



# CSLEA ALERT

July 27-August 10, 2009

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## State budget agreement reached

### -- CSLEA lobbying helps save DOJ, state park funding

An intensive media and lobbying campaign waged by CSLEA and its affiliates has succeeded in preventing a \$20 million cut in Bureau of Narcotic Enforcement special agents and helped keep 88 percent of state parks open that were slated for closure. Direct cuts aimed at Department of Justice crime labs were also prevented.

The fiscal tsunami that crashed down on California looks like it might be retreating back to the ocean now that the legislature on July 24 reached an agreement to close the \$26.3 billion budget deficit by cutting roughly \$16 billion from the state's general fund, borrowing about \$4 billion, and relying on revenue acceleration and accounting shifts for the balance. Gov. Arnold Schwarzenegger is expected to sign the budget agreement this week (July 27-31). (See Page 4 list of cuts)

Association of Special Agents' President Mike Loyd, with the help of CSLEA, gathered about 40 agents to comb through the capitol and press their case about the importance of BNE and the Department of Justice crime lab to the public safety of this state. In addition to its lobbying pressure, CSLEA and our consultants helped with devising a strategic game plan and started an earned-media campaign. ASA-DOJ engaged the paid-media portion of the plan that grabbed the attention of people nationwide. ASA-DOJ purchased radio ads,

print ads, and did countless interviews on the importance of the Bureau, which, among many other things, operates 51 task forces helping fight the drug cartels in Mexico.

CSLEA also succeeded in winning the argument with politicians and the public over the closure of state parks, by convincing legislators that shutting the gates would not keep out vandals, squatters, and thieves, and without the security and protection offered by park rangers, California would only be destroying its natural treasures. As a result, CSLEA helped keep 88 percent of state parks open.

"I'm extremely proud of the work our team did in sounding the alarm with lawmakers and the public at large," said CSLEA President Alan Barcelona. "We had to rally and turn on a dime in a very narrow period of time, and we succeeded. Most important of all, we did it our way: by good, honest, aggressive persuasion based on the merits of our arguments. Legislators were in no mood for protests outside their offices, and in this economy, the public was not at all receptive to the plight of state workers. We had to target well and come in under the radar. A lot was accomplished here, but a lot more needs to be done. The path to our success in saving our members' jobs will be the same one we travel down in the future."



Top photo: CSLEA President Alan Barcelona meets with Senate President Pro Tem Darrell Steinberg. At right, Barcelona, Sen. Alex Padilla, center, and CSLEA legislative advocate Craig Brown, right, discuss state budget.

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# CSLEA legal team wins two big decisions

## Informal reprimands subject to appeal

In successfully defending one of its members against his state agency, the CSLEA legal team also may have set a precedent in broadening the rights of state employees everywhere.

The right of a state employee to challenge a formal letter of reprimand has existed for a long time, but now that right extends to *informal* letters of reprimand as well.

The groundbreaking case concerned the state Employment Development Department and CSLEA-member Jaime Montti, an investigator for EDD. After winning a grievance on a request for some vacation time, Montti was accused by his immediate supervisor of failing to submit an investigative report in a timely manner. Details of that timeliness later proved Montti innocent of the charge, as evidenced by EDD's declining to pursue it further.

But Montti nonetheless was told the "Informal Letter of Reprimand" would be placed in his Official Personnel File and stay there for three years.

Significantly, EDD would not give Montti the right to challenge the *informal* reprimand in an evidentiary hearing before the State Personnel Board (SPB), a right which applies to *formal* letters of reprimand.

The CSLEA legal team filed an appeal with SPB, requesting a hearing for Montti. On June 9, EDD filed a motion to dismiss that appeal, arguing that the letter of reprimand was *informal* in nature and therefore, not subject to SPB jurisdiction. Back the ball came into CSLEA's court. On June 24, the CSLEA legal team filed an opposition to EDD's motion to dismiss.

CSLEA argued that the location and duration of the letter of the "Informal Letter of Reprimand," as well as the severity of allegations, made it fair game for appeal. Furthermore, CSLEA questioned whether EDD's actions violated the state's Public Safety Officers Bill of Rights.

On July 14, SPB Presiding Administrative Law Judge Alvin Gittsriboongul ruled in favor of CSLEA and Montti by denying EDD's motion to dismiss. In doing so, Judge Gittsriboongul said EDD's actions were disciplinary in nature and proper for appeal.

EDD now has to prove the allegations made in its "Informal Letter of Reprimand" are true, and if it can't, the reprimand will be revoked. The CSLEA legal team is asking the SPB to make its decision precedential, so it will be binding on other agencies who might also try circumventing an employee's right.



## ABC Investigator reinstated by SPB

In yet another victory for the CSLEA legal team, an ABC Investigator had been ordered back to work after the State Personnel Board found his dismissal unwarranted.

At its July 7 meeting, the Board adopted Administrative Law Judge Regina Brown's proposed decision dismissing several causes of action and modifying the discipline to a suspension.

One night in 2007, the investigator's gun accidentally discharged after an evening of range qualifications and training. Aside from a few ringing ears, no one was injured. During its investigation of the incident, however, the ABC perceived discrepancies between the investigator's statements and those of other investigators present at the range.



The Department's mistake, however, came from its failure to account for human reaction time: each investigator recalled taking a second or two to identify from where the shot originated and each recalled seeing the accused at a different angle and position in relation to others.

The Department had called the investigator's version of his story dishonest, but Judge Brown correctly credited the investigator's pre-hearing statements and testimony. He had no reason to lie, and the passage of time – no matter how short a span – accounts for the difference in perception.

Perhaps most damaging for the Department's case was its use in the initial adverse action of a supposed divot found in the concrete pad on which the investigator stood that night. The adverse action cited this divot's existence and its position as evidence that the discharged round had struck the ground in front of the accused investigator.

Yet upon further investigation, the Department found that the divot was nothing more than a piece of rebar in the ground – not evidence of the accidental discharge's direction or the investigator's position.

Judge Brown granted CSLEA's motion to strike the false and misleading evidence from the adverse action.

Citing his unblemished work history and commendable public service career, she also noted that the modified discipline would allow the investigator to continue to provide outstanding service to the state of California.

## Brown congratulates ASA-DOJ, CSLEA for restoring funding cuts



Association of Special Agents President Mike Loyd, left, CSLEA President Alan Barcelona, center, and Attorney General Jerry Brown, right, met at Department of Justice headquarters in Sacramento on July 22 to discuss the operational needs of CSLEA members at DOJ.

Brown congratulated ASA-DOJ and CSLEA on their successful lobbying efforts to restore the funding that had been cut out of DOJ's budget. These cuts would have resulted in the elimination of 70 Bureau of Narcotic Enforcement special agents, the shutting of 51 task forces led by the DOJ's Bureau of Narcotic Enforcement, and put a big financial dent in the states crime lab's ability to nail murderers and rapists.

## Furlough, overtime update

CSLEA continues to challenge Gov. Arnold Schwarzenegger's furlough order every step of the way.

As previously reported, CSLEA filed a grievance on Feb. 13 this year on behalf of all CSLEA members, charging that the Governor's furlough order violated Article 9.22 of the Unit 7 contract.

The contract allows consideration of furloughs only through the budget act or other legislation. Unilateral implementation of furloughs by the Governor constitutes a breach of that contract, CSLEA contends.

On July 20, the Department of Personnel Administration (DPA) issued a fourth-level response denying the grievance. Although it provided its reasons for the denial, DPA's response – very revealingly – did not affirmatively state that the furloughs were enacted by way of the budget act or other legislation.

As a result of this omission, CSLEA has requested arbitration of its grievance. It is possible DPA may contend that the grievance is not subject to arbitration. If DPA does, CSLEA will file a petition to compel.

CSLEA is pursuing every legal and administrative avenue not only to defend its members, but also to uphold the basic American principle of contract law.

### Overtime not subject to arbitration?

On July 15, DPA notified CSLEA that changes in the way overtime is calculated is set in statute and not subject to arbitration.

On July 21, CSLEA notified DPA that it would petition to compel arbitration if the state agency proceeded with its statutory suppression defense, a strategy that has been unsuccessful for DPA so far.

## CSLEA Reaches Out To New Unit 7 Employees



Association of Conservation Employees President Bill Martinez, Paul Satkowski, CSLEA director of member services, and Julia Marin, political affairs coordinator for CSLEA spoke with the 16 Conservationists I's about the benefits and services that CSLEA provides to its members, which include, but are not limited to:

- Legal representation
- Legal defense fund
- \$15,000 group term life insurance plan
- Grievance and complaint representation

The meeting was held on July 14 at the CALTRANS training academy at McClellan Park. Satkowski and Marin also praised Martinez for his 16 years as president of ACE.

- 1) Recapturing savings previously thought lost by missing the June 30 deadline and recalculating Proposition 98 accordingly
- 2) Regional Development Agency shift to schools
- 3) Additional cuts to University of California and California State University funding (Just under \$2 billion total for 2008-09 and 2009-10).

### • Corrections, \$785 million:

Leaders agreed upon just a reduction level in Corrections; the policy on how to get there will be determined upon the legislature's return in August.

### • General Government, \$1.6 billion:

- 1) Suspension of cost-of-living (COLA) increases
- 2) Leveraging state assets (no current-year savings)
- 3) Consolidating and reorganizing boards and commissions, including elimination of the Integrated Waste Management Board
- 4) Information technology procurement reform.

### • State Employee Compensation, \$820 million:

- 1) Third furlough day adopted
- 2) Elimination of rural health care
- 3) Healthcare scoring savings.

### • Health and Human Services, \$3 billion:

- 1) Long-term CalWORKs reforms, including graduated sanctions and twice-yearly check-ins
- 2) Medi-Cal eligibility changes and improved care coordination
- 3) IHSS fraud initiative including fingerprinting
- 4) Healthy Families eligibility changes

### • Line-item vetoes, \$.4 billion to \$1.1 billion

### Total fund shifts, \$1.1 billion

- These include CalFIRE inter-agency agreement with the Legislature and transportation spillover.

### Total revenues, \$3.5 billion

- Including:



## Legislature Finally Passes Budget

-- Supplement to  
Page One Story

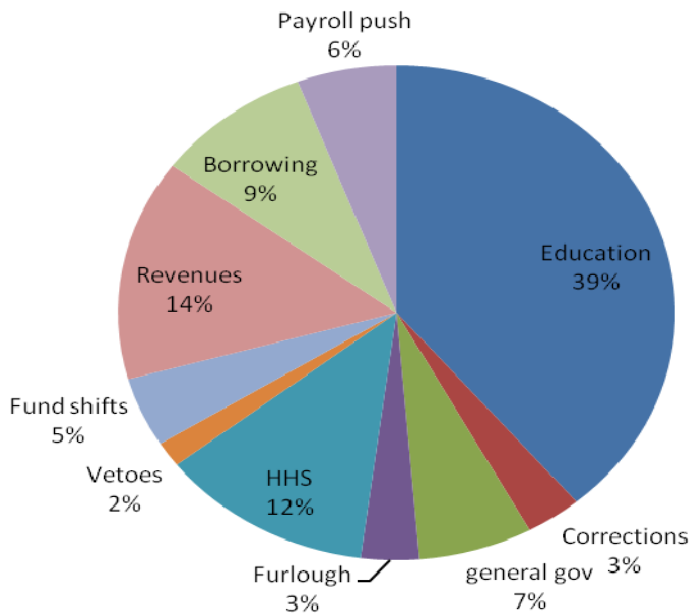
*The budget solution reached on July 24 includes \$15.9 billion in spending*

*reductions—which is on top of the \$15 billion made in February. This brings total budget cuts made this year to \$30 billion dollars, roughly a third of the entire state budget. While there are some one-time solutions in the current budget agreement, it was agreed by the legislative leaders and Gov. Arnold Schwarzenegger to keep them to a minimum while not increase taxes. Below is the math of how the Governor and legislative leaders agreed to solve the \$24.1 billion deficit.*

### Total expenditure reductions, \$15.9 billion:

#### • Education \$9.4 billion:

### Percentage of the \$24 billion solution



- 1) Optional personal income tax withholding changes
- 2) Tax enforcement
- 3) State Compensation Insurance Fund proposal
- 4) Special fund transfers.

### Total borrowing, \$2.2 billion:

- Including:
  - 1) Proposition 1A suspension
  - 2) Loan from State Highway Account
  - 3) Various other loans and fund shifts to keep state parks open.

### Other, \$1.4 billion:

- June to July state payroll and health premiums delay.

### Reserve, \$490 million

### Approximate solution, \$24.1 billion

The Governor and legislature also agreed to make some cost-saving structural reforms to put the state on more solid financial footing for the future. These include:

- **Consolidating and Eliminating Boards and Commissions--\$50 million in 2009-2010**  
This includes eliminating the Integrated Waste Management Board.

- **Rooting Out Fraud From IHSS--\$221 million in 09-10, \$517 million total**  
This includes putting in place a fraud-prevention program that includes background checks -- including fingerprinting -- for service providers.

- **Reforming CalWORKs--\$510 million**  
Focusing available funding on those who are meeting the work requirements.

- **Corrections, Custody, and Parole Reforms -- \$641 million**  
The goal in the reductions legislators agreed to for the 2009-2010 fiscal year is to have roughly half come from parole, corrections, and custody reforms.

*Amounts provided by Governor's office.  
Analysis and chart provided by Coby Pizzotti, CSLEA  
Legislative and Political Liaison*



"On my vacation last month, my son, who was recently discharged from the United States Marine Corps, and I drove from Redding, California to Reading, Pennsylvania for the World War II Air Show. On the way there, we stopped at the field in Shanksville, Pennsylvania, where Flight 97 crashed on 9/11. There is a large, makeshift memorial wall where people have left items of remembrance. These included police and fire service items, such as hats, helmets, patches, etc. I had an older CAUSE sticker in my car and posted it on the wall."

CSLEA/AMVIC member  
Anthony Beatrice, investigator,  
Dept. of Motor Vehicles