residence. Despite lacking the necessary authority, former officials for the spill office permitted Official A to identify her home as her headquarters and to claim expenses when traveling to Sacramento. Fish and Game allowed her to use state vehicles or state-funded flights for commutes between her Southern California home and her Sacramento headquarters, and to claim lodging and per diem expenses when she stayed in Sacramento. In addition, Fish and Game violated state travel regulations by reimbursing Official A for lodging and meal expenses incurred near her Sacramento headquarters and her residence. In total, Fish and Game improperly reimbursed Official A \$71,747 from October 2003 through March 2008.

At the time of our report, we recommended that Fish and Game either seek to recover the amount it had reimbursed Official A for her improper travel expenses or to explain and document its reasons for not seeking recovery. In addition, we made several recommendations for Fish and Game to improve its accounting office's review process for travel claims.

Fish and Game later reported that it would not seek to recover reimbursement from Official A for her improper commute and travel expenses because former Fish and Game officials had informed her that she would receive such reimbursements and had honored these "agreements" throughout her employment with the spill office. In addition, Fish and Game reported that it had since directed staff to implement more effective internal controls to ensure that any assignment of an employee's home as his or her headquarters is based on established criteria and approved by a Fish and Game deputy director or higher-level official. Fish and Game also reported that its accounting staff must ensure that the addresses of employees' residences and headquarters are identified when staff process travel claims. It further stated that when an employee's residence and headquarters are the same, the staff must ensure that the employee has included a form with the travel claim that explains the criteria for the headquarters designation and demonstrates that the designation has been approved by executive management. However, we expressed serious concerns about the lack of oversight in Fish and Game's process for determining the headquarters designations for its employees. Finally, Fish and Game reported that by December 2010 it would provide us with a list

In total, Fish and Game improperly reimbursed Official A \$71,747 from October 2003 through March 2008 for commute expenses.

of employees having a headquarters location that differs from the place where their position is located, including employees who identify their residences as their headquarters.

Updated Information

In July 2011 Fish and Game provided us with the list of employees whose headquarters differ from those designated for their established positions. Operating from this list, we now have requested additional information from Fish and Game, including a justification for why each of the employees on the list has a headquarters location that differs from the established location of the employee's position.

A Former University Official's Improper Expense Reimbursements

- \$39,135 in unnecessary travel costs that appeared to offer the university few tangible benefits and that were not in the State's best interest.
- \$26,455 in reimbursements that exceeded the amounts allowed for the official to organize, host, and attend business meals.
- \$43,288 in commute expenses that violated university policies.
- \$17,053 for personal expenses that the official incurred while purportedly conducting university business from his home in Northern California.
- \$24,676 related to monthly payments for long-term living expenses the employee received for 33 months but for which he did not qualify.
- \$1,834 in duplicate reimbursements and overpayments made to the official.

Source: Bureau of State Audits' analysis of the former university official's expenses.

California State University, Office of the Chancellor Case I2007-1158

On December 2, 2009, we reported that the Chancellor's Office for the California State University (university) system had improperly reimbursed a former official⁹ \$152,441 from July 2005 through July 2008 for unnecessary expenses that did not reflect the best interests of the university or the State. The text box explains these improper reimbursements in detail. The former official's supervisor and the university failed to review the official's reimbursement claims sufficiently or to follow long-established policies and procedures designed to ensure the accuracy and adequate control of expenses. In addition, the lack of clarity in university policies regarding business meals contributed to the waste of public funds, as did the university's failure to place limits on lodging expenses.

We recommended that the university take several actions, including the following:

- Recover from the official the duplicate payments and overpayments.
- Reexamine its review process for preapproving and reimbursing high-level university employees for their expenses.

⁹ The official left the university in July 2008.

- Terminate informal agreements that allow university employees to work at locations other than their headquarters.
- Establish maximum limits with regard to business meals and specify when these policies apply.
- Establish maximum limits for lodging costs and create controls that allow for exceptions to such limits only in specific circumstances.

At the time of our report, the university agreed that it would seek repayment from the official for any duplicate reimbursements or overpayments and that it would reexamine its reimbursement procedures for high-level employees. However, it did not agree that it would terminate informal agreements regarding work locations, stating that it needed flexibility to recruit and retain highly skilled employees. The university failed to indicate whether it would specify in its policies monetary limits for business meals and clarify when specific policies apply. Finally, the university stated that establishing defined limits for reimbursing the costs of lodging would be “impractical.” The university stated that it had instead asked its employees who travel frequently to “pay careful attention to lodging choices,” and requested that its managers “scrutinize travel claims for wasteful expenditures.”

Subsequently, the university collected from the official \$1,903—consisting of \$1,834 we identified and \$69 the university identified later—in duplicate payments and overpayments. In addition, the university reported that it sent a memorandum to its vice chancellors informing them that international travel by any Chancellor’s Office staff member must be preapproved by the chancellor. However, the university took no specific actions related to our other recommendations. Thus, the university did not terminate its informal agreements that allowed employees to work at locations other than their headquarters, it did not clarify its reimbursement policies for business meals, and it did not establish limits on lodging costs. In fact, university administrators informed us that the university does not need to take further action on these recommendations. In November 2010 the university reported that it needed to take no further corrective action.

Updated Information

In August 2011 the university reported that to strengthen its policies relating to food and beverage reimbursements, it had implemented a policy of only reimbursing employees based on the actual cost of meals and setting a maximum limit on meal reimbursements for any 24-hour period. In addition, it reported that under the policy

Subsequently, the university collected from the official \$1,903—consisting of \$1,834 we identified and \$69 the university identified later—in duplicate payments and overpayments.

the university will reimburse employees only for “expenses that are ordinary, reasonable, not extravagant, and necessary to conduct official university business.”

With regard to our recommendation that the university terminate informal agreements that allow its employees to work at locations other than their headquarters, the university reported that it had reviewed all of the alternate work location agreements that it currently has with its employees. The university stated that when it found no compelling rationale for an agreement, it gave the involved employee the option either to relocate his or her work location to the employee’s headquarters or to terminate his or her employment. The university noted that few of its employees chose to work at remote locations.

Finally, the university reiterated its assertion that lodging costs at the numerous locations where it does business make it difficult to establish a reasonable limit. It also stated that its supervisors carefully monitor expenditures to ensure the “prudent spending of resources.” Nevertheless, the university’s failure to place limits on its employees’ lodging costs, even though these costs can be excessive, will permit employees to continue an activity we identified as being wasteful and, therefore, not in the State’s best interest.

Department of Corrections and Rehabilitation Case I2007-0887

On January 18, 2011, we reported that a Corrections employee improperly reported 16 hours of overtime for responding to building alarm activations that never occurred. Because Corrections did not have adequate controls to detect the improper reporting, it compensated the employee \$446 in overtime pay she did not earn. After discovering the employee’s misconduct, it failed to take appropriate actions to establish controls, discipline the employee, or collect the improper pay. We recommended that Corrections take the following actions:

- Take appropriate disciplinary actions against the employee and pursue collection efforts for the compensation she did not earn.
- Obtain monthly logs from the alarm company and verify that overtime reported for responding to building alarm activations is consistent with the logs.

At the time of our report, Corrections stated that, based on its review of the findings, the employee did not engage in any misconduct. Thus, it took no action with regard to either of our recommendations.

Updated Information

Corrections has declined to take any action to implement our recommendations.

California Conservation Corps Case I2008-1021

On January 18, 2011, we reported that the California Conservation Corps (Conservation Corps) evaded competitive bidding requirements by splitting contracts to purchase uniforms costing \$64,666 from a single vendor. In addition, the Conservation Corps did not properly obtain price quotations when approving two other uniform purchases totaling \$19,812 from the same vendor. We recommended that the Conservation Corps take the following actions:

- Take appropriate corrective action against the employees responsible for the improper purchases.
- Implement controls to ensure that staff does not split contracts to evade competitive bidding requirements and that staff document the appropriate number of price quotations before purchasing goods.
- Provide adequate training to staff responsible for initiating and approving purchases.
- Correct inconsistent accounting practices and require staff to associate expenditures directly with the purchase orders that authorized the expenditures.

At the time of our report, the Conservation Corps stated that it had issued a corrective action memorandum to each employee responsible for the improper purchases. In addition, the Conservation Corps told us that it had randomly conducted reviews of purchase orders from fiscal years 2007–08 through 2010–11, but it did not keep documentation of the results of these reviews. The Conservation Corps also stated that it had provided procurement training to its staff in 2007, 2008, and 2009.

Updated Information

The Conservations Corps informed us that it created a procedure in February 2011 that requires field staff to submit bid information with every purchase or service order to ensure that the staff follow the proper procedures regarding bidding documents and price quotations.

The procedure also requires business services staff to review the information to ensure compliance. In addition, the Conservation Corps stated that it holds quarterly meetings with its business services officers to discuss procurement matters, including new policies and procedures. Finally, in March 2011 it held training for business services officers that focused on proper bidding procedures and other procurement activities.

Department of General Services Case I2008-1024

On January 18, 2011, we reported that a fleet division manager with the Department of General Services (General Services) improperly used state vehicles for his daily commute for nine years. The cost of the misuse from July 2006 through July 2009, the three years for which complete records are available, totaled an estimated \$12,379. Because the records were not retained, we were not able to estimate accurately the cost to the State for the remaining six years. We recommended that General Services take the following actions:

- Seek reimbursement from the manager for the costs associated with his misuse of state vehicles.
- Issue to all fleet division employees with access to state vehicles a memorandum regarding the appropriate use of state-owned vehicles.

At the time of our report, General Services stated that it planned to seek reimbursement from the manager, who retired during the investigation, for the costs associated with his misuse of state vehicles. In addition, General Services stated that in March 2010, before the completion of our investigation, it issued a number of operating policies to its employees that prohibit the use of state-owned vehicles for travel to and from an employee's home without express permission.

Updated Information

In June 2011 General Services and the manager signed an agreement directing the manager to reimburse the State the \$12,379 in costs arising from his misuse of state vehicles. The terms of the agreement require the manager to repay the State \$200 a month from June 2011 through August 2016. The manager made his first installment payment in June 2011.

Department of Corrections and Rehabilitation
Case I2009-0607

On January 18, 2011, we reported that Corrections placed parolees at risk by allowing a psychiatrist to continue to treat them for four months after it received allegations of his incompetence. In addition, Corrections wasted at least \$366,656 in state funds by not conducting a timely investigation of the allegations. Because it identified the investigation as low priority, Corrections took 35 months to complete it, resulting in the psychiatrist's performing only administrative duties for 31 months before being discharged. Nonetheless, during the 35-month investigation, he received more than \$600,000 in salary and accrued 226 hours of leave, for which Corrections paid him an additional \$29,149 upon his termination.

We recommended that Corrections take the following actions:

- Establish a protocol to ensure that upon receiving credible information that a medical professional may not be capable of treating patients competently, it promptly relieves that professional of his or her duty to treat patients, pending an investigation.
- Increase the priority that its Office of Internal Affairs (Internal Affairs) assigns to investigations of high-salaried employees.
- Develop procedures to ensure that Internal Affairs assigns a higher priority for completion of investigations involving employees who are assigned alternate duties.

At the time of our report, Corrections disagreed with our findings. Nevertheless, it reported that it would take some steps to implement our recommendations that it establish protocols and expedite the completion of investigations involving high-salaried staff assigned alternate duties. In addition, Corrections included in a training presentation a discussion of the need for staff involved in the disciplinary process to consult with Internal Affairs when employees are placed on administrative leave or removed from their primary duties.

Updated Information

Corrections reported that it established a task force to discuss its policies and procedures for removing medical professionals from the treatment of patients when an investigation is pending. In addition, Corrections reported that to reduce the fiscal impact to the State, Internal Affairs would ensure that it considers expediting investigations that involve high-salaried employees who are

assigned alternate duties. Corrections also identified various factors it will consider when giving priority to investigations that involve high-salaried employees. Corrections further stated that Internal Affairs would communicate with the proper authorities to determine whether employees under investigation have been removed from their primary duties. To assist in this process, Corrections reported that in June 2011 it established policies and procedures for collecting information about the costs related to health care employees who are either assigned alternate duties or on administrative time off. Finally, as of August 2011, Corrections reported that on several occasions it had presented to different staff involved in the disciplinary process a training session on the need to consult with Internal Affairs.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: August 25, 2011

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For questions regarding the contents of this report, please do not contact investigative staff. Contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Appendix

THE INVESTIGATIONS PROGRAM

The California Whistleblower Protection Act (Whistleblower Act) authorizes the Bureau of State Audits (bureau), headed by the state auditor, to investigate allegations of improper governmental activities by state agencies and employees. Contained in the California Government Code, beginning with section 8547, 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; is economically wasteful; or involves gross misconduct, incompetence, or inefficiency.

To enable state employees and the public to report suspected improper governmental activities, the bureau maintains a toll-free Whistleblower Hotline (hotline) at (800) 952-5665. The bureau also accepts reports of improper governmental activities by mail and over the Internet at www.bsa.ca.gov.

The Whistleblower Act provides that the bureau may independently investigate allegations of improper governmental activities. In addition, the Whistleblower Act specifies that the state auditor may request the assistance of any state entity in conducting an investigation. After a state agency completes its investigation and reports its results to the bureau, the bureau analyzes the agency's investigative report and supporting evidence, and it determines whether it agrees with the agency's conclusions or whether additional work must be done.

Although the bureau conducts investigations, it does not have enforcement powers. When it substantiates an improper governmental activity, the bureau reports confidentially the details to the head of the state agency or to the appointing authority responsible for taking corrective action. The Whistleblower Act requires the agency or appointing authority to notify the bureau of any corrective action taken, including disciplinary action, no later than 60 days after transmittal of the confidential investigative report and monthly thereafter until the corrective action concludes.

The Whistleblower Act authorizes the state auditor to report publicly on substantiated allegations of improper governmental activities as necessary to serve the State's interests. The state auditor may also report improper governmental activities to other authorities, such as law enforcement agencies, when appropriate.

Improper Governmental Activities Identified by the Bureau

Since 1993, when the bureau activated the hotline, it has identified improper governmental activities totaling \$30.5 million. These improper activities include theft of state property, conflicts of interest, and personal use of state resources. For example, the bureau reported in September 2005 that a supervisor at the Military Department embezzled at least \$132,523 in state funds over an eight-year period. As another example, the bureau reported in September 2007 that the California Highway Patrol wasted \$881,565 in state funds when it purchased 51 vans that remained unused for more than two years. The investigations have also substantiated improper governmental activities that cannot be quantified in dollars but have had negative social impacts. Examples include violations of fiduciary trust, failure to perform mandated duties, and abuse of authority.

Corrective Actions Taken in Response to Investigations

The chapters of this report describe the corrective actions that departments implemented on individual cases that we completed from September 2005 through March 2011. Table A summarizes all of the corrective actions that departments took in response to investigations between the time that the bureau opened the hotline in July 1993 until March 2011. In addition to the corrective actions listed, our investigations have resulted in many departments modifying or reiterating their policies and procedures to prevent future improper governmental activities.

Table A
Corrective Actions
July 1993 Through March 2011

| TYPE OF CORRECTIVE ACTION | TOTALS |
|---|------------|
| Convictions | 10 |
| Demotions | 19 |
| Job terminations | 81 |
| Resignations or retirements while under investigation | 5* |
| Pay reductions | 54 |
| Reprimands | 298 |
| Suspensions without pay | 24 |
| Total | 491 |

Source: Bureau of State Audits.

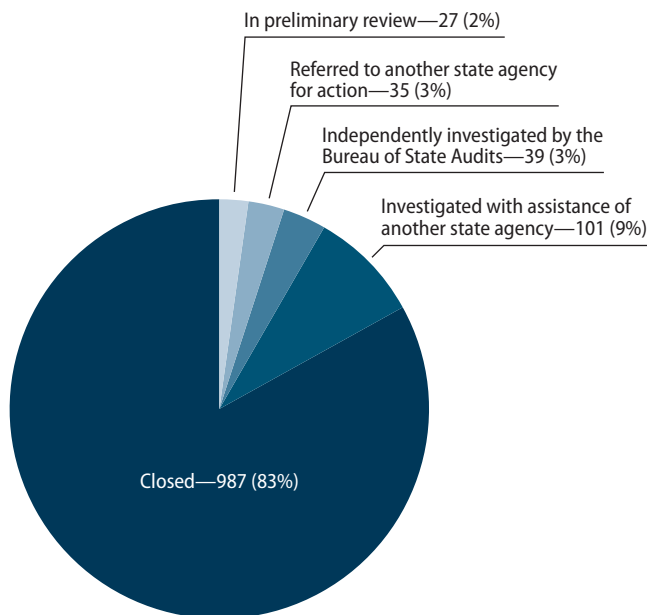
* The number of resignations or retirements consists of those resulting from investigations completed since September 2007.

The Bureau's Investigative Work From July 2010 Through March 2011

The bureau receives allegations of improper governmental activities in several ways. From July 1, 2010, through March 31, 2011, the bureau received 4,484 calls or inquiries. Of these, 3,945 came through the hotline, 142 through the mail, and 397 through the bureau's Web site. When the bureau determined that allegations were outside its jurisdiction, it referred the callers and inquirers to the appropriate federal, local, or state agencies, when possible.

During this nine-month period, the bureau conducted investigative work on 1,189 cases that it opened either in previous periods or in the current period. After completing a preliminary review process that includes analyzing available evidence and contacting witnesses, the bureau determined that 987 of the 1,189 cases the investigative staff worked on lacked sufficient information for further investigation. As Figure A shows, the bureau referred 35 cases to other state agencies to gather information or to take action. The bureau independently investigated 39 cases and investigated 101 cases with assistance from other state agencies. The bureau was still conducting its preliminary review of 27 cases as of March 31, 2011.

Figure A
Status of 1,189 Cases
July 2010 Through March 2011



Source: Bureau of State Audits.

Of the 39 cases the bureau independently investigated, it substantiated an improper governmental activity in five of the investigations it completed during the period. In addition, the bureau conducted analyses of the 101 investigations that state agencies conducted under its direction, and it substantiated an improper governmental activity in two of the investigations completed. The results of the seven investigations with substantiated improper governmental activities appear in this report.

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| DEPARTMENT/AGENCY | CASE NUMBER | ALLEGATION | PAGE NUMBER |
|---|-------------|---|-------------|
| California Conservation Corps | I2008-1021 | Failure to follow state contracting laws | 55 |
| California Energy Commission | I2010-0844 | Falsification of time and attendance records | 21 |
| California State University, Office of the Chancellor | I2007-1158 | Improper and wasteful expenditures | 52 |
| Corrections and Rehabilitation, Department of | I2004-0649 | Failure to account for employees' use of union leave | 49 |
| | I2004-0681 | | 49 |
| | I2004-0789 | | 49 |
| | I2007-0887 | Improper overtime reporting | 54 |
| | I2009-0607 | Delay in reassigning an incompetent psychiatrist put patients at risk, waste of state funds | 57 |
| | I2009-1203 | Misuse of state resources | 15 |
| Fish and Game, Department of, Office of Spill Prevention and Response | I2006-1125 | Improper travel expenses | 51 |
| Fish and Game, Department of | I2009-0601 | Misuse of a state vehicle, improper travel reimbursements | 33 |
| General Services, Department of | I2008-1024 | Misuse of state resources | 56 |
| Industrial Relations, Department of | I2008-0902 | Failure to monitor adequately employees' time reporting | 39 |
| Mental Health, Department of | I2009-0644 | Waste of state funds, misuse of state resources | 5 |
| State Controller's Office | I2009-1476 | Failure to report absences, failure to monitor adequately an employee's time reporting | 43 |
| Transportation, Department of | I2008-0731 | Inexcusable neglect of duty | 27 |

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