

Case No. S279137

**IN THE
SUPREME COURT OF CALIFORNIA**

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

No Fee (Gov. Code, § 6103)

After a Decision by the Court of Appeal,

First Appellate District, Division Five

Case No. A164021

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF RYAN P. MCGINLEY-STEMPEL;
[PROPOSED] ORDER**

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ALAMEDA HEALTH SYSTEM

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MOTION FOR JUDICIAL NOTICE

Respondent Alameda Health System (“AHS”) submits this Motion for Judicial Notice in support of its Opening Brief on the Merits concurrently filed in the above-captioned appeal.

Under California Rules of Court 8.252(a) and 8.520(g), and Evidence Code sections 452(b), (c) & (h), and 459(a), Respondent hereby moves this Court for an Order to take judicial notice for purposes of this appeal of the following documents, which are attached as Exhibits A-J to the Declaration of Ryan P. McGinley-Stempel filed in support hereof:

- Exhibit A: State of California, Secretary of State, Certificate of Filing, changing Alameda County Medical Center to Alameda Health System on September 3, 2014; Statements of Facts, Roster of Public Agencies Filings for 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2010, 2012, 2013, 2014, 2015, and 2016.
- Exhibit B: Alameda County’s Annual Comprehensive Report for the Year Ended June 30, 2021.
- Exhibit C: Industrial Welfare Commission (“IWC”) Order No. 5-76 and corresponding Statement of Basis.
- Exhibit D: Legislative history materials from Senate Bill No. 796 (2003-2004 Reg. Sess.), the Private Attorneys General Act of 2004 (“PAGA”):
 - Exhibit D-1: Sen. Amendments to Sen. Bill No. 796 (2003-2004 Reg. Sess.) Mar. 26, 2003.

- Exhibit D-2: Sen. Com. on Labor and Indus. Relations, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Mar. 26, 2003.
- Exhibit D-3: Sen. Amendments to Sen. Bill No. 796 (2003-2004 Reg. Sess.) Apr. 22, 2003.
- Exhibit D-4: Sen. Com. on Judiciary, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Apr. 22, 2003.
- Exhibit D-5: Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended May 12, 2003.
- Exhibit D-6: Assem. Com. on Jud., Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended May 12, 2003.
- Exhibit D-7: Assem. Com. on Labor and Employment, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended July 2, 2003.
- Exhibit D-8: Assem. Com. on Appropriations, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended July 16, 2003.
- Exhibit D-9: Sen. Com. on Labor and Employment, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended July 16, 2003.
- Exhibit D-10: Sen Com. on Labor and Employment, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Sept. 2, 2003.

- Exhibit D-11: Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Sept. 2, 2003.
- Exhibit E: IWC public hearing transcript, dated November 8, 1999.
- Exhibit F: January 10, 2003 letter from the Division of Labor Standards Enforcement (“DLSE”) regarding “Temporary Employment Placements With Public Employers.”
- Exhibit G: Statement of the Basis for Minimum Wage Order MW-2001.
- Exhibit H: IWC public hearing transcript, dated December 15, 1999.
- Exhibit I: Correspondence from the Department of Industrial Relations’ Labor Commissioner’s Office spanning July 21, 2020 to June 16, 2022.
- Exhibit J: Sen. Rules Com., Office of Floor Analyses, Analysis of Sen. Bill 1334 (Reg. Sess. 2021-2022), as amended Aug. 25, 2022.

Exhibit A is relevant to the appeal because it demonstrates AHS’s status as a public entity. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) The documents comprising Exhibit A were presented to the trial court as Exhibit A to AHS’s request for judicial notice in support of its demurrer, and the trial court granted AHS’s request for judicial notice. (See *id.*, rule 8.252(a)(2)(B); 2AA104-161 [AHS’s RJN]; 2AA305 [“AHS’s Requests for Judicial Notice are GRANTED”].) Finally, Exhibit A

does not relate to proceedings occurring after the order that is the subject of the appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Exhibit B is relevant to the appeal because it demonstrates the County's intrinsic involvement in AHS's finances, further indicating AHS's status as a public entity. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit B was not presented to the trial court but is subject to judicial notice under Evidence Code section 452(c) as an official act of the State. (Evid. Code § 452, subd. (c).) Exhibit B does not relate to proceedings occurring after the order that is the subject of the appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Exhibits C and G are relevant to the appeal because they show the exemption of public entities from certain obligations in the wage orders applies to all public entities and is not contingent on the type of public entity involved. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit C is also relevant because it supports a broad reading of the phrase "other municipal corporation." Exhibits C and G were not presented to the trial court. However, they are both subject to judicial notice under Evidence Code section 452(b) as "[r]egulations and legislative enactments issued by or under the authority of ... any public entity in the United States." (Evid. Code § 452, subd. (b).) Exhibits C and G do not relate to proceedings occurring after the order that is the subject of the appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Exhibits D-1 through D-11 are relevant to the appeal because, among other reasons, they bear on the question of

whether public entities are “employers” or “persons” under the Labor Code and whether public entities may be subject to civil penalties under PAGA. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibits D-1 through D-11 were not presented to the trial court. However, they are subject to judicial notice under Evidence Code section 452(c) as “[o]fficial acts of the legislative ... department[] ... of any state of the United States.” (Evid. Code § 452, subd. (c).) Exhibits D-1 through D-11 do not relate to proceedings occurring after the order that is the subject of the appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Exhibits E and H are relevant to the appeal because they demonstrate that, notwithstanding amendments to the Labor Code, the Legislature intended that public employees continue to be exempt from IWC regulations absent express language to the contrary. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibits E and H were not presented to the trial court. However, they are subject to judicial notice under Evidence Code section 452(c) as an official act of the State. (Evid. Code § 452, subd. (c).) Exhibits E and H do not relate to proceedings occurring after the order that is the subject of the appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Exhibit F is relevant to the appeal because it indicates the DLSE’s view that public employers are largely exempted from wage order obligations. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit F was not presented to the trial court. However, it is subject to judicial notice under Evidence Code section 452(c) as an official act of the State. (Evid. Code § 452,

subd. (c).) Exhibit F does not relate to proceedings occurring after the order that is the subject of the appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Exhibit I is relevant to the appeal because it demonstrates the Labor Commissioner's Office's understanding that AHS is a government entity entitled to the exemption for public entities under both the Wage Order and Labor Code section 220. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit I was not presented to the trial court. However, it is subject to judicial notice under Evidence Code section 452(c) as an official act of the State. (Evid. Code § 452, subd. (c).) Some of the documents in Exhibit I relate to proceedings before the Labor Commissioner that took place after the trial court's order but before the Court of Appeal's judgment in this case. (See Cal. Rules of Court, rule 8.252(a)(2).)


Exhibit J is relevant to the appeal because it demonstrates that the Legislature is aware of the rule that the Labor Code regulates private employment unless a provision explicitly states that it applies to public sector employment and knows how to deviate from that rule where it wants to do so. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit J was not presented to the trial court. However, it is subject to judicial notice under Evidence Code section 452(c) as an "[o]fficial act[] of the legislative ... department[] ... of any state of the United States." (Evid. Code § 452, subd. (c).) Exhibit J relates to legislative proceedings occurring after the trial court's demurrer order but

before the Court of Appeal's judgment. (See Cal. Rules of Court, rule 8.252(a)(2).)

This Motion is based on the attached Memorandum of Points and Authorities, true and correct copies of the above documents, which are attached as Exhibits A-J to the Declaration of Ryan P. McGinley-Stempel filed in support thereof, and the accompanying proposed order granting this motion.

Respectfully submitted,

Dated: July 17, 2023 RENNE PUBLIC LAW GROUP

By: 

RYAN P. MCGINLEY-STEMPEL
(SBN 296182)

Attorneys for Defendant and Respondent
ALAMEDA HEALTH SYSTEM

MEMORANDUM OF POINTS AND AUTHORITIES

Respondent Alameda Health System (“AHS”) submits this Memorandum of Points and Authorities in support of its Motion for Judicial Notice and Opening Brief on the Merits filed concurrently in the above-captioned appeal.

A. Evidence Code Section 459 Sets Forth The Circumstances Under Which Reviewing Courts Must Or May Take Judicial Notice.

“[R]eviewing court[s] may take judicial notice of any matter specified in Section 452” of the Evidence Code and “shall take judicial notice of (1) each matter properly noticed by the trial court and (2) each matter that the trial court was required to notice under Section 451 or 453.” (Evid. Code, § 459, subd. (a).) Section 453 requires the trial court to “take judicial notice of any matter specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.” (Evid. Code, § 453.)

Here, as explained below, judicial notice of Exhibits A-J is warranted under section 459.

B. The Documents Attached As Exhibit A Were Judicially Noticed By The Trial Court And Must Be So Noticed Here.

Courts may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code, § 452,

subd. (c).) Such official acts include “records, reports and orders of administrative agencies,” including local government agencies. (*Rodas v. Spiege* (2001) 87 Cal.App.4th 513, 518; *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 895, 901 [affirming “trial court’s decision to take judicial notice of the documents submitted by the County” relating to its regulation of chemical activities]; *Arroyo v. Plosay* (2014) 225 Cal.App.4th 279, 296 [affirming judicial notice of hospital’s license issued by state department of public health]; *Pan Pacific Properties, Inc. v. County of Santa Cruz* (1978) 81 Cal.App.3d 244, 256 [“resolutions, reports, and other official acts of the county”].)

Moreover, courts may take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) This includes documents regarding corporate status or forms filed with government agencies. (See *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1484 & fn. 12 [taking judicial notice of corporation’s articles of incorporation]; *Waltrip v. Kimberlin* (2008) 164 Cal.App.4th 517, 522, fn. 2 [taking judicial notice “of a certificate of status showing that Waltrip’s corporate powers were suspended as of December 14, 2006”]; *Eith v. Ketelhut* (2018) 31 Cal.App.5th 1, 7 [taking judicial notice of contents of tax form filed with IRS].)

Here, the documents attached to Exhibit A are judicially noticeable under both subdivisions (c) and (h) of Evidence Code

section 452 because they constitute official acts of a public entity and are not reasonably subject to dispute given that they may be immediately confirmed with the Secretary of State's public records.

On July 14, 2021, AHS presented the documents attached to Exhibit A to the trial court in connection with its Demurrer. (See 2AA104-161.) On November 6, 2021, the Superior Court issued an order granting AHS's request for judicial notice and sustaining the Demurrer in part. (3AA305.) The documents attached to Exhibit A are relevant to the appeal because they demonstrate AHS's status as a public entity. Likewise, the documents do not relate to proceedings occurring after the trial court's demurrer order that is the subject of this appeal. (See Cal. Rules of Court, rule 8.252(a)(2).)

Accordingly, judicial notice of the documents attached to Exhibit A is proper under Evidence Code section 459 and rules 8.252(a) and 8.520(g).

C. The Documents Attached As Exhibits B, D, E, F, H, I, and J Are Judicially Noticeable Under Evidence Code Section 452, Subdivision (c) And Should Be Noticed Here.

Exhibits B, D, E, F, H, I, and J are judicially noticeable as "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evid. Code, § 452, subd. (c).) As such, judicial notice of these exhibits pursuant to Evidence Code section 459 and rules 8.252(a) and 8.520(g) is proper.

Exhibit B, an official report prepared by the County of Alameda, is relevant to the appeal because it demonstrates the County's intrinsic involvement in AHS's finances, further indicating AHS's status as a public entity. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit B was not presented to the trial court but is subject to judicial notice under Evidence Code section 452(c) as an official act of the State. (Evid. Code § 452, subd. (c); see also *Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1603 [official reports subject to judicial notice]; *Pan Pacific Properties, supra*, 81 Cal.App.3d at p. 256 ["resolutions, reports, and other official acts of the county"].) Exhibit B does not relate to proceedings occurring after the order that is the subject of this appeal.

Exhibits D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, and D-11, legislative history from Senate Bill 796 (2003-2004 Reg. Sess.), are relevant to the appeal because, among other reasons, they bear on the questions of whether public entities are "employers" or "persons" under the Labor Code and whether public entities are subject to penalties under PAGA. Exhibits D-1 through D-11 were not presented to the trial court. However, they are subject to judicial notice under Evidence Code section 452(c) as official acts of the legislative department of any state of the United States. (Evid. Code § 452, subd. (c).) Courts regularly take judicial notice of bill analyses and legislative history generally. (See, e.g., *People v. Nelson* (2011) 200 Cal.App.4th 1083, 1095, fn. 6 [taking judicial notice of Senate Bill Analysis]; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th

508, 519, fn. 5 [same]; *State Farm General Insurance Company v. Oetiker, Inc.* (2020) 58 Cal.App.5th 940, 946, fn. 3 [same].)

Indeed, this Court has recognized that “[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn. 9; see also *A.M. v. Superior Court* (2021) 63 Cal.App.5th 343, 354, fn. 8 [same].)¹ Exhibits D-1 through D-11 do not relate to proceedings occurring after the order that is the subject of this appeal. Accordingly, the Court should take judicial notice of these exhibits.

Exhibits E and H are IWC public hearing transcripts. These exhibits are relevant to the appeal because they demonstrate that, notwithstanding changes to the Labor Code, the Legislature intended that public employees continue to be exempt from IWC regulations absent express language to the contrary. Exhibits E and H were not presented to the trial court. However, transcripts of public hearings are judicially noticeable under section 452(c) as official acts of the State. (See *Singh v. Superior Court* (2006) 140 Cal.App.4th 387, 391, fn. 3 [granting request for judicial notice of “transcripts and minutes of public hearing of the IWC”]; *Associated Builders and Contractors, Inc. v.*

¹ Exhibits D-1 through D-11 are published by the Legislature at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB796 (bill language, with prior versions accessible from a drop-down menu) and at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB796 (table of contents of bill analysis reports).

San Francisco Airports Com. (1999) 21 Cal.4th 352, 375 [granting commission's request for judicial notice of public hearing transcripts].) Exhibits E and H do not relate to proceedings occurring after the order or judgment that is the subject of the appeal. Thus, Exhibits E and H should be judicially noticed.

Exhibit F, an opinion letter by the DLSE, is relevant to the appeal because it indicates the DLSE's view that public entities are largely exempted from wage order obligations. Exhibit F was not presented to the trial court. However, DLSE opinion letters are treated as official acts of the State under Evidence Code section 452(c) and as such, are properly subject to judicial notice. (Evid. Code § 452, subd. (c); see also *Kao v. Holiday* (2017) 12 Cal.App.5th 947, 959 [granting request for judicial notice of DLSE opinion letters and related materials]; *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 552-553 [taking judicial notice of legal opinion letter from county as official act of legislative department].) Exhibit F does not relate to proceedings occurring after the order that is the subject of this appeal. Accordingly, the Court should grant judicial notice of Exhibit F.

Exhibit I, correspondence from the Department of Industrial Relations' Labor Commissioner's Office spanning July 21, 2020 to June 16, 2022, is relevant to the appeal because it demonstrates the Labor Commissioner's understanding that AHS is a government entity entitled to the public entity exemptions under the Wage Order and Labor Code section 220. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit I was not presented

to the trial court. However, letters by government entities are properly subject to judicial notice under Evidence Code section 452(c) as an official act of the State. (Evid. Code § 452, subd. (c); see also *Sheehan v. Vedder* (1930) 108 Cal.App. 419, 425 [taking judicial notice of letter from Commissioner office]; *In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1271 [trial court properly exercised discretion in taking judicial notice of letters by state agency].) Some of the documents in Exhibit I relate to proceedings before the Labor Commissioner that took place after the trial court's order but before the Court of Appeal's judgment in this case. Judicial notice of these letters as official acts is particularly appropriate because they served to reject (for lack of jurisdiction) claims submitted for resolution. As such, the Court should grant judicial notice of Exhibit I.

Exhibit J, a bill analysis from Senate Bill 1334 (2021-2022 Reg. Sess.), is relevant to the appeal because it demonstrates that the Legislature is aware of the rule that the Labor Code regulates private employment unless a provision explicitly states that it applies to public sector employment and knows how to deviate from that rule where it wants to do so. (See Cal. Rules of Court, rule 8.252(a)(2)(A).) Exhibit J was not presented to the trial court. However, it is subject to judicial notice under Evidence Code section 452(c) as an official act of the legislative department of any state of the United States. (Evid. Code § 452, subd. (c).)

Courts regularly take judicial notice of bill analyses and legislative history generally. (See, e.g., *Nelson, supra*, 200 Cal.App.4th at p. 1095, fn. 6 [taking judicial notice of Senate Bill

Analysis]; *Hoechst Celanese Corp. v. Franchise Tax Bd.*, *supra*, 25 Cal.4th at p. 519, fn. 5 [same]; *State Farm General Insurance Company v. Oetiker, Inc.*, *supra*, 58 Cal.App.5th at p. 946, fn. 3 [same].) Indeed, this Court has recognized that “[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient.” (*Quelimane Co. v. Stewart Title Guaranty Co.*, *supra*, 19 Cal.4th at p. 46, fn. 9; see also *A.M. v. Superior Court*, *supra*, 63 Cal.App.5th at p. 354, fn. 8 [same].)² Exhibit J relates to proceedings in the Legislature occurring after the trial court’s demurrer order but before the Court of Appeal’s judgment. (See Cal. Rules of Court, rule 8.252(a)(2).) Accordingly, this Court should take judicial notice of this exhibit.

D. The Documents Attached as Exhibits C and G Are Judicially Noticeable Under Evidence Code Section 452, Subdivision (b) and Should Be Noticed Here.

Exhibit C is IWC Wage Order 05-76 and the accompanying Statement as to the Basis. Exhibit G is the Statement as to the Basis for IWC Wage Order MW-2001. Exhibits C and G are relevant to the appeal because they show the exemption of public entities from certain obligations in the wage orders applies to all public entities and is not contingent on the type of public entity involved. Exhibit C is also relevant because it supports a broad reading of the phrase “other municipal corporation.”

² Exhibit J is published by the Legislature at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB1334 (table of contents of bill analysis reports).

Exhibits C and G were not presented to the trial court. However, they are both subject to judicial notice under Evidence Code section 452(b) as “[r]egulations and legislative enactments issued by or under the authority of ... any public entity in the United States.” (Evid. Code § 452, subd. (b).) California courts routinely grant judicial notice of wage orders and related documents. (See, e.g., *Morales v. 22nd Dist. Agricultural Assn.* (2016) 1 Cal.App.5th 504, 540 fn. 9 [granting request for judicial notice of wage orders, official notices pertaining to wage notices, and legislative materials pertaining to wage orders]; *California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 25–26 [judicially noticing IWC documents consisting of orders, minutes, and findings].) Exhibits C and G do not relate to proceedings occurring after the order that is the subject of this appeal. As such, the Court should grant judicial notice of these exhibits.

E. Conclusion

AHS requests that this Court grant its motion to judicially notice the attached materials.

Dated: July 17, 2023 RENNE PUBLIC LAW GROUP

By: 

RYAN P. MCGINLEY-STEMPEL
(SBN 296182)

Attorneys for Defendant and Respondent
ALAMEDA HEALTH SYSTEM

DECLARATION OF RYAN P. MCGINLEY-STEMPEL

1. I am an attorney in good standing licensed to practice before the Courts of this state. I have personal knowledge of the facts set forth below and would and could testify competently thereto. Attached hereto as Exhibits A-J are true and correct copies of the following:
 - a. Exhibit A: State of California, Secretary of State, Certificate of Filing, changing Alameda County Medical Center to Alameda Health System on September 3, 2014; Statements of Facts, Roster of Public Agencies Filings for 1998, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2010, 2012, 2013, 2014, 2015, and 2016.
 - b. Exhibit B: Alameda County's Annual Comprehensive Report for the Year Ended June 30, 2021.
 - c. Exhibit C: Industrial Welfare Commission ("IWC") Order No. 5-76 and corresponding Statement of Basis.
 - d. Exhibit D: Legislative History Materials For Senate Bill 796 (2003-2004 Reg. Sess.), the Private Attorneys General Act of 2004:
 - i. Exhibit D-1: Sen. Amendments to Sen. Bill No. 796 (2003-2004 Reg. Sess.) Mar. 26, 2003.
 - ii. Exhibit D-2: Sen. Com. on Labor and Indus. Relations, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Mar. 26, 2003.


- iii. Exhibit D-3: Sen. Amendments to Sen. Bill No. 796 (2003-2004 Reg. Sess.) Apr. 22, 2003.
- iv. Exhibit D-4: Sen. Com. on Judiciary, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Apr. 22, 2003.
- v. Exhibit D-5: Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended May 12, 2003.
- vi. Exhibit D-6: Assem. Com. on Jud., Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended May 12, 2003.
- vii. Exhibit D-7: Assem. Com. on Labor and Employment, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended July 2, 2003.
- viii. Exhibit D-8: Assem. Com. on Appropriations, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended July 16, 2003.
- ix. Exhibit D-9: Sen. Com. on Labor and Employment, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended July 16, 2003.
- x. Exhibit D-10: Sen Com. on Labor and Employment, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Sept. 2, 2003.
- xi. Exhibit D-11: Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Sept. 2, 2003.

- e. Exhibit E: IWC public hearing transcript, dated November 8, 1999.
 - f. Exhibit F: January 10, 2003 letter from the Division of Labor Standards Enforcement regarding “Temporary Employment Placements With Public Employers.”
 - g. Exhibit G: Statement of the Basis for Minimum Wage Order MW-2001.
 - h. Exhibit H: IWC Public hearing transcript, dated December 15, 1999.
 - i. Exhibit I: Correspondence from the Department of Industrial Relations’ Labor Commissioner’s Office spanning July 21, 2020 to June 16, 2022.
 - j. Exhibit J: Sen. Rules Com., Office of Floor Analyses, Analysis of Sen. Bill 1334 (Reg. Sess. 2021-2022), as amended Aug. 25, 2022.
- 2. Each of these documents is relevant to the appeal for the reasons stated in the concurrently filed Motion for Judicial Notice and supporting Memorandum of Points and Authorities.
 - 3. Exhibit A was presented to and judicially noticed by the trial court in connection with its ruling on AHS’s demurrer below.
 - 4. Exhibits B-J were not presented to the trial court. However, they are subject to judicial notice under Evidence Code sections 452 and 459.
 - 5. Exhibits A-H do not relate to proceedings occurring after the order that is the subject of this appeal. Some of the documents in Exhibit I relate to proceedings before the Labor

Commissioner that took place after the trial court's order but before the Court of Appeal's judgment in this case. Exhibit J relates to legislative proceedings occurring after the trial court's demurrer order but before the Court of Appeal's judgment.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on this, the 17th day of July, 2023, in San Francisco, California.



RYAN P. MCGINLEY-STEMPEL
(SBN 296182)

Case No. S279137

IN THE
SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

No Fee (Gov. Code, § 6103)

After a Decision by the Court of Appeal,

First Appellate District, Division Five

Case No. A164021

**[PROPOSED] ORDER GRANTING JUDICIAL
NOTICE**

Good cause appearing, Respondent Alameda Health System's Motion for Judicial Notice is hereby granted. Judicial notice is taken of the documents attached as Exhibits A-J to the declaration of Ryan P. McGinley-Stempel supporting the motion for judicial notice filed by Respondent Alameda Health System.

Dated: _____

Chief Justice Guerrero

EXHIBIT A

State of California
Secretary of State

CERTIFICATE OF FILING

I, ALEX PADILLA, Secretary of State of the State of California hereby certify:

That on the 18th day of September, 1998, a Statement of Facts Roster of Public Agencies Filing was filed in this office in accordance with Section 53051 of the Government Code of the State of California for the following:

Alameda County Medical Center

That on the 3rd day of September, 2014, an update to the Statement of Facts Roster of Public Agencies Filing was filed in this office changing the name to:

Alameda Health System



IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
28th day of June 2017

ALEX PADILLA
Secretary of State



State of California
Bill Jones
Secretary of State

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
(Government Code Section 53051)

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Bill Jones, Secretary of State

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New Filing ☒ Update ☐

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Name of Update: _____

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD, SAN LEANDRO, CA 94578

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MARY ALICE MUELLERLEILE Address: 15400 FOOTHILL BLVD, SAN LEANDRO, CA 94578

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: V. BOWEN SCHULZ Address: 15400 FOOTHILL BLVD, SAN LEANDRO, CA 94578

Members:

Name: MARY ALICE MUELLERLEILE, PhD, JD Address: 7000 Hemlock Street, Oakland, CA 94611

Name: RICHARD WARREN Address: 42118 Highland Court, Fremont, CA 94539

Name: ROBERT STEVEN Address: 2558 Ida Gate Court, Pleasanton, CA 94566

Name: MARCELLE C. HETTINGER, MD Address: 90 Sec View, Piedmont, CA 94611

Name: VICKI ALEXANDER, MD, MPH Address: 3306 Kingsland, Oakland, CA 94611

Date: September 4, 1998

[Signature]
Signature

Michael G. Samoy, Chief Executive Officer
(Doc Name: 12)

**STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
(Attachment) Additional Members**

Name: Herbert Houston, MA

Name: Frank Kiang, PhD

Name: Barry Williams, JD, MBA

Name: Michael G. Smart

Name: Ted Rose, MD

Address: 4550 Sequoyah road, Oakland, CA 94616

Address: 4807 Rockingham Court, Oakland, CA 94619

Address: 1737 Alhambra Lane, Oakland, CA 94611

Address: 1103 High Court, Berkeley, CA 94708

Address: 6025 LaSalle Avenue, Oakland, CA 94611



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Bill Jones
Secretary of State

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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: ROBERT STRAWN Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: CHRISTINE GONZALEZ Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Members:

Name: ROBERT STRAWN Address: 2568 LIN GATE COURT, PLEASANTON, CA 94566

Name: RICHARD WARREN Address: 42718 WEIGAND COURT, FREMONT, CA 94539

Name: MARYELLEN C. HERRINGER, JD Address: 90 SEA VIEW, PIEDMONT, CA 94611

Name: VICKI ALEXANDER, MD, MPH Address: 3300 KINGSLAND, OAKLAND, CA 94611

Name: MICHAEL G. SMART, Address: 1103 HIGH COURT, BERKELEY, CA 94708

Date: NOVEMBER 10, 1998

Michael G. Smart
Signature

MICHAEL G. SMART, CEO AND BOARD MEMBER
Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
HERBERT HOUSTON, MA	4550 Sequoyah Road, Oakland, CA 94605
FRANK KIANG, PhD	4607 Rockingham Court, Oakland, CA 94619
BARRY WILLIAMS, JD, MBA	1737 Alhambra Lane, Oakland, CA 94611
TED ROSE, MD	6025 LaSalle Avenue, Oakland, CA 94611



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Bill Jones
Secretary of State

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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: ROBERT L. STRAWN Address: 2668 LIN GATE COURT, PLEASANTON, CA 94566-4572

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: ROBERT L. STRAWN Address: 2668 LIN GATE COURT, PLEASANTON, CA 94566

Name: RICHARD WARREN Address: 42718 WEIGLAND COURT, FREMONT, CA 94539

Name: MARVELLEN C. HERRINGER Address: 90 SEA VIEW, PIEDMONT, CA 94611

Name: FRANK KIANG Address: 4607 ROCKINGHAM COURT, OAKLAND, CA 94619

Name: MICHAEL WALL Address: 1003 PEBBLE BEACH DR., CLAYTON, CA 94517

Date: 1/18/90

Michael Wall
Signature

MICHAEL WALL, CEO and BOARD MEMBER

Typed Name and Title

**STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)**

NAME	ADDRESS
Warren Brown	5300 Estate Drive, Oakland, CA 94618
Maria E. Gallo	2908 Marina Drive, Alameda, CA 94501
Herbert Houston	4550 Sequoyah Road, Oakland, CA 94605
Barry Williams	1737 Alhambra Lane, Oakland, CA 94611-2231
Melinda Paras	1461 Curtis Street, Berkeley, CA 94702
Ted Rose	6025 LaSalle Avenue, Oakland, CA 94611



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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

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Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: ROBERT L. STRAWN Address: 2668 LIN GATE COURT, PLEASANTON, CA 94566-4572

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: ROBERT L. STRAWN Address: 2668 LIN GATE COURT, PLEASANTON, CA 94566

Name: RICHARD WARREN Address: 42718 WEIGLAND COURT, FREMONT, CA 94539

Name: MARYELLEN C. HERRINGER Address: 90 SEA VIEW, PIEDMONT, CA 94611

Name: FRANK KIANG Address: 4607 ROCKINGHAM COURT, OAKLAND, CA 94618

Name: MICHAEL WALL Address: 1003 PEBBLE BEACH DR., CLAYTON, CA 94517

Date: 1/15/97

Signature

MICHAEL WALL, CEO and BOARD MEMBER

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
Warren Brown	5300 Estate Drive, Oakland, CA 94618
Maria E. Gallo	2908 Marina Drive, Alameda, CA 94501
Herbert Houston	4550 Sequoyah Road, Oakland, CA 94605
Barry Williams	1737 Alhambra Lane, Oakland, CA 94611-2231
Melinda Paras	1461 Curtis Street, Berkeley, CA 94702
Ted Rose	6025 LaSalle Avenue, Oakland, CA 94611



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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name . . . Address of each member of the governing board:

Chairman: President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MELINDA PARAS Address: 1461 CURTIS STREET, BERKELEY, CA 94702

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: MELINDA PARAS Address: 1461 CURTIS STREET, BERKELEY, CA 94702

Name: THEODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: HERBERT HOUSTON Address: 4550 SEQUOYAH RD., OAKLAND, CA 94605

Name: RICHARD WARREN Address: 42718 WEIGLAND CT., FREMONT, CA 94539

Name: MARYELLEN C. HERRINGER Address: 90 SEA VIEW, PIEDMONT, CA 94611

Date: Jan. 29, 2001

Roger Peek
Signature

ROGER PEEKS, M.D., INTERIM CEO AND BOARD MEMBER

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
WARREN BROWN	5300 ESTATE DR., OAKLAND, CA 94618
MARIA E. GALLO	2908 MARINA DRIVE, ALAMEDA, CA 94501
BARRY WILLIAMS	1737 ALHAMBRA LANE, OAKLAND, CA 94611-2231
ROGER PEEKS, M.D.	2440 LEIMERT, OAKLAND, CA 94602



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Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MELINDA PARAS Address: 1461 CURTIS STREET, BERKELEY, CA 94702

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: <u>MELINDA PARAS</u>	Address: <u>1461 CURTIS ST., BERKELEY, CA 94702</u>
Name: <u>THEODORE ROSE, M.D.</u>	Address: <u>6025 LASALLE AVE., OAKLAND, CA 94611</u>
Name: <u>HERBERT HOUSTON</u>	Address: <u>4550 SEQUOYAH ROAD, OAKLAND, CA 94605</u>
Name: <u>RICHARD WARREN</u>	Address: <u>42718 WEIGLAND CT., FREMONT, CA 94539</u>
Name: <u>MARVELLEN C. HERRINGER</u>	Address: <u>90 SEA VIEW, PIEDMONT, CA 94611</u>

Date: 4-29-01

Roger Peek
Signature

ROGER PEEKS, M.D., INTERIM CEO AND BOARD MEMBER
Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
WARREN BROWN	5300 ESTATE DR., OAKLAND, CA 94618
MARIA E. GALLO	2908 MARINA DRIVE, ALAMEDA, CA 94501
ROGER PEEKS, M.D.	2440 LEIMERT, OAKLAND, CA 94602



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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MELINDA PARAS Address: 1461 CURTIS STREET, BERKELEY, CA 94702

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: MELINDA PARAS Address: 1461 CURTIS ST., BERKELEY, CA 94702

Name: TREODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: HERBERT HOUSTON Address: 4550 SEQUOYAH ROAD, OAKLAND, CA 94605

Name: RICHARD WARREN Address: 42718 WEIGLAND CT., FREMONT, CA 94539

Name: MARYELLEN C. HERRINGER Address: 90 SEA VIEW, PIEDMONT, CA 94611

Date: 9/10/01

Signature

Kenneth B. Cohen
KENNETH B. COHEN, CEO & BOARD MEMBER

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
WARREN BROWN	5300 ESTATE DR. OAKLAND, CA 94618
MARIA E. GALLO	2908 MARINA DRIVE. ALAMEDA, CA 94501
KENNETH B. COHEN	101 EMBARCADERO, OAKLAND, CA 94607
ROBERT PHILLIPS	9624 ELMVIEW DRIVE, OAKLAND, CA 94601
BARRY B. SIEGEL	868 MANDANA BLVD., OAKLAND, CA 94610



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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FCOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MELINDA PARAS Address: 1461 CURTIS STREET, BERKELEY, CA 94702

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGSEDE Address: 15400 FCOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: MELINDA PARAS Address: 1461 CURTIS ST., BERKELEY, CA 94702

Name: THEODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: HERBERT HOUSTON Address: 4550 SEQUOYAH ROAD, OAKLAND, CA 94605

Name: RICHARD WARREN Address: 42718 WEIGLAND CT., FREMONT, CA 94539

Name: MARYELLEN C. HERRINGER Address: 90 SEA VIEW, PIEDMONT, CA 94611

Date: Nov 29, 2001

Signature

Kenneth B. Cohen
KENNETH B. COHEN, CEO AND BOARD MEMBER

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
WARREN BROWN	5300 ESTATE DR., OAKLAND, CA 94618
MARIA E. GALLO	2908 MARINA DRIVE, ALAMEDA, CA 94501
KENNETH B. COHEN	101 EMBARCADERO, OAKLAND, CA 94607
ROBERT PHILLIPS	9624 ELMVIEW DRIVE, OAKLAND, CA 94601
BARRY B. SIEGEL	868 MANDANA BLVD., OAKLAND, CA 94610
NEELAM SEKHRI FEACHEM	121 CREEDON CIRCLE, ALAMEDA, CA 94610



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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

PRESIDENT

Chairman, President or other Presiding Officer (Indicate Title):

Name: HERBERT HOUSTON

Address: 4550 SEQUOYAH ROAD, OAKLAND, CA 94605

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE

Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Members:

Name: HERBERT HOUSTON

Address: 4550 SEQUOYAH ROAD, OAKLAND, CA 94605

Name: RICHARD WARREN

Address: 42718 WZIGLAND CT., FREMONT, CA 94539

Name: NEELAM SEKHRI FEACHEM

Address: 121 CREEDON CIRCLE, ALAMEDA, CA 94610

Name: THEODORE ROSE, M.D.

Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: KENNETH B. COHEN

Address: 101 EMBARCADERO, OAKLAND, CA 94607

Date: May 9, 2002

Kenneth B. Cohen
Signature

KENNETH B. COHEN, CEO AND BOARD MEMBER

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
MARYELLEN C. HERRINGER	90 SEA VIEW, PIEDMONT, CA 94611
WARREN BROWN	5300 ESTATE DR., OAKLAND, CA 94618
MARIA E. GALLO	2908 MARINA DRIVE, ALAMEDA, CA 94501
ROBERT PHILLIPS	9624 ELMVIEW DRIVE, OAKLAND, CA 94601
BARRY B. SIEGEL	868 MANDANA BLVD., OAKLAND, CA 94610



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Bill Jones
Secretary of State

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Name: THEODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: KENNETH B. COHEN Address: 101 EMBARCADERO, OAKLAND, CA 94607

Name: WARREN BROWN Address: 5300 ESTATE DR., OAKLAND, CA 94618

Date: SEPT. 3, 2002

Signature

Kenneth B. Cohen
KENNETH B. COHEN, CEO

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
MARIA E. GALLO	2908 MARINA DRIVE, ALAMEDA, CA 94501
ROBERT PHILLIPS	9624 ELMVIEW DRIVE, OAKLAND, CA 94601
BARRY B. SIEGEL	868 MANDANA BLVD., OAKLAND, CA 94610



State of California
Bill Jones
Secretary of State

STATEMENT OF FACTS
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OCT 22 2002

Bill Jones
BILL JONES, Secretary of State

(Office Use Only)

Instructions:

1. Complete and mail to: Secretary of State,
P.O. Box 944225, Sacramento, CA 94244-2250 (916) 653-3984
2. A street address must be given as the official mailing address or as
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3. Complete addresses as required.
4. If you need additional space, please include information on an 8½ X 11 page.

New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: HERBERT HOUSTON Address: 4550 SEQUOYAH RD., OAKLAND, CA 94605

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA

Members:

Name: HERBERT HOUSTON Address: 4550 SEQUOYAH RD., OAKLAND, CA 94605

Name: RICHARD WARREN Address: 42718 WEIGLAND CT., FREMONT, CA 94539

Name: THEODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: KENNETH B. COHEN Address: 6133 RUTHLAND DR., OAKLAND, CA 94611

Name: WARREN BROWN Address: 5300 ESTATE DR., OAKLAND, CA 94618

Date: OCTOBER 15, 2002

Signature

Kenneth B. Cohen
KENNETH B. COHEN, CEO

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
MARIA E. GALLO	2908 MARINA DRIVE, ALAMEDA, CA 94501
ROBERT PHILLIPS	9624 ELMVIEW DRIVE, OAKLAND, CA 94601
BARRY B. SIEGEL	868 MANDANA BLVD., OAKLAND, CA 94610
DENISE K. MARTIN	26 EASTWOOD COURT, OAKLAND, CA 94611



State of California
Bill Jones
Secretary of State

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
(Government Code Section 53051)

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APR 08 2003

Kevin Shelley
KEVIN SHELLEY, SECRETARY OF STATE

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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP (change of officers and loss of one board member)

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MARIA GALLO Address: 2908 MARINA DRIVE, ALAMEDA, CA 94501

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA

Members:

Name: MARIA GALLO Address: 2908 MARINA DRIVE, ALAMEDA, CA 94501

Name: RICHARD WARREN Address: 42718 WEIGLAND CT., YRFMONT, CA 94539

Name: ROBERT PHILLIPS Address: 9624 ELMVIEW DR., OAKLAND, CA 94601

Name: THEODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: KENNETH B. COHEN Address: 6133 RUTHLAND DR., OAKLAND, CA 94611

Date: FEBRUARY 10, 2003

Signature

Kenneth B. Cohen

KENNETH B. COHEN, TRUSTEE AND CEO

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
BARRY B. SIEGEL	868 MANDANA BLVD., OAKLAND, CA 94610
DENISE K. MARTIN	26 EASTWOOD COURT, OAKLAND, CA 94611
JOSEPH DELUCA	1221 GRAND AVE., ALAMEDA, CA 94501



State of California
Bill Jones
Secretary of State

STATEMENT OF FACTS
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Kevin Shelley
KEVIN SHELLEY, SECRETARY OF STATE

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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: MEMBERSHIP UPDATE: ONE RESIGNATION AND ONE NEW MEMBER

County: COUNTY OF ALAMEDA

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94575

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MARIA GALLO Address: 2908 MARINA DRIVE, ALAMEDA, CA 94501

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA

Members:

Name: MARIA GALLO Address: 2908 MARINA DRIVE, ALAMEDA, CA 94501

Name: RICHARD WARREN Address: 42718 WEIGLAND CT., FREMONT, CA 94539

Name: ROBERT PHILLIPS Address: 9624 ELMVIEW DR., OAKLAND, CA 94601

Name: THEODORE ROSE, M.D. Address: 6025 LASALLE AVE., OAKLAND, CA 94611

Name: KENNETH B. COHEN Address: 6133 RUTLAND DR., OAKLAND, CA 94611

Date: 6/10/03

Signature

Kenneth B. Cohen
KENNETH B. COHEN, TRUSTEE AND CEO

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
BARRY B. SIEGEL	808 MANDANA BLVD., OAKLAND, CA 94610
DENISE K. MARTIN	26 EASTWOOD COURT, OAKLAND, CA 94611
ROBERT W. BLACKBURN	4210 BEMIS ST., OAKLAND, CA 94605



State of California
Kevin Shelley
Secretary of State

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
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OCT - 7 2003

Kevin Shelley
KEVIN SHELLEY, SECRETARY OF STATE

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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: FIVE BOARD MEMBERS RESIGNED: NEW BOARD MEMBERS ADDED

NEW PRESIDENT OF THE BOARD OF TRUSTEES

County: ALAMEDA COUNTY

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Name and Address of each member of the governing board:

PRESIDENT BOARD OF TRUSTEES

Chairman, President or other Presiding Officer (Indicate Title):

Name: ILENE WEINREB Address: 65 HELLER DRIVE, OAKLAND, CA 94618

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Members:

Name: <u>ILENE WEINREB</u>	Address: <u>65 HELLER DRIVE, OAKLAND, CA 94618</u>
Name: <u>JOE PHAN</u>	Address: <u>3598 YELLOWSTONE CT., PLEASANTON, CA</u>
Name: <u>BARBARA PRICE</u>	Address: <u>1047 TAHITI LANE, ALAMEDA, CA 94502</u>
Name: <u>DR. TED ROSE</u>	Address: <u>6025 LA SALLE AVE., OAKLAND, CA 9461</u>
Name: <u>STANLEY SCHIFFMAN</u>	Address: <u>120 NORWICH RD., ALAMEDA, CA 94502</u>

Date: OCTOBER 1, 2003

Signature

Barbara Miller-Elegbede
BARBARA MILLER-ELEGBEDE, CLERK OF THE BOARD

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME

ADDRESS

RICHARD WARREN

42718 WEIGAND COURT, FREMONT, CA 94539



State of California
Kevin Shelley
Secretary of State

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
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MAY 04 2004

Kevin Shelley
KEVIN SHELLEY, SECRETARY OF STATE

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P.O. Box 942877, Sacramento, CA 94277-0001 (916) 652-3924
2. A street address must be given as the official mailing address or as
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3. Complete addresses as required.
4. If you need additional space, please include information on an 8 1/2 X 11 page.

New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: TWO NEW BOARD MEMBERS

County: ALAMEDA COUNTY

Official Mailing Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Name and Address of each member of the governing board:

PRESIDENT BOARD OF TRUSTEES

Chairman, President or other Presiding Officer (Indicate Title):

Name: ILENE WEINREB Address: 65 HELLER DRIVE, OAKLAND, CA 94618

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 15400 FOOTHILL BLVD., SAN LEANDRO, CA 94578

Members:

Name: <u>ILENE WEINREB</u>	Address: <u>65 HELLER DRIVE, OAKLAND, CA 94618</u>
Name: <u>JOE PHAN</u>	Address: <u>3598 YELLOWSTONE CT., PLEASANTON, CA</u>
Name: <u>BARBARA PRICE</u>	Address: <u>1047 TAHITI LANE, ALAMEDA, CA 94502</u>
Name: <u>DR. TED ROSE</u>	Address: <u>6025 LA SALLE AVE., OAKLAND, CA 94618</u>
Name: <u>STANLEY SCHIFFMAN</u>	Address: <u>120 NORWICH RD., ALAMEDA, CA 94502</u>

Date: APRIL 30, 2004

Barbara Miller-Elegbede
Signature

BARBARA MILLER-ELEGBEDE, CLERK OF THE BOARD

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

Alameda County
Medical Center
5/4/04
pg. 2

NAME	ADDRESS
RICHARD WARREN	42718 WEIGAND COURT, FREMONT, CA 94539
GWEN ROWE-LEE SYKES, PHD	3930 TURNLEY AVENUE, OAKLAND, CA 94605
DR. FLOYD HUEN	2181 BRAEMAR ROAD, OAKLAND, CA 94602



State of California Secretary of State

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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: NEW OFFICIAL ADDRESS: THREE NEW BOARD MEMBERS: OFFICER CHANGE

County: ALAMEDA

Official Mailing Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: DR. THEODORE ROSE Address: 6025 LA SALLE AVE., OAKLAND, CA 94611

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 1411 EAST 31ST STREET, OAKLAND, CA 94578

Members:

Name: DR. THEODORE ROSE Address: 6025 LA SALLE AVE., OAKLAND, CA 94611

Name: DR. GWEN ROWE LEE SYLES Address: 3930 TURNLEY AVE., OAKLAND, CA 94605

Name: STANLEY M. SCHIFFMAN Address: 120 NORWICH ROAD, ALAMEDA, CA 94502

Name: DANIEL BOGGAN, JR. Address: 1969 BYWOOD DRIVE, OAKLAND, CA 94602

Name: DR. FLOYD HUEN Address: 2181 BRAEMER ROAD, OAKLAND, CA 94602

Date: JUNE 9, 2005

Signature

Barbara Miller-Elegbede
BARBARA MILLER-ELEGBEDE, CLERK OF THE BOARD

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
JOE PHAN	3598 YELLOWSTONE COURT, PLEASANTON, CA 94588
TOM PICO	795 NEAL PLACE, PLEASANTON, CA 94566
BARBARA PRICE	1047 TAHITI LANE, ALAMEDA, CA 94502
J. BENNETT TATE	6216 THORNHILL DRIVE, OAKLAND, CA 94611
RICHARD WARREN	42718 WEIGAND COURT, FREMONT, CA 94539
ILENE WEINREB	65 HILLER DRIVE, OAKLAND, CA 94618



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New Filing ☐ Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: OFFICER CHANGE OF OFFICERS: NEW MEMBER: TWO MEMBERS RESIGNED

County: ALAMEDA

Official Mailing Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: J. BENNETT TATE Address: 6216 THORNHILL DR., OAKLAND CA 94611

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: BARBARA MILLER-ELEGBEDE Address: 1411 E. 31ST STREET, OAKLAND 94602

Members:

Name: <u>J. BENNETT TATE</u>	Address: <u>6216 THORNHILL DR., OAKLAND 94611</u>
Name: <u>STANLEY SCHIFFMAN</u>	Address: <u>120 NORWICH RD., ALAMEDA, CA 94611</u>
Name: <u>DANIEL BOGGAN, JR.</u>	Address: <u>1969 BYWOOD DRIVE, OAKLAND, CA 94602</u>
Name: <u>FLOYD HUEN, MD</u>	Address: <u>2181 BRAEMER RD., OAKLAND, CA 94602</u>
Name: <u>ILENE WEINREB</u>	Address: <u>65 HILLER DR., OAKLAND, CA 94613</u>

Date: APRIL 27, 2006

Signature Barbara Miller-Elegbede
BARBARA MILLER-ELEGBEDE
CLERK OF THE BOARD

Typed Name and Title

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES
(ADDITIONAL MEMBERS)

NAME	ADDRESS
JOE PHAN	3598 YELLOWSTONE COURT, PLEASANTON, CA 94588
BARBARA PRICE	1047 TAHITI LANE, ALAMEDA, CA 94502
RICHARD WARREN	42718 WEIGAND COURT, FREMONT, CA 94539
RON NELSON	1460 LINCOLN STREET, BERKELEY, CA 94702
DR. THEODORE ROSE	6025 LASALLE AVENUE, OAKLAND, CA 94611



State of California
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STATEMENT OF FACTS
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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: OFFICER CHANGE; MEMBERS ROSTER UPDATED
(see additional attachment)

County: ALAMEDA

Official Mailing Address: 1411 EAST 31ST STREET, OAKLAND, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: J. BENNETT TATE Address: 5216 THORNHILL DRIVE, OAKLAND, CA 94611

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: JESSICA HUTCHESON Address: 1411 EAST 31ST STREET, OAKLAND, CA 94602

Members:

Name: ANTHONY SLIMICK Address: 7896 DRIFTWOOD WAY, PLEASANTON, CA 94586

Name: KIRK E. MILLER, ESQ. Address: 810 HIGHLAND AVENUE, PIEDMONT, CA 94611

Name: BARBARA PRICE Address: 1041 TAHITI LANE, ALAMEDA, CA 94502

Name: RONALD NELSON Address: 1460 LINCOLN STREET, BERKELEY, CA 94702

Name: VALERIE LEWIS, ESQ Address: 5708 BALMORAL DRIVE, OAKLAND, CA 94619

Date: JUNE 12, 2008

Signature

JESSICA HUTCHESON, CLERK OF THE BOARD

Typed Name and Title

ALAMEDA COUNTY MEDICAL CENTER

6/17/08

pg 2 of 2

Members:

Name: STANLEY SCHIFFMAN	Address: 120 NORWICH ROAD, ALAMEDA, CA 94502
Name: DANIEL BOGGIN, JR.	Address: 1969 BYWOOD DRIVE OAKLAND, CA 94602
Name: FLOYD HUEN, M.D.	Address: 2181 BREMER ROAD, OAKLAND, CA 94602
Name: THEODORE ROSE, M.D.	Address: 6025 LASALLE AVENUE, OAKLAND, CA 94611
Name: ILENE WIENREB	Address: 65 HILLER DRIVE, OAKLAND, CA 94618



State of California Secretary of State

STATEMENT OF FACTS ROSTER OF PUBLIC AGENCIES FILING (Government Code section 53051)

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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: CLERK OF THE BOARD CHANGE MEMBER ROSTER UPDATED

County: ALAMEDA

Official Mailing Address: 1411 EAST 31ST STREET, OAKLAND, CA 94602

Name and Address of each member of the governing board

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: J. BENNETT TATE Address: 5215 THORNHILL DRIVE, OAKLAND, CA 94611

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: SASHA M. GUZMAN Address: 1411 EAST 31ST STREET, OAKLAND, CA 94602

Members:

Name: DANIEL BOGGAN, JR. Address: 1959 BYWOOD DRIVE, OAKLAND, CA 94602

Name: BARBARA PRICE Address: 1047 TAYLOR LANE, ALAMEDA, CA 94502

Name: FLOYD HUEN, MD Address: 2131 BRAEMER ROAD, OAKLAND, CA 94602

Name: VALERIE LEWIS, ESQ. Address: 5708 BALMORAL DRIVE, OAKLAND, CA 94619

Name: KIRK E. MILLER, ESQ. Address: 510 HIGHLAND AVENUE, PIEDMONT, CA 94611

RETURN ACKNOWLEDGMENT TO (Type or Print)

NAME

ACMC Board of Trustees
Alameda County Medical Center
Highland Campus - 3rd Floor, Atrium
1411 East 31st Street
Oakland, CA 94602

ADDRESS

CITY/STATE/ZIP

JUNE 9, 2009

Date

Signature

SASHA GUZMAN, CLERK OF THE BOARD

Typed Name and Title

Members:

Name:	RONALD D. NELSON	Address:	1460 LINCOLN STREET, BERKELEY, CA 94702
Name:	THEODORE G. ROSE, MD	Address:	6025 LASALLE AVENUE, OAKLAND, CA 94611
Name:	STANLEY M. SCHIFFMAN	Address:	1530 EASTSHORE DRIVE, ALAMEDA, CA 94501
Name:	ANTHONY SLIMICK	Address:	7596 DRIFTWOOD WAY, PLEASANTON, CA 94588
Name:	ILENE WEINREB	Address:	65 HILLER DRIVE, OAKLAND, CA 94618



State of California Secretary of State

STATEMENT OF FACTS ROSTER OF PUBLIC AGENCIES FILING

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New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: OFFICER CHANGE; TRUSTEE ROSTER UPDATED

County: Alameda

Official Mailing Address: 1411 EAST 31ST STREET,
OAKLAND, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: DANIEL BOGGAN, JR. Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: EMILY D. ROGERS Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Members:

Name: BARBARA PRICE Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name: RONALD D. NELSON Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name: FLOYD HUEN, MD Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name: VALERIE LEWIS, ESQ. Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

Name: KIRK MILLER, ESQ. Address: 1411 E. 31ST STREET, OAKLAND, CA 94602

RETURN ACKNOWLEDGMENT TO: (Type or Print)

NAME

ACMC Board of Trustees
Alameda County Medical Center
Highland Campus - 3rd Floor, Atrium
1411 East 31st Street
Oakland, CA 94602

ADDRESS

CITY/STATE/ZIP

April 29, 2010

Date

Signature

Emily D. Rogers, Clerk of the Board

ALAMEDA COUNTY MEDICAL CENTER

3/5/10

pg 2 of 2

Members:

Name: THEODORE G. ROSE, MD
Name: STANLEY M. SCHIFFMAN
Name: ANTHONY SLIMICK
Name: J. BENNETT TATE
Name: ILENE WEINREB

Address: 1411 E. 31ST STREET, OAKLAND, CA 94602
Address: 1411 E. 31ST STREET, OAKLAND, CA 94602
Address: 1411 E. 31ST STREET, OAKLAND, CA 94602
Address: 1411 E. 31ST STREET, OAKLAND, CA 94602
Address: 1411 E. 31ST STREET, OAKLAND, CA 94602



State of California Secretary of State

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OCT 12 2012

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the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, attach information on an 8½" X 11" page, one sided and legible.

New Filing ☐

Update ☒

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: OFFICER CHANGE, TRUSTEE ROSTER UPDATED

County: Alameda

Official Mailing Address: 1411 E. 31st Street, Oakland, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: Daniel Boggan, Jr. Address: 1411 E. 31st Street, Oakland, CA 94602

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: Barbara L. McElroy Address: 1411 E. 31st Street, Oakland, CA 94602

Members:

Name: Floyd Huen, MD. Address: 1411 E. 31st Street, Oakland, CA 94602

Name: Valerie D. Lewis, Esq. Address: 1411 E. 31st Street, Oakland, CA 94602

Name: Kirk E. Miller Address: 1411 E. 31st Street, Oakland, CA 94602

Name: Ronald D. Nelson Address: 1411 E. 31st Street, Oakland, CA 94602

Name: Stanley M. Schiffman Address: 1411 E. 31st Street, Oakland, CA 94602

RETURN ACKNOWLEDGMENT TO: (Type or Print)

NAME ACMC Board of Trustees
ADDRESS 1411 E. 31st Street - 3rd Floor Atrium
CITY/STATE/ZIP Oakland, CA 94602

October 5, 2012

Signature

Barbara L. McElroy, Clerk of the Board
Typed Name and Title

ALAMEDA COUNTY MEDICAL CENTER
STATEMENT OF FACTS - ROSTER OF PUBLIC AGENCIES FILING
PAGE 2

MEMBERS:

Name: Anthony Slimick	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: J. Bennett Tate	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Ilene Weinreb	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Barry Zorthian, MD	Address: 1411 E. 31 st Street, Oakland, CA 94602



**State of California
Secretary of State**

**STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING**
(Government Code section 53051)

FILED
Secretary of State
State of California
JUN 06 2013

Instructions:

1. Complete and mail to: Secretary of State,
P.O. Box 942877, Sacramento, CA 94277-0001 (916) 853-3884
2. A street address must be given as the official mailing address or as
the address of the presiding officer.
3. Complete addresses as required.
4. If you need additional space, attach information on an 8½" X 11" page, one sided and legible.

New Filing: ☐ Update: ☒

(Office Use Only)

Legal name of Public Agency: ALAMEDA COUNTY MEDICAL CENTER

Nature of Update: OFFICER CHANGE, TRUSTEE ROSTER UPDATE

County: ALAMEDA

Official Mailing Address: 1411 E. 31st STREET, OAKLAND, CALIFORNIA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: KIRKE E. MILLER Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: Barbara L. McElroy Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Members:

Name: Daniel Boggan, Jr. Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Michele Lawrence Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Valerie D. Lewis, Esq. Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Kirk E. Miller Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Ronald D. Nelson Address: 1411 E. 31st STREET, OAKLAND, CA 94602

RETURN ACKNOWLEDGMENT TO: (Type or Print)

NAME ☐ ACMC Board of Trustees

ADDRESS ☐ 1411 E. 31st STREET

CITY/STATE/ZIP ☐ OAKLAND, CA 94602

May 30, 2013

Date

Signature

Barbara L. McElroy, Clerk of the Board

Typed Name and Title

ALAMEDA COUNTY MEDICAL CENTER
STATEMENT OF FACTS – ROSTER OF PUBLIC AGENCIES FILING
PAGE 2

MEMBERS:

Name: Stanley M. Schiffman	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Anthony Slimick	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: J. Bennett Tate	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Anthony B. Varni	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Barry Zorthian, MD	Address: 1411 E. 31 st Street, Oakland, CA 94602



**State of California
Secretary of State**

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(Government Code section 52051)

FILED
Secretary of State
State of California

SEP 03 2014

Instructions

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P.O. Box 942277 Sacramento, CA 94227-0000 (916) 661-1664
2. A street address must be given as the official mailing address or as the address of the presiding officer.
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4. If you need additional space, attach information on an 8 1/2" x 11" page, one sided and legible.

New Filing ☐ Update ☒

Legal name of Public Agency Alameda County Mental Center

Nature of Update Legal Name Change to Alameda Mental System Trustee Roster Update

Clerk of the Board update

County ALAMEDA

Official Mailing Address 1411 E 31st Street Oakland 94602

Name and Address of each member of the governing board

Chairman, President or other Presiding Officer President

Name KAREN E. MILLER Address 1411 E 31ST STREET OAKLAND CA 94602

Secretary or Clerk designate CLERK OF THE BOARD

Name MARLA D. COX Address 1411 E 31ST STREET OAKLAND CA 94602

Members

Name VALERIE D. LEWIS Address 1411 E 31ST STREET OAKLAND CA 94602

Name KENNEDY DANIEL R Address 1411 E 31ST STREET OAKLAND CA 94602

Name JOE DEVER Address 1411 E 31ST STREET OAKLAND CA 94602

Name MICHAEL J. LAWRENCE Address 1411 E 31ST STREET OAKLAND CA 94602

Name JOE LUCIANO Address 1411 E 31ST STREET OAKLAND CA 94602

RETURN ACKNOWLEDGMENT TO: Type of form

NAME AND BOARD OF TRUSTEES

ADDRESS 1411 E 31ST STREET

CITY/STATE/ZIP OAKLAND CA 94602

ALMAST 29 2014

Typed Name and Title

MARLA D. COX CLERK OF THE BOARD

Typed Name and Title

Alameda Health System

ALAMEDA HEALTH SYSTEM

STATEMENT OF FACTS - NOTION OF PUBLIC AGENCIES FILING

REDACTED

Name Anthony B. Varn

Name Barry Zornstein, MD

Address 1411 E 31st Street Oakland CA 94602

Address 1411 E 31st Street Oakland CA 94602

Page 2 of 2



State of California
Secretary of State

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
(Government Code section 53051)

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Secretary of State
State of California

AUG 03 2015

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Instructions:

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2. A street address must be given as the official mailing address or as
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3. Complete addresses as required.
4. If you need additional space, attach information on an 8½" X 11" page, one sided and legible.

New Filing ☐ Update ☒

Legal name of Public Agency: Alameda Health System

Nature of Update: OFFICER CHANGE, TRUSTEE ROSTER UPDATE

County: ALAMEDA

Official Mailing Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: MICHELE LAWRENCE Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: MARLA D. COX Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Members:

Name: Kirk Miller Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Joe DeVries Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Maria Hernandez Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Tracy Jensen Address: 1411 E. 31st STREET, OAKLAND, CA 94602

Name: Jim Lugannani Address: 1411 E. 31st STREET, OAKLAND, CA 94602

RETURN ACKNOWLEDGMENT TO: (Type or Print)

JULY 14, 2015

NAME

Date

ADDRESS

Signature

CITY/STATE/ZIP

MARLA D. COX, CLERK OF THE BOARD

Typed Name and Title

2012

ALAMEDA HEALTH SYSTEM
STATEMENT OF FACTS – ROSTER OF PUBLIC AGENCIES FILING
PAGE 2

MEMBERS:

Name: Kinkini Banerjee	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Anthony B. Varni	Address: 1411 E. 31 st Street, Oakland, CA 94602
Name: Barry Zorhian, MD	Address: 1411 E. 31 st Street, Oakland, CA 94602



State of California
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STATEMENT OF FACTS
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(Government Code section 53051)

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New Filing ☐ Update ☒

Legal name of Public Agency: Alameda Health System

Nature of Update: Trustee Roster Update; Clerk of the Board Update; Officer Update

County: ALAMEDA

Official Mailing Address: 1411 E. 31st Street, Oakland 94602

Name and Address of each member of the governing board.

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: Michele Lawrence Address: 1411 E. 31st Street, Oakland CA 94602

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: Susana Flores Address: 1411 E. 31st Street, Oakland CA 94602

Members:

Name: Michele Lawrence Address: 1411 E. 31st Street, Oakland CA 94602

Name: Kinkini Banerjee Address: 1411 E. 31st Street, Oakland CA 94602

Name: Joe DeVries Address: 1411 E. 31st Street, Oakland CA 94602

Name: Maria G. Hernandez Address: 1411 E. 31st Street, Oakland CA 94602

Name: Tracy Jensen Address: 1411 E. 31st Street, Oakland CA 94602

RETURN ACKNOWLEDGMENT TO: (Type or Print)

NAME AHS Board of Trustees

ADDRESS 1411 E. 31st Street

CITY/STATE/ZIP OAKLAND, CA 94602

March 21, 2016

Date

Signature

Susana Flores, Clerk of the Board
Typed Name and Title

ALAMEDA HEALTH SYSTEM
STATEMENT OF FACTS – ROSTER OF PUBLIC AGENCIES FILING

MEMBERS:

Name: Jim Lugannani

Address: 1411 E. 31st Street, Oakland, CA 94602

Name: Barry Zorthian, MD

Address: 1411 E. 31st Street, Oakland, CA 94602



State of California
Secretary of State

STATEMENT OF FACTS
ROSTER OF PUBLIC AGENCIES FILING
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4. If you need additional space, attach information on an 8 1/2" X 11" page, one sided and legible.

New Filing ☐

Update ☒

Legal name of Public Agency: Alameda Health System

Nature of Update: Trustee Roster Update

County: ALAMEDA

Official Mailing Address: 1411 E. 31st Street, Oakland 94602

Name and Address of each member of the governing board:

Chairman, President or other Presiding Officer (Indicate Title): PRESIDENT

Name: Michele Lawrence Address: 1411 E. 31st Street, Oakland CA 94602

Secretary or Clerk (Indicate Title): CLERK OF THE BOARD

Name: Susana Flores Address: 1411 E. 31st Street, Oakland CA 94602

Members:

Name: Michele Lawrence Address: 1411 E. 31st Street, Oakland CA 94602

Name: Kinkini Banerjee Address: 1411 E. 31st Street, Oakland CA 94602

Name: Joe DeVries Address: 1411 E. 31st Street, Oakland CA 94602

Name: Maria G. Hernandez Address: 1411 E. 31st Street, Oakland CA 94602

Name: Tracy Jensen Address: 1411 E. 31st Street, Oakland CA 94602

RETURN ACKNOWLEDGMENT TO: (Type or Print)

December 16, 2016

NAME AHS Board of Trustees

ADDRESS 1411 E. 31st Street

CITY/STATE/ZIP OAKLAND, CA 94602

Date

Signature

Susana Flores, Clerk of the Board
Typed Name and Title

ALAMEDA HEALTH SYSTEM

STATEMENT OF FACTS – ROSTER OF PUBLIC AGENCIES FILING

MEMBERS:

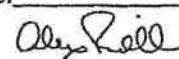
Name: Jim Lugennani	Address: 1411 E 31 st Street, Oakland, CA 94602
Name: Barry Zorthian, MD	Address: 1411 E 31 st Street, Oakland, CA 94602
Name: Gary Charland	Address: 1411 E 31 st Street, Oakland, CA 94602
Name: Anthony Thompson	Address: 1411 E 31 st Street, Oakland, CA 94602



I hereby certify that the foregoing transcript of 852 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

JUN 28 2017 

Date: _____

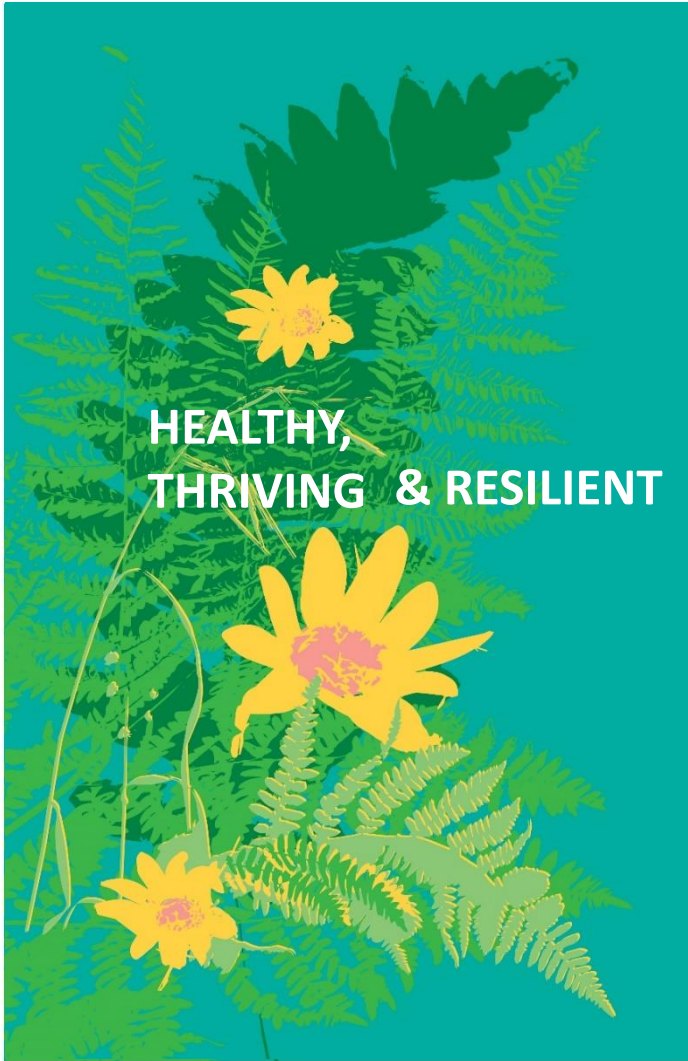


ALEX PADILLA, Secretary of State

EXHIBIT B

ANNUAL COMPREHENSIVE FINANCIAL REPORT

For the Fiscal Year Ended June 30, 2021



Melissa Wilk, Auditor-Controller

COUNTY OF ALAMEDA STATE OF CALIFORNIA



ANNUAL COMPREHENSIVE FINANCIAL REPORT

**For the Year Ended
June 30, 2021**

**Melissa Wilk
Auditor-Controller**

Front & Back Covers: Through the support and shared vision of New Beginnings, Alameda County Arts Commission's 100 Families program partnered with Alameda County Library to conduct family art making workshops at Library locations throughout Alameda County. Images celebrate the diversity of Alameda County and feature local residents. Artwork image designed by Malik Johnson. Photographs by Paul Kuroda.

COUNTY OF ALAMEDA, CALIFORNIA

ANNUAL COMPREHENSIVE FINANCIAL REPORT YEAR ENDED JUNE 30, 2021

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COUNTY OF ALAMEDA, CALIFORNIA

ANNUAL COMPREHENSIVE FINANCIAL REPORT YEAR ENDED JUNE 30, 2021

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COUNTY OF ALAMEDA, CALIFORNIA

ANNUAL COMPREHENSIVE FINANCIAL REPORT YEAR ENDED JUNE 30, 2021

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COUNTY OF ALAMEDA, CALIFORNIA

**ANNUAL COMPREHENSIVE FINANCIAL REPORT
YEAR ENDED JUNE 30, 2021**

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INTRODUCTORY SECTION



ALAMEDA COUNTY
AUDITOR-CONTROLLER AGENCY
MELISSA WILK
AUDITOR-CONTROLLER/CLERK-RECORDER

December 28, 2021

The Honorable Board of Supervisors
Alameda County
County Administration Building
Oakland, CA 94612

Members of the Board of Supervisors and the Citizens of Alameda County:

The Annual Comprehensive Financial Report (ACFR) of Alameda County (the County) for the year ended June 30, 2021, is hereby submitted in compliance with the provisions of Sections 25250 and 25253 of the Government Code of the State of California.

The ACFR has been prepared by the Auditor-Controller Agency in compliance with the principles and standards for financial reporting set forth by the Governmental Accounting Standards Board (GASB). Management assumes full responsibility for the completeness and reliability of the information contained in this report based upon a comprehensive internal control framework it established for this purpose. Because the costs of internal control should not surpass its benefits, the objective is to provide reasonable rather than absolute assurance that the financial statements are free of any material misstatements.

The ACFR has been audited by the independent certified public accounting firm of Macias Gini & O'Connell LLP. The purpose of the independent audit was to provide reasonable assurance that the financial statements of the County of Alameda for the year ended June 30, 2021, are free of material misstatements. The independent certified public accounting firm has issued an unmodified ("clean") opinion on the County's financial statements for the year ended June 30, 2021.

Management's Discussion and Analysis (MD&A) immediately follows the independent auditor's report and provides a narrative introduction, overview, and analysis of the financial statements. This letter of transmittal is designed to complement the MD&A and should be read in conjunction with it.

In addition to the annual audit of the ACFR, the County is also required to undergo an annual single audit in conformity with the provisions of the Single Audit Act of 1984 and the 1996 amendments to that act, and the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Information related to the single audit, including the schedule of expenditures of federal awards, findings and questioned costs, and the auditor's report on the internal control and compliance with applicable laws and regulations, is presented in a separate publication.

The ACFR includes all funds of the County. The County provides a full range of services, including public protection; social services; health care for the indigent; construction and maintenance of highways, streets and other infrastructure; recreational activities; library services; and cultural events. In addition to general government activities, this ACFR includes activities of the Alameda Health System (as a discretely presented component unit), the Alameda County Employees' Retirement Association, the Alameda County Redevelopment Successor Agency, and certain special districts, financing authorities, and county service areas. The Oakland-Alameda County Coliseum Authority, which includes the Oakland-Alameda County Coliseum Financing Corporation as its blended component unit, is a joint venture between the County and the City of Oakland, each funding up to 50% of the Coliseum Authority's operating costs and debt service requirements, to the extent such funding is necessary. Finally, information about the Master Tobacco Settlement Corporation is included (as a blended component unit).

Office of the Auditor-Controller
1221 Oak St., Suite 249
Oakland, CA 94612
Tel: (510) 272-6565
Fax: (510) 272-6502

Central Collections Division
1221 Oak St., Suite 220
Oakland, CA 94612
Tel: (510) 208-9900
Fax: (510) 208-9932

Clerk-Recorder's Office, Main
1106 Madison St., 1st Floor
Oakland, CA 94607
Tel: (510) 272-6362
Fax: (510) 208-9858

Clerk-Recorder's Office, Tri-Valley
7600 Dublin Blvd.
Dublin, CA 94568
Tel: (510) 272-6362
Fax: (510) 208-9858

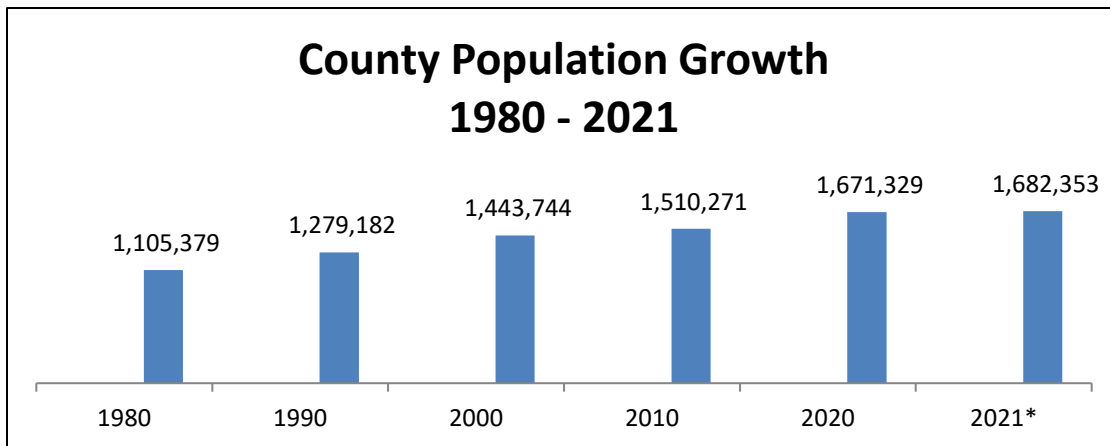
ALAMEDA COUNTY

Profile of Government:

The County was established in 1853 and is governed by a five-member Board of Supervisors ("Board") elected by popular vote. Other elected officials include the Auditor-Controller/Clerk-Recorder, Assessor, Treasurer-Tax Collector, District Attorney, and Sheriff/Coroner. The Board of Supervisors is responsible for providing policy direction, approving the County budget, and representing the County in a number of areas including special districts. The County Administrator reports to the Board and is responsible for delivering County services.

Local Economy:

Located on the east side of the San Francisco Bay, the County encompasses 813 square miles and extends from Albany in the North to Fremont in the South and Livermore in the East. The population of the County exceeds 1.6 million making it the seventh most populous county in California according to 2020 U.S. Census Bureau data. Population growth in the County has been fairly consistent during the last forty years making it a desirable place to live and work.



Source U.S. Census

* Estimate based on April 1, 2020 Census

The County possesses a large and diverse economic base, consisting of research and high technology, professional services, manufacturing, farming, finance, transportation, wholesale and retail trade, higher education, medical and health services, and government services. The County also has a diversified industrial base that provides well-paying jobs to its residents.

In international trade, the County has a long history of strong cultural and business ties with Pacific Rim trading partners. Because of its central location and state-of-the-art port facilities, it is a major port for the Pacific Rim trade. The County's extensive network of air, sea, highway and rail facilities have made the County a major transportation hub for regional, national, and international trade.

The Port of Oakland serves an essential role for the agricultural and manufacturing sectors of the California economy. California farm products, such as fruits, nuts, vegetables, rice, and raw cotton are exported through the Port of Oakland, as are other products, including animal feed, chemicals, lumber, recycled paper, and scrap metal. Despite the series of disruptions caused by the pandemic, the Port managed to handle more containers compared to last year. It moved 1.1 million TEUs in 2020, a 0.5% increase from the previous year, making it the 10th in the Top 30 U.S. Ports in 2020. The growth was attributed to the rapid reemergence of Chinese ports from the pandemic. Early closures of the Asian economies in the first quarter of 2020 resulted in a 5.2% drop in imports and the biggest contributor was the 10.3% decrease in imports of consumer discretionary products as Asian factories closed. For the first 11 months of 2021, Oakland imports are up nearly 8%. The recovery is due to shipping lines restoring vessel service to Oakland following mid-year cancellations.

Oakland International Airport (OAK), owned and operated by the Port of Oakland, is a passenger, cargo and general aviation airport located on approximately 2,600 acres of land. It is one of the three major commercial airports serving the San Francisco Bay Area as well as the largest cargo hub in Northern California. An improved economy, a relaxation of COVID-19 related restrictions and business shutdowns, and increased airline activity has caused the Airport passenger traffic to soar higher during 2021, climbing to its highest level in more than a year. The July passenger activity was the highest since January 2020, when the East Bay transportation facility handled 905,817 passengers.

In addition, the Port oversees approximately 837 acres of land along the Oakland Estuary that is not used for maritime or aviation purposes. The commercial real estate properties on this land serve a number of uses including warehouses, parking lots, hotels, offices, shops, restaurants, public parks and open space.

The Livermore Valley is home to one of California's oldest wine regions with a rich winemaking tradition dating back to 1840. Capturing America's first international gold medal for wine in 1889 at the Paris Exposition thus putting California on the world wine map, Livermore Valley currently has 50 plus wineries and more than 5,000 acres of vineyards. Wineries vary in size from limited release, 100-case special reserves to 400,000-case mass-produced operations. The region's climate is ideal for producing fully ripened, balanced grapes for winemaking. The Livermore Valley's long and rich tradition of winemaking makes it a true tourist destination for wine lovers. In an effort to improve its visibility and attract more visitors, the Livermore City Council approved the formation of the new Livermore Valley Wine Heritage District on November 22, 2021. The City of Livermore will act as the lead agency for the district, collecting an annual assessment of 2% of winery sales made in the State of California over a five-year term that would begin retroactively on July 1, 2021 with the collection of assessments set to begin on Jan. 1, 2022. The district seeks to increase sales by putting money toward marketing, advocacy, quality enhancement, education and professional development.

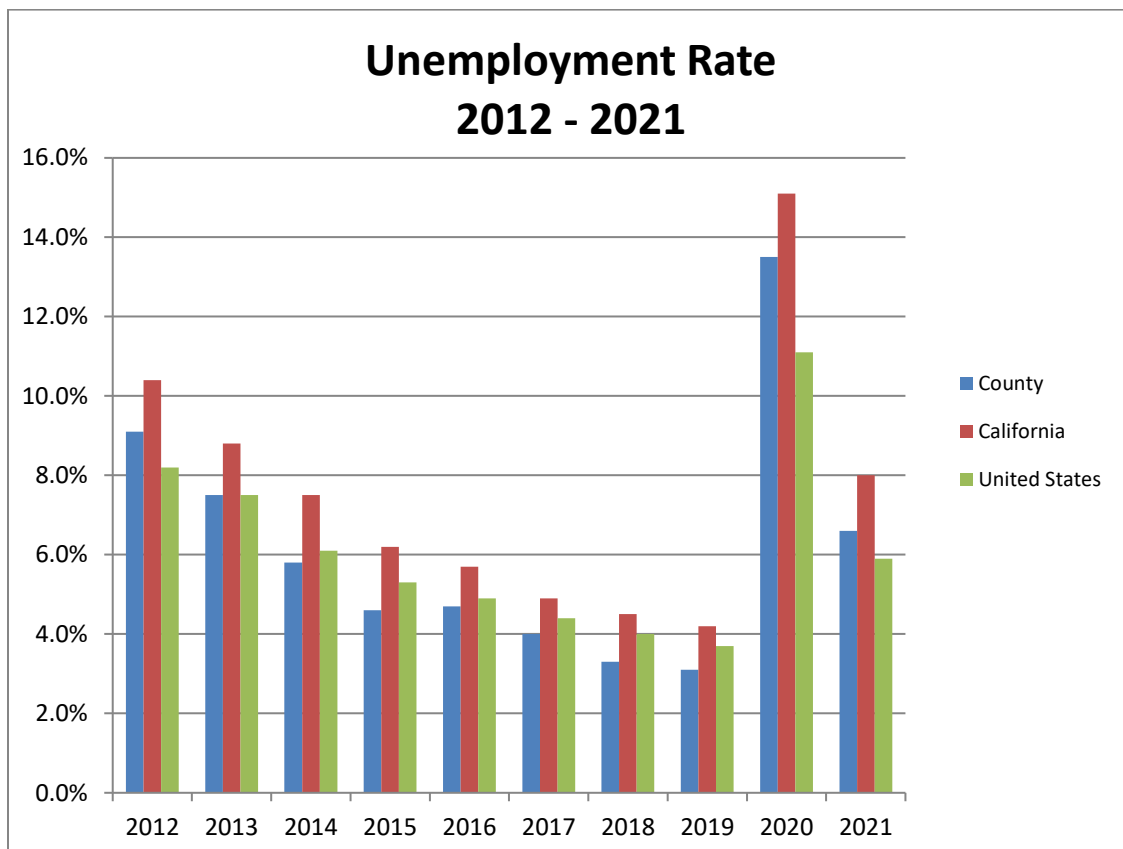
The County is also the home of Ernest Orlando Lawrence Berkeley National Laboratory and Lawrence Livermore National Laboratory. Both sites are world-renowned scientific centers, where cutting-edge science and engineering are used to break new ground to enhance national security. Other areas of research at the two locations include developments in energy, biomedicine, and environmental science.

Many institutions of higher education are located in the County, including the prestigious University of California at Berkeley, California State University of the East Bay, Mills College, Holy Names University, the California College of Arts and Crafts, seven community colleges and many vocational and specialty schools. These institutions of higher learning help to produce an educated work force to drive the economy of the Bay Area.

A number of major freeways, bridges, the Alameda-Contra Costa Transit District (AC Transit), and the San Francisco Bay Area Rapid Transit District (BART) provide the County with a modern and efficient transportation system. As COVID-19 mandates and restrictions ease and offices re-open, additional services are restored to meet the demands. Ridership for BART and AC Transit are steadily increasing and are trending towards pre-pandemic levels.

ECONOMIC OUTLOOK

As the coronavirus continues to evolve and mutate, so does the pandemic's impact on the California economy. The United States Bureau of Labor Statistics show that unemployment in California was at 8.0% in June 2021 compared to the national unemployment rate of 5.9%. In the County, the unemployment rate decreased from 13.5% in June 2020 to 6.6% in June 2021. These numbers reflect a significant recovery as the economy has grown more resilient to the effects of the virus.



Source: Bureau of Labor Statistics

The UCLA Anderson School of Business forecasts the U.S. economy will continue its strong economic growth and labor market recovery, with a lessening of supply constraints and inflation. For the first quarter of 2022, the growth rate was adjusted in December 2021 to 2.6% from the 4.2% predicted in September 2021, based on the assumption that the omicron variant might be disruptive, while acknowledging that its effects cannot be predicted. A shortage of workers still persists across the U.S due to lagging labor force participation which is steady at 61.7% in recent months, below the 63.4% rate before the pandemic, and fewer workers hold multiple jobs now than before the pandemic. California's unemployment rate is expected to reach 7.0% in the fourth quarter of 2021, before falling to an annual average of 5.6% in 2022 and 4.4% in 2023. The economists expect non-farm payroll job growth for 2021, 2022 and 2023 to be 1.9%, 4.7% and 2.5% respectively.

The State of California has passed its budget for 2021-22 which includes a one-time appropriation of \$2 billion to assist counties, Continuums of Care, and large cities with addressing homelessness in their communities. Funding of \$1 billion is appropriated in 2021-22 and \$1 billion is appropriated in 2022-23, with future years subject to authorization. It also includes \$222.5 million to be expended over three years to assist counties with new prevention services implementation efforts allowable under the new federal Family First Prevention Services Act. These one-time resources will assist counties to build locally driven prevention services and support for children, youth and families at risk of entering foster care. In addition, \$139.2 million is also included to assist counties with serving foster youth with complex needs and behavioral health conditions within California, as well as youth that return from an out-of-state congregate placement.

On June 25, 2021, the Board of Supervisors adopted a budget for Fiscal Year 2021–2022 by closing a \$49.2 million funding gap compared to last year's \$128.3 million using \$25.4 million in ongoing strategies and \$23.8 million in one-time solutions.

California housing market remains solid amidst easing competition. Due to supply constraints and higher home prices, home sales are expected to slightly go down in 2022. An imbalance in demand and supply will continue to put upward pressure on prices, but higher interest rates and partial normalization of the mix

of sales will likely curb median price growth. In a report published by the California Association of Realtors, the County's median sales price of single-family homes is \$1.3M in September 2021, an increase of 23.8% from September 2020.

The leadership of the County continues to employ sound fiscal judgment to address the severe economic issues it is facing. In the last three fiscal years, the County has closed budget gaps totaling \$254.6 million while providing essential services to the citizens of the County.

LONG-TERM FINANCIAL PLANNING AND MAJOR INITIATIVES

Partnerships and collaboration have played a key role in helping the County close a \$49.2 million funding gap.

The Assessor's Office timely submitted the 2020–2021 local assessment roll of \$343.0 billion reflecting assessments of 512,246 taxable properties. The 6.69% roll increase from 2019–2020 is primarily attributed to the growing economy and the increase in real estate values.

A \$6.8 million investment was approved for the ALL IN Eats expansion of the County circular food economy in FY 2021-22 from existing sources, including state and federal funds in collaboration with various County agencies and community-based organizations.

The Enhancing Vision 2026 fund was extended for an additional three years from FY 2022-23 through FY 2024-25 by designating residual tax proceeds, continuing administration of the fund by the Health Care Services Agency, and including a more robust results-based accountability and evaluation process.

The Board directed the County Administrator and Health Care Services Agency Director to identify funding for St. Rose Hospital to maintain critical safety-net operations. Contingent upon Health Committee verification and review of St. Rose Hospital's budget, it was recommended that \$8.0 million for FY 2021-22 to FY 2024-25 in American Rescue Plan funding be directed to St. Rose Hospital.

While the County continues to face budgetary challenges from the pandemic and public health emergency, it maintained continuity of operations, provided core services to the most vulnerable residents and communities, and protected the health and safety of its employees during a time of unprecedented disruption. Guided by the Board's Vision 2026 foundational operating principles of equity, access, fiscal stewardship, sustainability, collaboration and innovation; as well as the bold 10X goals, the County accelerated its adaptation to technology and implemented innovative solutions to continue providing services to its residents and diverse communities during the pandemic and shelter in place orders.

As we look forward to a new year of hope and transition, there are many Board priorities and initiatives that will continue and move towards implementation as we gradually return to a "new normal." In addition, key investments in infrastructure will focus on our priority deferred maintenance needs, and an updated facility assessment report and real estate master plan will help guide development of a more robust capital program, including moving forward with commitments to affordable housing and plans to develop the Broadway properties in Oakland. Planning is also underway for the replacement of fire stations funded by voter-approved Measure X.

The County's internal infrastructure changed with the Health Care Services Agency's pivot to a longer term Office of COVID Mitigation and Prevention, and implementation of a countywide Office of Diversity, Equity and Inclusion in the County Administrator's Office.

The County's Final Budget for FY 2021-2022 includes \$1.4 billion in salary and employee benefits for a diverse workforce of over 10,000 employees, \$720 million in funding for direct client services provided by 261 community-based organizations including \$89 million for the Alameda Health System, \$348 million in public benefit and assistance programs, \$191 million for homelessness programs and affordable housing, \$321 million in services to the unincorporated areas, and \$707 million for children's services.

RELEVANT FINANCIAL POLICIES

Internal Control: The management of the County is responsible for establishing and maintaining adequate internal control to assure that County operations are effective and efficient, applicable laws and regulations are followed, and financial reports are reliable. Internal control is designed to provide reasonable, but not absolute, assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of internal control should not exceed the benefit likely to be derived, and that cost-benefit analyses require estimates and judgment by management.

Countywide internal control standards are established by the Auditor-Controller Agency. The Board of Supervisors adopted a policy that requires County departments to conduct triennial self-assessments of their internal controls, using control self-assessment tools developed by the Auditor-Controller Agency, and to make improvements to enhance their fiscal accountability. The County's internal audit staff monitors the countywide assessment program.

Budgetary Control: In accordance with the provisions of Sections 29000 through 29143, of the Government Code and other statutory provisions, commonly known as the County Budget Act, the County prepares and adopts a budget for each fiscal year. Activities of the general fund, special revenue funds and capital projects funds are included in the annual budget. Budgetary control (that is, the level at which expenditures cannot legally exceed the appropriated amount) is established for major expenditure categories in each budget unit. The budgeted expenditures become law through the passage of the Appropriation Ordinance. This Ordinance constitutes the authorized spending threshold for the fiscal year, and cannot be exceeded, except by subsequent amendment of the budget by the Board of Supervisors. In the governmental funds, an encumbrance system is used to ensure effective budgetary control and to enhance cash planning and control. As demonstrated by the statements and schedules included in the financial section of this report, the County continues to meet its responsibility for sound fiscal management.

Pension and Other Postemployment Benefits (OPEB) Trust Fund Operations: County employees' pension and OPEB are managed under trust by ACERA, except Fire Department employees, who are managed under two pension plans and one OPEB plan by CalPERS. ACERA and CalPERS Miscellaneous Risk Pool are cost-sharing multiple-employer defined benefit pension plans and as such all risks and costs are shared by the participating employers within the plans. In addition, CalPERS OPEB and Safety pension plans are agent multiple-employer defined benefit plans and as such plan assets are maintained separately for each individual employer to pay the benefits of its employees. All plans operate independently outside the control of the County Board of Supervisors. Pension benefits are the only vested benefits and all other postemployment benefits (healthcare, COLA and death benefits) are not vested.

The County's funding objective for its pension plans is to fund long-term pension liabilities through contributions and investment income. For calendar year 2020, total contributions of \$415.8 million, net investment income of \$1.0 billion, and miscellaneous income of \$0.3 million, combined for a net increase of \$1.4 billion. Of the total contributions of \$415.8 million, the employers' share was \$309.7 million while the employees' share was \$106.1 million. Total contributions increased by \$14 million compared with a \$37 million increase the previous year. For calendar year 2020, the overall change to plan net position was an increase of \$840 million, compared to a \$1.1 billion increase in calendar year 2019.

In fiscal year 2015, the Board of Supervisors authorized the establishment of a Pension Liability Reduction Account (PLRA), a commitment of fund balance in the general fund, and the initial transfer of \$200 million from County reserves to reduce the ACERA net pension liability. Since then, \$600 million has been transferred which increased the PLRA balance to \$800 million. In June, the County transferred the full \$800 million to ACERA which was applied to the County's safety member unfunded liability. This lowers the County's safety contribution rate to ACERA but will not impact the rates for employee contributions. A policy was adopted to deposit the savings from the reduced employer retirement rates to the PLRA to further reduce the unfunded pension liabilities.

The County is one of the few counties within the State of California that has adopted Article 5.5 of the County Employees Retirement Law of 1937, which requires 50% of investment earnings in excess of the actuarially assumed rate of return from pension to be transferred to the Supplemental Retirees Benefits

Reserve (SRBR). The SRBR funds other postemployment healthcare benefits and other benefits for ACERA members. CalPERS members are funded on a pay-as-you-go basis in a separate plan. The postemployment healthcare benefits payments for calendar year 2020 was \$46.0 million, an increase of \$2.5 million or 5.7% over the prior year.

AWARDS

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the County of Alameda for its ACFR for the year ended June 30, 2020. The County has received this prestigious award for 38 consecutive years. In order to be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized ACFR. This report must satisfy both generally accepted accounting principles and applicable legal requirements. A Certificate is valid for a period of one year only. The County believes that its current ACFR continues to meet the Certificate of Achievement Program's requirements and the County is submitting it to GFOA to determine its eligibility for another certificate.

ACKNOWLEDGEMENTS

The preparation of the ACFR was made possible by the dedicated services of the entire staff of the Auditor-Controller Agency. I would also like to express my appreciation to all members of the County departments who assisted and contributed to its preparation. In addition, I acknowledge and appreciate the leadership and support provided by the Board of Supervisors and the County Administrator who have made the preparation of this report possible.



Melissa Wilk
Auditor-Controller
of Alameda County



Government Finance Officers Association

Certificate of
Achievement
for Excellence
in Financial
Reporting

Presented to

**County of Alameda
California**

For its Comprehensive Annual
Financial Report
For the Fiscal Year Ended

June 30, 2020

Christopher P. Morill

Executive Director/CEO

COUNTY OF ALAMEDA, CALIFORNIA
ELECTED AND APPOINTED PUBLIC OFFICIALS

As of June 30, 2021

ELECTED OFFICIALS

Board of Supervisors

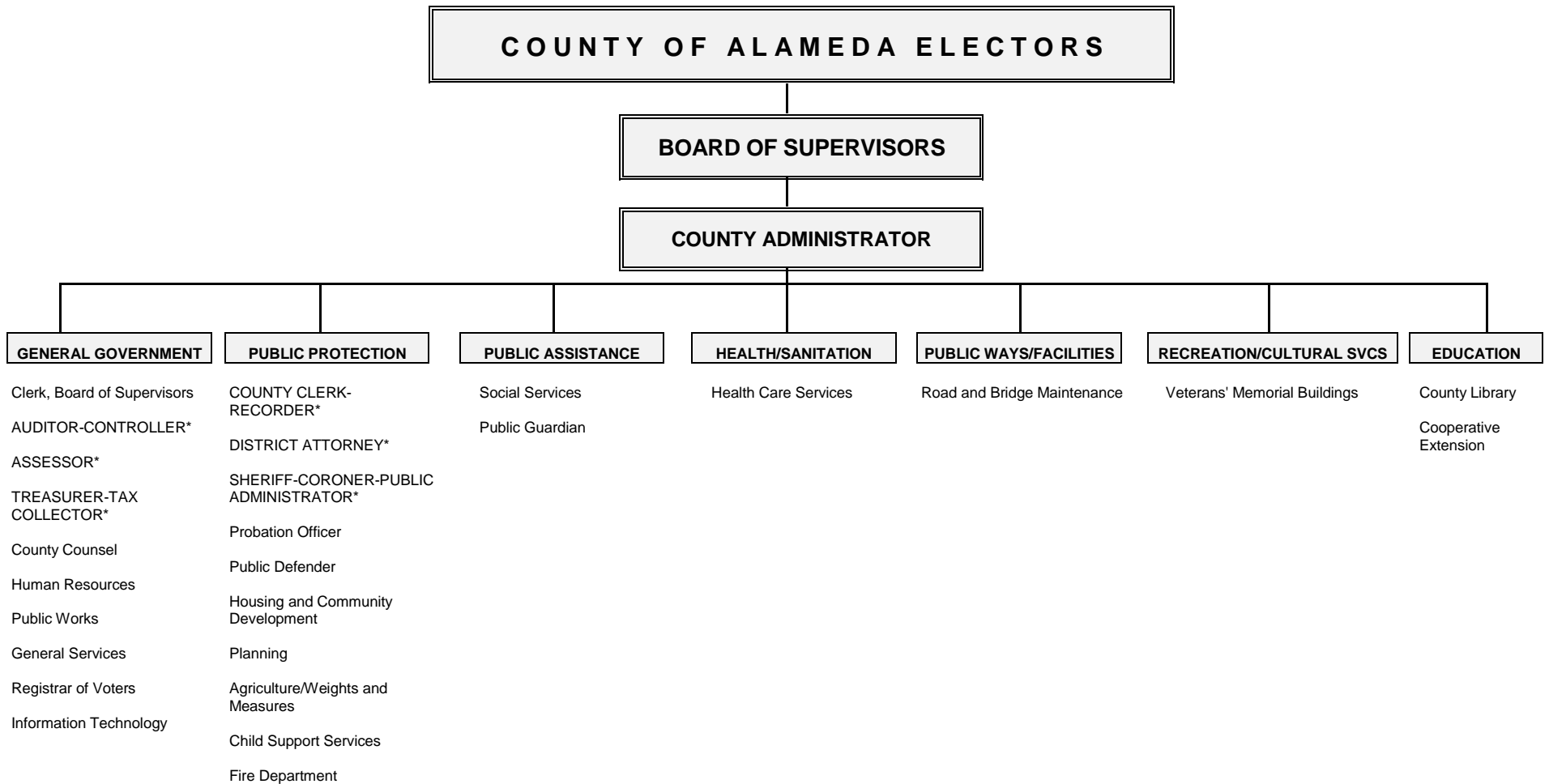
David Haubert	District 1
Richard Valle	District 2
Wilma Chan	District 3
Nathan Miley	District 4
Keith Carson	District 5

Department Heads

Phong La	Assessor
Melissa Wilk	Auditor-Controller/County Clerk-Recorder
Nancy E. O'Malley	District Attorney
Gregory J. Ahern	Sheriff-Coroner
Henry C. Levy	Treasurer-Tax Collector

APPOINTED DEPARTMENT HEADS

Susan S. Muranishi	County Administrator
Anika Campbell-Belton	Clerk, Board of Supervisors
Christopher Bazar	Director, Community Development
Frank McPherson	Director, Cooperative Extension
Donna R. Ziegler	County Counsel
William L. McDonald	Fire Chief
Kimberly A. Gasaway	Interim Director, General Services
Colleen Chawla	Director, Health Care Services
Joseph M. Angelo	Director, Human Resource Services
Timothy Dupuis	Chief Information Officer
Cynthia L. Chadwick	County Librarian
Marcus Dawal	Interim Chief Probation Officer
Brendon D. Woods	Public Defender
Daniel Woldesenbet	Director, Public Works
Timothy Dupuis	Registrar of Voters
Lori A. Cox	Director, Social Services
Phyllis Nance	Director, Child Support Services



* Elected Officials



FINANCIAL SECTION



Independent Auditor's Report

The Grand Jury and Honorable Members
of the Board of Supervisors
County of Alameda, California

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the County of Alameda, California (County), as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise the County's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We did not audit the financial statements of the Alameda County Employees' Retirement Association (ACERA) and the Alameda Health System (AHS), which represent the following percentages of the assets and deferred outflows, net positions/fund balances, and revenues/additions of the following opinion units as of and for the year ended June 30, 2021:

Opinion Unit	Assets and Deferred Outflows	Net Position/ Fund Balance	Revenues/ Additions
Aggregate remaining fund information	67%	70%	9%
Discretely presented component unit	100%	100%	100%

Those statements were audited by other auditors whose reports thereon have been furnished to us, and our opinions, insofar as they relate to the amounts included for ACERA and AHS, are based solely on the reports of the other auditors. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, based on our audit and the reports of the other auditors, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the County, as of June 30, 2021, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter

Implementation of a New Accounting Pronouncement

As discussed in Note 1(G) to the financial statements, effective July 1, 2020, the County adopted the provisions of Government Accounting Standards Board (GASB) Statement No. 84, *Fiduciary Activities*. Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis, the schedule of proportionate share of the net pension liability and related ratios, the schedule of changes in the net pension liability and related ratios, the schedule of County contributions – pension plans, the schedule of proportionate share of the net OPEB liability and related ratios, the schedule of changes in the net OPEB liability and related ratios, the schedule of County contributions – OPEB plans, the budgetary comparison schedule – General Fund, the budgetary comparison schedule – Property Development Special Revenue Fund, and the budgetary comparison schedule – Flood Control Special Revenue Fund, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We and other auditors have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the County's basic financial statements. The introductory section, combining and individual fund statements and schedules, and statistical section are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The combining and individual fund statements and schedules are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America by us and other

auditors. In our opinion, based on our audit, the procedures performed as described above, and the reports of the other auditors, the combining and individual fund financial statements and schedules are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

The introductory and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on them.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated December 28, 2021, on our consideration of the County's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the County's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the County's internal control over financial reporting and compliance.

A handwritten signature in dark ink that reads "Macias Gini & O'Connell LLP". The signature is written in a cursive, flowing style.

Walnut Creek, California
December 28, 2021

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

This section of the County of Alameda's (the County) Annual Comprehensive Financial Report presents a narrative overview and analysis of the financial activities of the County for the year ended June 30, 2021. We encourage readers to consider the information presented here in conjunction with additional information that we have furnished in our letter of transmittal. All amounts, unless otherwise indicated, are expressed in thousands of dollars.

Financial Highlights

- The assets and deferred outflows of resources of the County exceeded its liabilities and deferred inflows of resources at the close of the fiscal year by \$2,638,938 (net position). Of this amount, \$918,463 is restricted for specified purposes and is not available to meet the government's ongoing obligations to citizens and creditors, \$889,851 is net investment in capital assets, and the remaining unrestricted net position totals \$830,624. is available to meet the County's ongoing obligations to citizens and creditors.
- The government's total net position increased for fiscal year 2021 by \$457,592, an increase of 21.0 percent over the prior fiscal year. Total revenue increased \$471,197 which includes increases in most of the revenue sources. Total expenses increased \$231,697 or 7.1 percent over the prior fiscal year.
- As of June 30, 2021, the County's governmental funds reported a combined ending fund balance of \$2,870,678, a decrease of \$526,191 in comparison with the prior year. Unassigned fund balance of \$125,890 is available for spending at the government's discretion.
- At the end of the current fiscal year, the unassigned fund balance for the general fund was \$154,255 or 4.3 percent of total general fund expenditures of \$3,588,290.
- The County's gross long-term obligations, excluding unamortized premiums and discounts, decreased by \$49,538 during the fiscal year 2021 primarily due to decreases in long-term debt outstanding balances, as principal payments were made to reduce existing long-term debts.

Overview of the Financial Statements

This discussion and analysis are intended to serve as an introduction to the County of Alameda's basic financial statements. The County's basic financial statements are comprised of three components: (1) government-wide financial statements, (2) fund financial statements, and (3) notes to the basic financial statements. This report also contains other supplementary information in addition to the basic financial statements themselves.

Government-wide financial statements

The government-wide financial statements are designed to provide readers with a broad overview of the County's finances, in a manner similar to private-sector business.

The statement of net position presents information on all of the County's assets, deferred outflows of resources, liabilities and deferred inflows of resources, with the difference between the two reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the County is improving or deteriorating.

The statement of activities presents information showing how the County's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of the related cash flows. Thus, revenues and

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

expenses are reported in this statement for some items that will only result in cash flow in future fiscal periods, such as revenues related to uncollected taxes but earned and unused vacation and compensating time off.

The government-wide statements distinguish functions of the County that are principally supported by taxes and intergovernmental revenues (governmental activities) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (business-type activities). The government activities of the County include general government, public protection, public assistance, health and sanitation, public ways and facilities, recreation and cultural services, and education. The County currently does not have any business-type activities.

The government-wide financial statements include not only the County of Alameda (known as the primary government), but also a legally separate hospital authority for which the County appoints the Board of Trustees. Financial information for this component unit is reported separately from the financial information presented for the primary government itself.

The government-wide financial statements can be found on pages 19-20 of this report.

Fund financial statements

The fund financial statements are designed to report information about groupings of related accounts, which are used to maintain control over resources that have been segregated for specific activities or objectives. The County, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the County can be divided into three categories: **governmental**, **proprietary**, and **fiduciary** funds.

Governmental funds

Governmental funds are used to account for essentially the same functions that are reported as governmental activities in the government-wide financial statements. The County reports most of its basic services in governmental funds. These statements, however, focus on: (1) how cash and other financial assets can readily be converted to available resources and (2) year-end balances that are available for spending. This information may be useful in evaluating the County's near-term financing requirements.

The focus of governmental funds is narrower than that of the government-wide financial statements; it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between governmental funds and governmental activities.

The County maintains several individual governmental funds organized according to their type (special revenue, capital projects, debt service, and general fund). Information is presented separately in the governmental fund balance sheet and statement of revenues, expenditures, and changes in fund balances for the major funds, including general, property development, flood control, capital projects, and debt service. Data from the remaining governmental funds are combined into a single, aggregated presentation. Individual fund data for each of these non-major governmental funds is provided in the form of combining statements elsewhere in this report.

The governmental fund financial statements can be found on pages 21-24 of this report.

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Proprietary funds

Proprietary funds are generally used to account for services for a government's business-type activities (activities supported by fees or charges). There are two types of proprietary funds and they are enterprise and internal service funds.

The County does not maintain any enterprise funds, which are used to report the same functions as business-type activities in the government-wide financial statements.

The County does maintain internal service funds, which are used to accumulate and allocate costs internally among the County's various functions. The County uses internal service funds to account for its fleet of vehicles, maintenance of buildings, risk management services, communications services and information technology services. Since the County does not have business-type activities, these services have been included within governmental activities in the government-wide financial statements. The internal service funds are combined into a single, aggregated presentation in the proprietary fund financial statements. Individual fund data for each of the internal service funds is provided in the form of combining statements elsewhere in this report.

The proprietary fund financial statements can be found on pages 25-27 of this report.

Fiduciary funds

Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide statements because the resources of those funds are not available to support the County's own programs. The accounting used for fiduciary funds is similar to that used for proprietary funds. The County reports unapportioned taxes, as well as the external portion of the Treasurer's investment pool, the pension, OPEB and other employee benefits trust funds, the private-purpose trust fund, and other custodial funds under the fiduciary funds.

The fiduciary fund financial statements can be found on pages 28-29 of this report.

Notes to the basic financial statements

The notes to the basic financial statements provide additional information that is essential to a complete understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements can be found on pages 30-100 of this report.

Required supplementary information

This report contains required supplementary information concerning the County's progress in its obligation to provide pension, postemployment medical, and other postemployment benefits to its employees, along with budget-to-actual information for the County's general and major special revenue funds. Required supplementary information can be found on pages 101-111 of this report.

Other supplementary information

The combining statements referred to in connection with non-major governmental funds and internal service funds are presented immediately following the required supplementary information. Schedules of capital assets used in the operation of governmental funds are also presented. Combining and individual fund statements and schedules can be found on pages 113-142 of this report. Budgetary comparisons for the County's capital projects and non-major special revenue funds are also presented.

COUNTY OF ALAMEDA, CALIFORNIA

MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Government-wide Financial Analysis

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. Alameda County's assets and deferred outflows of resources exceeded liabilities and deferred inflows of resources by \$2,638,938 at June 30, 2021.

A portion of the County's net position, \$889,851 or 34 percent, reflects its investment in capital assets (e.g. land, buildings, equipment and infrastructure), less related outstanding debt used to acquire those assets and debt-related deferred outflows of resources. The County uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Although the County's investment in its capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

County of Alameda
Net Position
June 30, 2021 and 2020

	Governmental Activities	
	2021	2020
Assets:		
Current and other assets	\$ 4,325,169	\$4,676,328
Capital assets	1,877,485	1,842,745
Total assets	<u>6,202,654</u>	<u>6,519,073</u>
Deferred outflows of resources	<u>1,449,007</u>	<u>423,259</u>
Liabilities:		
Current liabilities	945,759	921,772
Long-term liabilities	3,416,062	3,405,397
Total liabilities	<u>4,361,821</u>	<u>4,327,169</u>
Deferred inflows of resources	<u>650,902</u>	<u>436,316</u>
Net position:		
Net investment in capital assets	889,851	810,517
Restricted	918,463	883,195
Unrestricted	830,624	485,135
Total net position	<u>\$ 2,638,938</u>	<u>\$ 2,178,847</u>

Current and other assets decreased \$351,159 from prior year primarily due to net decreases of cash and investment balances of \$403,178 from increased expenditures, and a decrease of \$68,416 for amounts due from the Alameda Health System. This is offset by an increase of \$81,381 in loans receivable and \$51,260 in properties held for resale due to the acquisition of several hotels and the former Oakland Raiders training facility.

Deferred outflows of resources increased \$1,025,748 due to the change in value for the pension and OPEB deferred outflows of resources.

Current liabilities increased \$23,987 primarily due to an increase of \$90,365 in accounts payable and accrued expenses offset by a decrease of \$19,980 in loans payable and \$16,044 due to amounts owed to the Alameda Health System.

COUNTY OF ALAMEDA, CALIFORNIA

MANAGEMENT'S DISCUSSION AND ANALYSIS

(Amounts expressed in thousands)

JUNE 30, 2021

Long-term liabilities and deferred inflows of resources increased \$10,665 and \$214,587, respectively, primarily due to the change in value for the net pension/OPEB liability and related deferred inflows of resources.

A portion of the County's net position, \$918,463, represents resources that are subject to external restrictions as to how they may be used. As of June 30, 2021, the County has a balance of \$830,624 in unrestricted net position. Unrestricted net position in the amount of \$830,624 may be used to meet the government's ongoing obligations to citizens and creditors. There was an increase of \$35,268 in restricted net position reported in connection with the County's governmental activities.

The County's net position increased by \$457,592 during the fiscal year 2021 versus an increase of \$218,092 for fiscal year 2020. As compared to last fiscal year, expenses increased by \$231,697. Operating and capital grants and contributions increased \$394,998 over fiscal year 2020 and charges for services increased \$17,427. General revenues increased by a total of \$58,772.

**County of Alameda
Changes in Net Position
For the Years Ended June 30, 2021 and 2020**

	Governmental Activities	
	2021	2020
Revenues:		
Program revenues:		
Charges for services	\$ 672,257	\$ 654,830
Operating grants and contributions	2,264,699	1,869,783
Capital grants and contributions	8,252	8,170
General revenues:		
Property taxes	729,572	698,345
Sales taxes - shared revenues	81,480	69,976
Other taxes	44,156	37,012
Interest and investment income	99,475	81,135
Other	41,359	50,802
Total Revenues	<u>3,941,250</u>	<u>3,470,053</u>
Expenses:		
General government	217,486	181,091
Public protection	1,093,840	1,108,558
Public assistance	889,769	816,847
Health and sanitation	1,120,261	986,332
Public ways and facilities	55,787	51,122
Recreation and cultural services	798	780
Education	37,668	36,636
Interest on long-term debt	68,049	70,595
Total expenses	<u>3,483,658</u>	<u>3,251,961</u>
Change in net position	457,592	218,092
Net position - beginning of period, as previously reported	2,178,847	1,960,755
Cumulative effect of restatements	2,499	-
Net position - beginning of period	<u>2,181,346</u>	<u>1,960,755</u>
Net position - end of period	<u><u>\$ 2,638,938</u></u>	<u><u>\$ 2,178,847</u></u>

COUNTY OF ALAMEDA, CALIFORNIA

MANAGEMENT'S DISCUSSION AND ANALYSIS (Amounts expressed in thousands) JUNE 30, 2021

Governmental activities

Governmental activities increased the County's net position by \$457,592.

Operating grants and contributions increased \$394,916 or about 21 percent during the year. The increase is primarily due to an increase of \$286,710 in state and local general government programs, \$14,499 in federal and state public protection programs, \$6,745 in federal and state public assistance programs, and \$91,924 in federal and state health programs.

Capital grants and contributions increased \$82. Significant projects include federal funding of \$8,188 for the Acute Tower Replacement project, an increase of \$44 from the prior year. Other projects include state funding of \$64, an increase of \$38 from the prior year.

Charges for services increased \$17,427 or 3 percent from fiscal year 2020. The County earned higher charges for services because medical care financing increased by \$33,397 due to state-approved rate range transfers. These increases were partially offset by a decrease of \$7,494 in mental health services and \$6,578 in environmental health special programs.

General revenues increased by \$58,772 or 6 percent overall in the fiscal year 2021.

- Property tax revenues increased by \$31,227 or 4 percent due to strong assessment roll growth.
- Sales and use tax revenue increased by \$11,504 or 16 percent due to strengthening demand in the economy.
- Other taxes increased \$7,144 or 19 percent due to increases in property transfer taxes and utility user taxes.
- Interest and investment income increased by \$18,340 or 23 percent. The increase was primarily due to increased rates of return on investments.
- Other revenue decreased \$9,443 or 19 percent. The decrease was primarily due to lower levels of interest credited to the general fund.

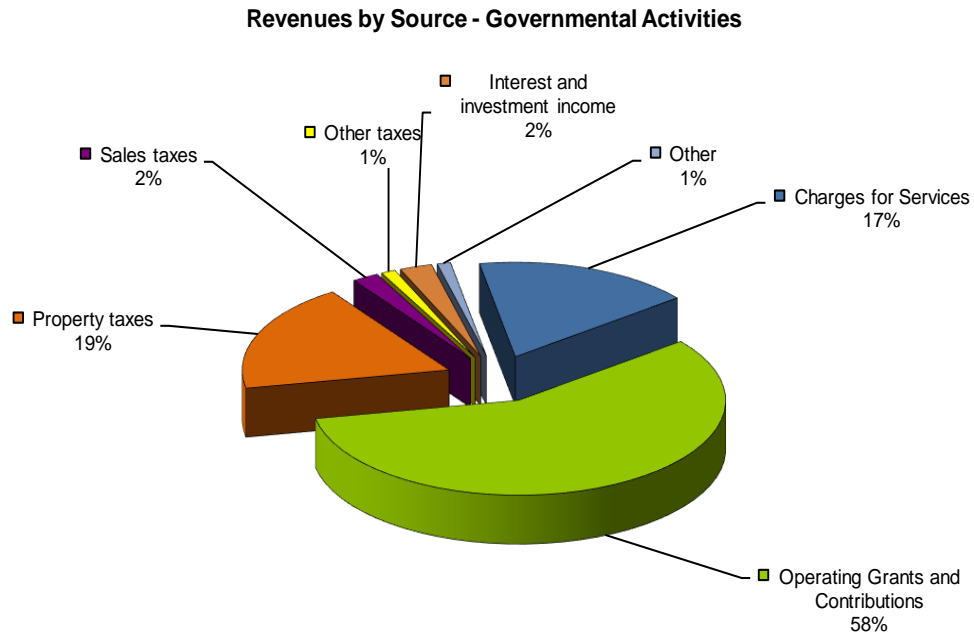
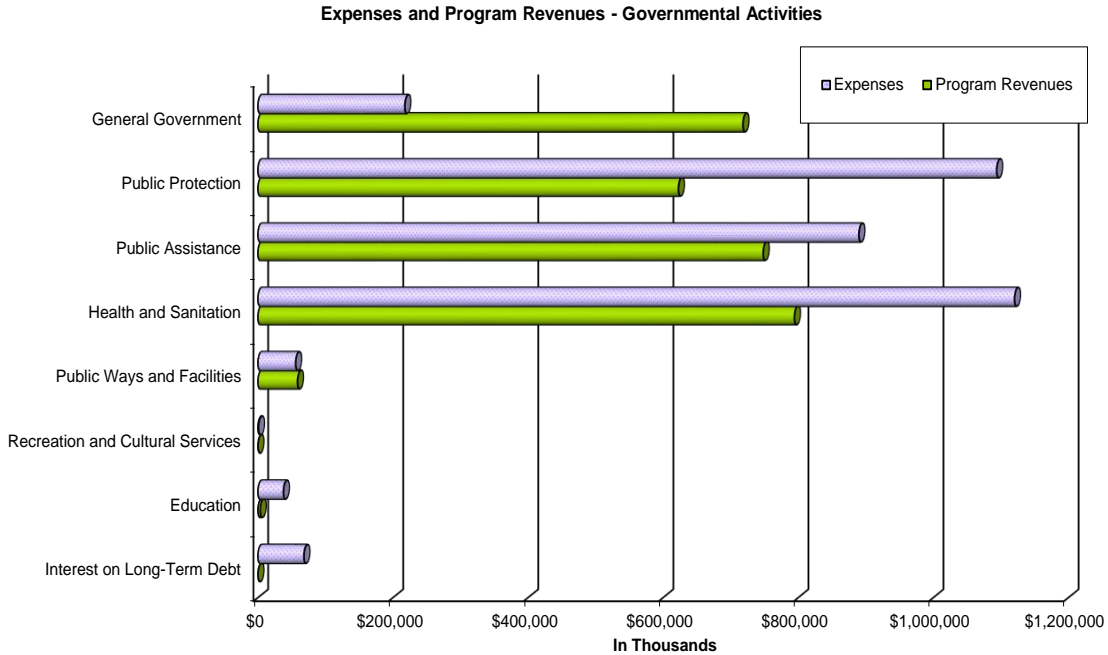
Expenses related to governmental activities increased \$231,697 or 7.1 percent during fiscal year 2021. The major changes in expenses related to governmental activities are in the following areas: general government expenses increased by \$36,395, public protection expenses decreased by \$14,718, public assistance expenses increased \$72,922, and health and sanitation expenses increased by \$133,929 from fiscal year 2020.

- The \$36,395 increase in general government expenses is due to higher project maintenance costs and elections. The County had multiple maintenance projects and contributions to other local governments that contributed to increased costs of \$22,619. In addition, elections were held during the fiscal year that increased costs by \$5,924.
- The \$14,718 decrease in public protection expenses was primary due to lower covid-19 and contract law enforcement expenditures. Law enforcement expenditures eligible for CARES reimbursement decreased by \$10,701. Contract law enforcement decreased by \$4,025 due to the postponement or cancellation of several events.
- The \$72,922 increase in public assistance expenses was due to higher covid-19 expenditures offset by lower welfare services and use of Measure A1 bond proceeds for affordable housing expenditures. Social service expenditures associated with covid-19 and eligible for CARES reimbursement increased by \$117,925. This was offset by declines in welfare administration and assistance payments of \$37,240. In addition, use of Measure A1 proceeds decreased by \$11,852 due to lower affordable housing expenditures.

COUNTY OF ALAMEDA, CALIFORNIA

MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

- The \$133,929 increase in health and sanitation expenses was primarily due to higher covid-19 expenditures eligible for CARES reimbursement and, as a result, expenditures are higher by \$121,214.



COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Financial Analysis of the County's Funds

The County uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental funds

The focus of the County's governmental funds is to provide information on near-term inflows, outflows, and balances of resources that are available for spending. Such information is useful in assessing the County's financing requirements. In particular, unassigned fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

The governmental funds reported by the County include: general, special revenue, debt service, and capital projects.

As of June 30, 2021, the County's governmental funds reported combined ending fund balances of \$2,870,678, a decrease of \$526,191 or 15 percent as compared to fiscal year 2020. Approximately 4 percent of this total amount (\$125,890) constitutes unassigned fund balance, which is available for spending at the County's discretion. The remainder of fund balance consists of nonspendable (\$55,375), restricted (\$1,258,864), committed (\$1,077,202), or assigned (\$353,347).

Revenue for governmental funds overall totaled \$3,962,047 for the fiscal year 2021, which represents an increase of \$499,013 or 14.4 percent from the fiscal year 2020. Expenditures for governmental funds, totaling \$4,493,127, increased by \$1,210,009 or 37 percent from the fiscal year 2020. The governmental funds' expenditures exceeded revenues by \$531,080 or 12 percent.

The general fund is the primary operating fund of the County. At the end of fiscal year 2021, the unassigned fund balance of the general fund was \$154,255, while total fund balance was \$1,605,987. As a measure of the general fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. Unassigned fund balance represents 4.3 percent of total general fund expenditures of \$3,588,290, while total fund balance represents 45 percent of that same amount. The prior year comparisons for unassigned and total fund balance to total general fund expenditures are 7.7 percent and 78 percent, respectively.

General fund revenues increased by \$266,343 or 9 percent to due to the following factors:

- Tax revenues increased by \$54,947 or 9 percent. Property tax revenues increased \$31,512 due to a strong assessment roll growth. The general strength of the economy also led to increases of \$11,504 in sales taxes and \$7,143 in other taxes such as property transfer taxes and utility users' taxes.
- Fines, permits, and forfeitures increased \$14,151 or 47 percent primarily due to an increase in District Attorney statutory penalties.
- State aid increased by \$80,367 or 6 percent. Mental health expenditures qualifying for state grant reimbursement increased by \$38,089. Realignment backfill increased realignment sales tax revenues by \$19,725 to cover shortfalls in the prior fiscal year sales tax revenues. State disaster aid increased by \$27,098 to support housing affordability and homeless issues exacerbated by the pandemic.

COUNTY OF ALAMEDA, CALIFORNIA

MANAGEMENT'S DISCUSSION AND ANALYSIS (Amounts expressed in thousands) JUNE 30, 2021

- Federal aid increased by \$56,304 or 12 percent. This was due to an increase of \$14,841 in federal health administration and \$30,331 in federal health programs for lower levels of deferred revenues compared to the prior year.
- Other Aid increased by \$20,587 or 33 percent. The increase was primarily due to \$10,000 in contributions received from the Oakland-Alameda County Coliseum Authority and \$5,858 in increased affordable housing revenues.
- Charges for services increased by \$53,974 or 15 percent. The increase was due to \$55,736 in medical charges due to decreases in utilization and eligibility of the population served. In addition, election services revenues increased \$3,693 as local elections were held during the fiscal year.
- Other revenue increased by \$28,093 or 31 percent, primarily due to \$33,398 in state intergovernmental transfers for medical care financing.

General fund expenditures increased by \$928,960 or 35 percent from fiscal year 2020, totaling \$3,588,290. Overall, the general fund's performance resulted in expenditures exceeding revenues in the fiscal year 2021, by \$389,249. In fiscal year 2020, the general fund revenues exceeded expenditures by \$273,368.

The property development fund total fund balance was \$473,857. This fund accounts for activities related to the development and sale of County surplus land. The net decrease in the fund balance during the fiscal year 2021 was \$70,561, primarily due to the increased use of Measure A1 debt proceeds to fund housing programs.

The disaster response fund total fund balance was \$(20,938). This fund accounts for activities related to the response to disaster events, in particular this year in response to covid-19. The net decrease in the fund balance during the fiscal year 2021 was \$17,244, primarily due to the recognition of expenditures where the County intends to claim reimbursement from FEMA. Most other expenditures were funded by federal CARES Act funding received in April 2020.

The fund balance in the flood control fund increased in 2021 from \$256,505 to \$269,307 or 5 percent. Revenue increased by \$671 mainly due to increased tax revenues and decreased services and supplies for state water facilities.

The capital projects fund has a 2021 fund balance of \$73,339, an increase of \$15,017 from fiscal year 2020. The increase was primarily attributable to the transfers in from other funds in excess of construction costs for projects such as the Arena Center, and the Santa Rita Jail access and disability upgrades and security system projects.

The fund balance in the debt service fund decreased \$14,841 from \$107,294 to \$92,453 due to lower tax revenues for Measure A1 debt.

Proprietary funds

The County's proprietary fund statements of internal service funds are reported with governmental activities in the government-wide financial statements. The County does not have an enterprise fund to report.

The net position of the internal service funds decreased \$8,758 in 2021 with an operating loss of \$6,306, negative investment earnings, and negative net transfers in. This was primarily due to services and supplies increasing at higher rates, along with negative investment performance and net transfers out of \$2,391 for debt service, energy loans and leases, and tenant improvement projects.

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Fiduciary funds

The County maintains fiduciary funds for the assets of the Alameda County Employees' Retirement Association (ACERA) and funds held in trust for employees for before-tax reimbursement of health care expenses. As of December 31, 2020, ACERA's fiscal year-end, the net position of ACERA and the other employee benefits trust totaled \$9,629,775 representing an increase of \$837,991 in net position from the prior year's net position. The increase was largely attributable to an increase in fair value of investments as of December 31, 2019.

As of June 30, 2021, the external investment pool's net position totaled \$3,492,225, a \$127,227 increase in net position. The increase in net position of the external investment pool was due to net investment income of \$539, plus net of contributions exceeding withdrawals to the fund by \$126,688.

The private-purpose trust fund includes the redevelopment non-housing successor agency, public guardian, and Court Wards & Dependents. As of June 30, 2021, the private-purpose trust fund's net position totaled \$2,919, an decrease of \$708.

General fund budgetary highlights

The County's final expenditure budget of the general fund differs from the original budget in that it contains supplemental appropriations approved during the fiscal year. The difference of \$1,104,262 between the original budget and the final amended budget represents increased appropriations. The significant appropriations are briefly summarized:

- General government increased appropriations by \$29,992. This included \$3,870 of salary and benefit increases, \$5,533 of services and supplies increases, and \$23,087 of capital asset increases.
- The public protection departments increased appropriations by \$858,143. This included \$831,142 of salary and benefit increases and \$25,432 of service and supplies increases.
- The public assistance departments increased appropriations by \$61,850. This included \$26,314 of service and supplies increases and \$34,489 of capital asset increases.
- Appropriations for health and sanitation increased by \$153,613. This included \$87,116 of services and supplies increases and \$62,884 in other charges increases.

Overall, the County's actual general fund revenues under-realized its budgeted fiscal year 2021 revenues by \$108,069 or 3 percent. Revenues that had significant variances include:

- Taxes were under-realized by \$5,349 or 1 percent. This is primarily due to \$20,486 in property taxes due to assessed values, offset by \$4,177 in property transfer tax and \$12,522 in sales tax due to housing sales and the improved economy.
- Fines, forfeitures, and penalties revenue exceeded the budget by \$30,510 or 226 percent. This was due to the under-budgeting of penalties for delinquent taxes by \$15,759 and statutory penalties by \$16,878.
- State aid revenue was over-realized by \$24,089 or 2 percent. Realignment and state disaster aid revenues were higher than expected by \$65,505 and \$27,098, respectively, due to realignment backfill and covid-19 revenues. This was partially offset by state health program and state public

COUNTY OF ALAMEDA, CALIFORNIA

MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

assistance program revenues were lower than expected by \$32,678 and \$39,283, respectively, due to lower than expected reimbursable costs.

- Federal aid revenue was under-realized by \$74,585 or 13 percent. Federal public assistance and social services programs were lower than expected by \$18,387 and \$31,713, respectively, due to lower than expected reimbursable costs associated with assistance payments and welfare administration. Federal grant reimbursements for housing and community development programs were lower than expected by \$12,693.
- Other revenue was less than budgeted by \$76,701 or 39 percent. Welfare administration was under budget by \$48,935 and assistance payments was under budget by \$16,210.

Variations between budget and actual expenditures in the general fund reflect overall expenditures under the adjusted budget by \$481,201 or 11 percent. In general, this represents savings from the major government functions, primarily due to vacancies, cost-containment measures, and unspent contingency appropriations. Significant savings came from the following County functions:

- General government's total actual expenditures was \$62,585 or 25 percent less than budget. Vacant positions resulted in savings of \$9,335. Discretionary expenditures were lower by \$20,100 due to reduction of expenditures. Capital assets were lower by \$33,479 due to lower capital asset acquisition costs.
- Public protection spent \$83,144 or 5 percent less than budget. Vacant positions resulted in savings of \$39,117 in salaries and benefits. Discretionary services and supplies expenditures were lower by \$43,139 due to reduction of expenditures and delayed services contract assignment and implementation.
- Public assistance spent \$136,301 or 13 percent less than budget. Vacant positions resulted in savings of \$25,881 in salaries and benefits. Discretionary services and supplies expenditures were lowered by \$70,670 due to savings on contracts and interdepartmental expenditures. Other charges were lower by \$39,553 due to lower caseloads in CalWORKS, in-home support services, and child welfare services.
- Health and sanitation expenditures were \$198,782 or 15 percent less than budget. Salaries and employee benefits were under-spent by \$37,842 due to vacant positions. Discretionary services and supplies expenditures were lower by \$147,949 due to reduction of expenditures and savings on contracts.

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Capital assets and debt administration

Capital Assets

The County's investment in capital assets for its governmental activities amounts to \$1,877,485 (net of accumulated depreciation), as shown in the table below. This investment includes land, buildings and improvements, machinery and equipment, roads, bridges, flood control canals and other infrastructure. The total increase in the County's investment in capital assets for fiscal year 2021 was \$34,740 or 1.9 percent.

Capital Assets Net of Accumulated Depreciation
June 30, 2021

	Governmental Activities	
	<u>2021</u>	<u>2020</u>
Land and other assets not being depreciated	\$ 298,454	\$ 246,757
Structures and improvements, machinery and equipment, and infrastructure, net of depreciation	1,579,031	1,595,988
Total	<u>\$ 1,877,485</u>	<u>\$ 1,842,745</u>

Major capital asset events that occurred during fiscal year 2021 include:

- Land increased \$6,888 and buildings and improvements increased \$27,554 due to the acquisition of the Social Services administration building.
- Machinery and equipment increased \$15,624 due to the acquisition of equipment totaling \$10,189 and vehicles totaling \$5,435.
- Construction in progress increased \$68,986 primarily due to the following: Fairmont Tiny Homes, Santa Rita Jail security system upgrades and Cherryland Community Center in the amounts of \$5,589, \$2,332 and \$4,720, respectively. Road projects increased construction in progress by \$34,040 and flood control projects increased construction in progress by \$17,629. These increases in construction in progress were offset by completed projects that were placed into service. Completed projects include road projects totaling \$14,796 and flood control projects totaling \$8,964.

At the end of the fiscal year, road improvements, and flood control channel improvements projects had outstanding contract commitments of \$28,454 and \$6,613, respectively.

For government-wide statement of net position presentation, depreciable capital assets are depreciated from the date they are placed into service through the end of the current fiscal year.

Governmental fund financial statements record capital asset purchases as expenditures.

Additional information about the County's capital assets can be found in Note 5 (page 58) of the financial statements.

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Debt Administration

As of June 30, 2021, the County had long-term obligations outstanding of \$1,544,328, excluding unamortized premiums and discounts of \$23,828, as summarized below:

Outstanding Long-term Obligations		
June 30, 2021 and 2020		
	Governmental Activities	
	<u>2021</u>	<u>2020</u>
Certificates of participation	\$ 3,055	\$ 5,985
Tobacco securitization bonds	296,234	294,359
Lease revenue bonds	743,795	772,055
General obligation bonds	191,300	218,000
Capital leases	595	1,466
Other long-term obligations	309,349	302,001
Total	<u>\$ 1,544,328</u>	<u>\$ 1,593,866</u>

The County's total long-term obligations decreased \$49,538 during the fiscal year primarily due to decreases in long-term debt outstanding balances, as principal payments were made to reduce existing long-term debts.

The County's legal debt limit is 1.25 percent of total assessed value. As of June 30, 2021, the legal limit was \$4.19 billion. The County's outstanding general obligation debt is \$191 million and therefore \$4.00 billion is still available of the debt limit.

The County's general obligation debt financings are rated as follows:

	<u>2021 Rating</u>	<u>2020 Rating</u>
Moody's	Aaa	Aaa
Standard & Poor's	AAA	AAA
Fitch	AAA	AAA

In addition, the County's lease-based financings are rated as follows:

	<u>2021 Rating</u>	<u>2020 Rating</u>
Moody's	Aa1	Aa1
Standard & Poor's	AA+	AA
Fitch	AA+	AA+

The County's long-term obligations can be found in Note 7 (page 62) of the notes to the basic financial statements.

COUNTY OF ALAMEDA, CALIFORNIA
MANAGEMENT'S DISCUSSION AND ANALYSIS
(Amounts expressed in thousands)
JUNE 30, 2021

Economic factors and next year's budget and rates

- According to the U.S. Department of Labor, the unemployment rate for the County was 6.6 percent in June 2021, compared to the rate of 13.5 percent in June 2020. The State's unemployment rate was 8.0 percent in June 2021. This information is also in transmittal letter.
- The assessed value of the County's property increased by 6.8 percent in 2021 compared to an increase of 7.0 percent in 2020.
- The County experienced an increase in property tax revenues in fiscal year 2021 due to an improved economy and housing market. Spending for goods and services throughout the state and the country increased as unemployment rates, as indicated above, declined.

All of the above factors were considered in preparing the County's budget for fiscal year 2021.

The County adopted its fiscal year 2021-22 budget on June 25, 2021, three days before the State of California adopted its own budget on June 28, 2021.

Requests for Information

This financial report is designed to provide our citizens, taxpayers, customers, investors and creditors with a general overview of the County's finances and to demonstrate the County's accountability for the money it receives. Below is the contact information for questions about this report or requests for additional financial information.

Alameda County
Office of the Auditor-Controller
1221 Oak Street, Room 249
Oakland, CA 94612

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BASIC FINANCIAL STATEMENTS

COUNTY OF ALAMEDA, CALIFORNIA

STATEMENT OF NET POSITION

JUNE 30, 2021

(amounts expressed in thousands)

	Primary Government Governmental Activities	Component Unit Alameda Health System
ASSETS		
Current assets:		
Cash and investments with County Treasurer	\$ 2,877,703	\$ -
Cash and investments with fiscal agents	451,917	13,669
Deposits with others	14,180	-
Receivables, net of allowance for uncollectible accounts	488,432	295,657
Due from component unit	1,145	-
Due from primary government	-	77,834
Inventory of supplies	158	20,375
Prepaid items	2,133	10,117
Total current assets	<u>3,835,668</u>	<u>417,652</u>
Noncurrent assets:		
Restricted assets - cash and investments with County Treasurer	-	-
Restricted assets - cash and investments with fiscal agents	138,049	302
Properties held for resale	53,276	-
Due from component unit, net of allowance	13,537	-
Endowment	-	4,227
Loans receivable	284,639	-
Capital assets:		
Land and other assets not being depreciated	298,454	40,392
Structures and improvements, machinery and equipment, infrastructure, net of depreciation	<u>1,579,031</u>	<u>143,388</u>
Total capital assets, net	<u>1,877,485</u>	<u>183,780</u>
Total noncurrent assets	<u>2,366,986</u>	<u>188,309</u>
Total assets	<u>6,202,654</u>	<u>605,961</u>
DEFERRED OUTFLOWS OF RESOURCES		
Loss on refunding debt	3,659	-
Pension-related items	1,367,150	115,696
OPEB-related items	78,198	14,724
Total deferred outflows of resources	<u>1,449,007</u>	<u>130,420</u>
LIABILITIES		
Current liabilities:		
Accounts payable and accrued expenses	383,094	346,650
Due to component unit	42,164	-
Due to primary government	-	1,145
Compensated employee absences payable	35,748	20,508
Estimated liability for claims and contingencies	38,336	7,896
Certificates of participation and bonds payable	42,701	-
Lease obligations	248	-
Loans payable	915	-
Accrued interest payable	7,174	-
Unearned revenue	390,097	-
Due to other governmental units	14	-
Obligation to fund Coliseum Authority deficit	5,268	-
Total current liabilities	<u>945,759</u>	<u>376,199</u>
Noncurrent liabilities:		
Net pension liabilities	1,843,225	356,346
Net OPEB liabilities	92,241	1,172
Compensated employee absences payable	70,177	18,516
Estimated liability for claims and contingencies	139,063	25,874
Certificates of participation and bonds payable	1,215,511	-
Lease obligations	347	-
Loans payable	2,391	-
Due to component unit	35,670	-
Due to primary government	-	44,537
Due to other governmental units	-	19,258
Obligation to fund Coliseum Authority deficit	17,437	-
Total noncurrent liabilities	<u>3,416,062</u>	<u>465,703</u>
Total liabilities	<u>4,361,821</u>	<u>841,902</u>
DEFERRED INFLOWS OF RESOURCES		
Pension-related items	419,895	117,297
OPEB-related items	231,008	47,515
Total deferred inflows of resources	<u>650,903</u>	<u>164,812</u>
NET POSITION		
Net investment in capital assets	895,441	184,374
Restricted:		
Public protection	472,259	-
Public assistance	93,867	-
Health and sanitation	177,055	9,885
Public ways and facilities	139,086	-
Education	22,832	-
Other purposes	13,363	25,703
Unrestricted (deficit)	<u>825,034</u>	<u>(490,295)</u>
Total net position	<u>\$ 2,638,937</u>	<u>\$ (270,333)</u>

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position	
		Charges for Services	Operating Grants and Contribution	Capital Grants and Contribution	Primary Government	Component Unit
					Governmental Activities	Alameda Health System
Primary government:						
Governmental activities:						
General government	\$ 217,486	\$ 105,701	\$ 612,404	\$ 64	\$ 500,683	\$ -
Public protection	1,093,840	269,944	352,673	-	(471,223)	-
Public assistance	889,769	19,308	728,826	-	(141,635)	-
Health and sanitation	1,120,262	265,240	520,980	8,188	(325,854)	-
Public ways and facilities	55,787	10,614	47,978	-	2,805	-
Recreation and cultural services	798	(3)	-	-	(801)	-
Education	37,668	1,453	1,838	-	(34,377)	-
Interest on long-term debt	68,049	-	-	-	(68,049)	-
Total governmental activities	3,483,659	672,257	2,264,699	8,252	(538,451)	-
Total primary government	\$ 3,483,659	\$ 672,257	\$ 2,264,699	\$ 8,252	(538,451)	-
Component unit						
Alameda Health System	\$ 1,113,301	\$ 939,296	\$ 16	\$ 9,983	-	(164,006)
General revenues:						
Property taxes					729,572	-
Sales taxes - shared revenues					81,480	127,920
Property transfer taxes					25,288	-
Utility users' tax					11,683	-
Other taxes					7,185	-
Interest and investment income					99,475	2,270
Other					41,359	31,244
Total general revenues					996,042	161,434
Change in net position					457,591	(2,572)
Net position - beginning of period					2,178,847	(267,761)
Cumulative effect of restatements					2,499	-
Net position - beginning of period, as restated					2,181,346	(267,761)
Net position - end of period					\$ 2,638,937	\$ (270,333)

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**BALANCE SHEET
GOVERNMENTAL FUNDS**

JUNE 30, 2021

(amounts expressed in thousands)

	General	Property Development	Disaster Response	Flood Control	Capital Projects	Debt Service	Non-major Governmental Funds	Total Governmental Funds
Assets:								
Cash and investments with County Treasurer	\$ 1,725,335	\$ 30,695	\$ 212,954	\$ 271,431	\$ 70,184	\$ 35,917	\$ 289,266	\$ 2,635,782
Cash and investments with fiscal agents	1,346	450,317	-	-	-	-	4	451,667
Restricted assets - cash and investments with fiscal agents	2,038	-	-	-	5,413	57,009	73,589	138,049
Deposits with others	296	-	-	-	-	-	13,879	14,175
Receivables, net of allowance for uncollectible accounts	380,003	65,081	272	6,549	249	84	30,058	482,296
Due from other funds	1,924	-	-	-	-	-	-	1,924
Due from component unit, net of allowance	14,638	-	-	-	-	-	3	14,641
Inventory of supplies	-	-	-	3	-	-	151	154
Properties held for resale	51,513	1,763	-	-	-	-	-	53,276
Prepaid items	-	-	-	-	-	-	42	42
Advances to other funds	4,414	-	-	-	-	-	-	4,414
Loans receivable	89,540	160,823	-	-	-	-	34,276	284,639
Total assets	\$ 2,271,047	\$ 708,679	\$ 213,226	\$ 277,983	\$ 75,846	\$ 93,010	\$ 441,268	\$ 4,081,059
Liabilities, deferred inflows of resources, and fund balances								
Liabilities:								
Accounts payable and accrued expenditures	\$ 300,610	\$ 12,541	\$ 22,171	\$ 8,549	\$ 2,507	\$ 557	\$ 19,612	\$ 366,547
Due to other funds	-	-	-	-	-	-	821	821
Due to component unit	77,197	-	636	-	-	-	-	77,833
Unearned revenue	177,444	-	211,357	-	-	-	1,296	390,097
Due to other governmental units	14	-	-	-	-	-	-	14
Total liabilities	555,265	12,541	234,164	8,549	2,507	557	21,729	835,312
Deferred inflows of resources								
Unavailable revenue	109,795	222,281	-	127	-	-	42,866	375,069
Fund balances:								
Nonspendable	55,179	-	-	3	-	-	193	55,375
Restricted	469,605	59,389	7,427	269,304	-	92,453	360,686	1,258,864
Committed	589,395	414,468	-	-	73,339	-	-	1,077,202
Assigned	337,553	-	-	-	-	-	15,794	353,347
Unassigned	154,255	-	(28,365)	-	-	-	-	125,890
Total fund balances	1,605,987	473,857	(20,938)	269,307	73,339	92,453	376,673	2,870,678
Total liabilities, deferred inflows of resources, and fund balances	\$ 2,271,047	\$ 708,679	\$ 213,226	\$ 277,983	\$ 75,846	\$ 93,010	\$ 441,268	\$ 4,081,059

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET
TO THE STATEMENT OF NET POSITION
JUNE 30, 2021
(amounts expressed in thousands)**

Fund balances – total governmental funds	\$ 2,870,678
Amounts reported for governmental activities in the statement of net position are different because:	
Capital assets, net of accumulated depreciation, used in governmental activities are not financial resources and, therefore, are not reported in the funds	1,851,486
The unamortized balance of deferred outflows of resources resulting from deferred refunding losses	3,659
The unamortized balance of deferred outflows of resources related to net pension liability	1,346,108
The unamortized balance of deferred outflows of resources related to net OPEB	75,370
Long-term liabilities, including bonds payable, are not due and payable in the current period and, therefore, are not reported in the funds. These liabilities (except those reported in the internal service funds) are as follows:	
Certificates of participation and bonds payable	(1,258,212)
Compensated employee absences payable	(100,910)
Lease obligations	(595)
Loans payable	(3,306)
Other liabilities	(22,705)
Total long-term liabilities	<u>(1,385,728)</u>
The net OPEB liability pertaining to governmental fund types is not recorded in the governmental fund statements	(92,014)
The net pension liability pertaining to governmental fund types is not recorded in the governmental fund statements	(1,773,701)
Because the focus of governmental funds is on short-term financing, some assets will not be available to pay for current period expenditures and, therefore, are reported as deferred inflows of resources in the governmental funds.	375,069
Deferred inflows of resources related to net pension liability	(391,110)
Deferred inflows of resources related to net OPEB liability	(221,036)
Interest on long-term debt is not accrued in the funds, but is recognized as an expenditure when due.	(7,174)
Internal service funds are used by management to charge the costs of fleet management, building maintenance, information technology, and risk management to individual funds. The assets and liabilities of the internal service funds are included in the governmental activities in the statement of net position.	<u>(12,669)</u>
Net position of governmental activities	\$ 2,638,937

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
GOVERNMENTAL FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	General	Property Development	Disaster Response	Flood Control	Capital Projects	Debt Service	Non-major Governmental Funds	Total Governmental Funds
Revenues:								
Taxes	\$ 673,319	\$ -	\$ -	\$ 54,728	\$ -	13,673	\$ 113,769	\$ 855,489
Licenses and permits	10,988	-	-	122	-	-	1,248	12,358
Fines, forfeitures, and penalties	43,993	-	-	-	-	-	108	44,101
Use of money and property	18,602	24,697	(1,539)	976	145	(2,408)	2,966	43,439
State aid	1,335,870	-	38,450	300	64	64	51,961	1,426,709
Federal aid	512,195	-	253,467	3,127	-	8,188	2,080	779,057
Other aid	82,806	-	1,887	6,468	-	-	6,151	97,312
Charges for services	403,135	-	-	12,942	-	-	136,727	552,804
Other revenue	118,133	2,454	1,006	106	965	-	28,113	150,777
Total revenues	3,199,041	27,151	293,271	78,769	1,174	19,517	343,123	3,962,046
Expenditures:								
Current								
General government	178,376	600	18,350	-	-	-	8	197,334
Public protection	1,638,855	-	396	48,042	-	-	171,412	1,858,705
Public assistance	816,171	82,340	123,040	-	-	-	-	1,021,551
Health and sanitation	948,649	-	142,111	-	-	-	28,607	1,119,367
Public ways and facilities	3,370	-	-	-	-	-	33,205	36,575
Recreation and cultural services	740	-	-	-	-	-	-	740
Education	368	-	-	-	-	-	36,482	36,850
Debt service								
Principal	-	-	-	-	-	57,890	9,905	67,795
Interest	-	-	-	-	-	51,330	7,176	58,506
Capital outlay	1,761	-	-	17,777	42,043	-	34,123	95,704
Total expenditures	3,588,290	82,940	283,897	65,819	42,043	109,220	320,918	4,493,127
Excess (deficiency) of revenues over expenditures	(389,249)	(55,789)	9,374	12,950	(40,869)	(89,703)	22,205	(531,081)
Other financing sources (uses):								
Transfers in	31,117	-	-	1	56,592	74,902	2,000	164,612
Transfers out	(105,660)	(14,772)	(26,618)	(149)	(706)	(40)	(14,276)	(162,221)
Total other financing sources (uses)	(74,543)	(14,772)	(26,618)	(148)	55,886	74,862	(12,276)	2,391
Net change in fund balances	(463,792)	(70,561)	(17,244)	12,802	15,017	(14,841)	9,929	(528,690)
Fund balances - beginning of period, as reported	2,067,280	544,418	(3,694)	256,505	58,322	107,294	366,744	3,396,869
Cumulative effect of restatements	2,499	-	-	-	-	-	-	2,499
Fund balances - beginning of period, as restated	2,069,779	544,418	(3,694)	256,505	58,322	107,294	366,744	3,399,368
Fund balances - end of period	<u>\$ 1,605,987</u>	<u>\$ 473,857</u>	<u>\$ (20,938)</u>	<u>\$ 269,307</u>	<u>\$ 73,339</u>	<u>\$ 92,453</u>	<u>\$ 376,673</u>	<u>\$ 2,870,678</u>

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES, AND
CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS
TO THE STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

Net change in fund balances – total governmental funds **\$ (528,690)**

Amounts reported for governmental activities in the statement of activities are different because:

Some revenues will not be collected within the availability period established for governmental funds. As a result, they are not considered as available revenues in the governmental funds and are reported as deferred inflows of resources in the governmental funds. 67,090

Pension contributions made subsequent to the measurement date in the governmental funds, but reported as deferred outflow of resources in the government-wide financial statements 144,208

OPEB contributions made subsequent to the measurement date in the governmental funds, but reported as deferred outflow of resources in the government-wide financial statements 7,145

Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds.

Changes to net pension liability and pension related deferred outflows and inflows of resources	670,515
Changes to net OPEB liability and OPEB related deferred outflows and inflows of resources	7,752
Increase in compensated absences	(20,337)
Decrease in obligation to fund Coliseum Authority deficit	5,017
Total	<u>662,947</u>

Governmental funds report capital outlays as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense. The statement of activities reports the gain or loss on disposal of capital assets but the governmental funds do not report any gain or loss. Governmental funds do not report capital assets; hence, capital assets transferred to and from governmental fund to the proprietary fund are not recorded in the governmental fund.

Capital outlay and expenditures for general capital assets and infrastructure	137,969
Expenditures not subject to capitalization	(26,552)
Depreciation expense	(78,017)
Proceeds from sale of capital assets	(96)
Net gain on disposal of capital assets	58
Total	<u>33,362</u>

The change in net position of internal service funds is reported with governmental activities. (8,758)

Net increase in accrued interest decreases the liability in the statement of net position but is reported as an expenditure in the governmental funds when paid. 454

The repayment of the principal of long-term debt, capital leases, and loans consume the current financial resources of governmental funds. These transactions, however, have no effect on net position.

Principal payment on long-term debt	67,795
Principal payment on capital leases and loans	21,766
Total	<u>89,561</u>

Interest accreted on bonds and certificates of participation (11,780)

Amortization of bond premiums and bond discounts 2,566

Amortization of deferred outflows of resources resulting from the deferred refunding loss (514)

Change in net position of governmental activities **\$ 457,591**

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF NET POSITION
PROPRIETARY FUNDS**

JUNE 30, 2021

(amounts expressed in thousands)

	Governmental Activities - Internal Service Funds
Assets:	
Current assets:	
Cash and investments with County Treasurer	\$ 241,921
Cash and investments with fiscal agents	250
Deposits with others	5
Other receivables	6,136
Due from component unit	41
Inventory of supplies	4
Prepaid items	2,091
Total current assets	<u>250,448</u>
Noncurrent assets:	
Capital assets:	
Machinery and equipment, net of depreciation	25,999
Total assets	<u><u>276,447</u></u>
Deferred outflows of resources	
Pension-related items	21,042
OPEB-related items	2,828
Total deferred outflows of resources	<u><u>23,870</u></u>
Liabilities:	
Current liabilities:	
Accounts payable and accrued expenses	16,547
Compensated employee absences payable	1,604
Estimated liability for claims and contingencies	38,336
Due to other funds	1,103
Total current liabilities	<u>57,590</u>
Noncurrent liabilities:	
Net pension liability	69,524
Net OPEB liability	227
Compensated employee absences payable	3,411
Estimated liability for claims and contingencies	139,063
Advances from other funds	4,414
Total noncurrent liabilities	<u>216,639</u>
Total liabilities	<u><u>274,229</u></u>
Deferred inflows of resources	
Pension-related items	28,785
OPEB-related items	9,972
Total deferred inflows of resources	<u><u>38,757</u></u>
Net Position	
Investment in capital assets	25,999
Unrestricted	(38,668)
Total net position	<u><u>\$ (12,669)</u></u>

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN FUND NET POSITION
PROPRIETARY FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Governmental Activities - Internal Service Funds
Operating revenues:	
Charges for services	\$ 289,366
Operating expenses:	
Salaries and benefits	75,886
Contractual services	20,493
Utilities	15,504
Repairs and maintenance	20,824
Other supplies and expenses	88,753
Insurance claims and expenses	44,887
Depreciation	6,657
Amortization	32
Telephone	2,085
County indirect costs	9,371
Dental claims	9,772
Other	1,408
Total operating expenses	295,672
Operating loss	(6,306)
Non-operating revenues (expenses):	
Investment loss	(185)
Gain on sale of capital assets	180
Loss on sale of capital assets	(20)
Total non-operating revenues (expenses)	(25)
Loss before capital contributions and transfers	(6,331)
Capital contributions	(36)
Transfers in	3,005
Transfers out	(5,396)
Change in net position	(8,758)
Total net position - beginning of period	(3,911)
Total net position - end of period	\$ (12,669)

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Governmental Activities - Internal Service Funds
Cash flows from operating activities:	
Internal activity - receipts from other funds	\$ 287,234
Payments to suppliers	(143,104)
Payments to employees	(80,089)
Internal activity - payments to other funds	(9,371)
Claims paid	(42,947)
Other payments	(1,408)
Net cash provided by operating activities	10,315
Cash flows from non-capital financing activities:	
Transfers in	3,005
Transfers out	(5,396)
Net cash used in non-capital financing activities	(2,391)
Cash flows from capital and related financing activities:	
Acquisition of capital assets	(8,280)
Proceeds from sale of capital assets	342
Net cash used in capital and related financing activities	(7,938)
Cash flows from investing activities:	
Interest paid on pooled cash	(185)
Net decrease in cash and cash equivalents	(199)
Cash and cash equivalents - beginning of period	242,370
Cash and cash equivalents - end of period	\$ 242,171
Reconciliation of operating loss to net cash provided by operating activities:	
Operating loss	\$ (6,306)
Adjustments for non-cash activities:	
Depreciation	6,657
Amortization	32
Amortization - pension-related items	(4,663)
Amortization - OPEB-related items	(737)
Changes in assets and liabilities:	
Other receivables	(2,132)
Prepaid items	252
Accounts payable and accrued expenses	5,406
Compensated employee absences payable	1,197
Estimated liability for claims and contingencies	11,712
Due to/advances from other funds	(1,103)
Total adjustments	16,621
Net cash provided by operating activities	\$ 10,315

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF FIDUCIARY NET POSITION
FIDUCIARY FUNDS
JUNE 30, 2021
(amounts expressed in thousands)**

	Pension, OPEB, ¹ and Other Employee Benefits Trust Funds	Private- Purpose Trust Fund	Custodial	
			External Investment Pool	Other Custodial
Assets:				
Cash and investments with County Treasurer	\$ 17	\$ 21,704	\$ 3,567,867	\$ 353,335
Cash and investments with fiscal agents	3,236	2,187	-	-
Investments, at fair value:				
Short-term investments	182,037	-	-	-
Domestic equities	562,387	-	-	-
Domestic equity commingled funds	2,159,591	-	-	-
International equities	1,296,336	-	-	-
International equity commingled funds	1,460,569	-	-	-
Domestic fixed income	1,093,183	-	-	-
International fixed income	190,474	-	-	-
International fixed income commingled funds	159,176	-	-	-
Real estate - separate properties	72,474	-	-	-
Real estate - commingled funds	528,671	-	-	-
Real assets	467,886	-	-	-
Absolute return	645,134	-	-	-
Private equity	726,180	-	-	-
Private credit	57,747	-	-	-
Total investments	9,601,845	-	-	-
Securities lending cash collateral	117,171	-	-	-
Deposits with others	755	-	-	-
Receivables:				
Taxes for other governments	-	-	-	118,396
Interest	8,742	43	7,609	573
Other	132,879	-	-	9
Properties held for redevelopment	-	5,008	-	-
Capital assets, net of accumulated depreciation	4,319	2,235	-	-
Total assets	9,868,964	31,177	3,575,476	472,313
Liabilities:				
Accounts payable and accrued expenses	122,018	-	83,251	-
Accrued interest payable	-	452	-	-
Use tax payable	-	-	-	10
Unapportioned tax	-	-	-	156,137
Securities lending obligation	117,171	-	-	-
Due to other governmental units	-	3,405	-	3
Uncollected tax revenue	-	-	-	118,397
Bonds payable	-	23,634	-	-
Total liabilities	239,189	27,491	83,251	274,547
Net Position				
Investment in capital assets	4,319	2,235	-	-
Restricted for :				
Pension benefits	8,726,319	-	-	-
Postemployment medical benefits	899,129	-	-	-
Other employee benefits	8	-	-	-
Pool participants	-	-	3,492,225	-
Individuals and other governments	-	1,451	-	197,766
Total net position	\$ 9,629,775	\$ 3,686	\$ 3,492,225	\$ 197,766

¹ Pension and OPEB balances reported as of December 31, 2020.

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA

**STATEMENT OF CHANGES IN FIDUCIARY NET POSITION
FIDUCIARY FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Pension, OPEB, ¹ and Other Employee Benefits Trust Funds	Private- Purpose Trust Fund	Custodial	
			External Investment Pool	Other Custodial
Additions:				
Contributions:				
Members	\$ 106,104	\$ -	\$ -	\$ -
Employer	309,753	-	-	-
Contributions on pooled investments	-	-	9,418,782	-
Total contributions	415,857	-	9,418,782	-
Investment income:				
Interest	41,183	274	30,204	2,712
Dividends	32,450	-	-	-
Net increase (decrease) in fair value of investments	989,949	(237)	(29,665)	(1,886)
Real estate	21,871	-	-	-
Securities lending income	1,182	-	-	-
Private equity and alternatives	(18,497)	-	-	-
Brokers' Commissions	28	-	-	-
Total investment income	1,068,166	37	539	826
Less investment expenses:				
Investment expenses	43,888	-	-	-
Securities lending borrower rebates and management fees	584	-	-	-
Real estate	6,358	-	-	-
Total investment expenses	50,830	-	-	-
Net investment income	1,017,336	37	539	826
Other Income:				
Redevelopment property tax revenue	-	3,689	-	-
Taxes collected for other governments	-	-	-	2,649,028
Fees collected for other governments	-	-	-	9,190
Receipt of asset forfeitures	-	-	-	11,171
Grants collected for other governments	-	-	-	503,625
Contributions for non-profits	-	-	-	14
Collections for operations	-	-	-	483,873
Contributions for individuals	-	-	-	12,755
Miscellaneous income	318	9,290	-	89,016
Total other income	318	12,979	-	3,758,672
Total additions, net	1,433,511	13,016	9,419,321	3,759,498
Deductions:				
Benefit payments	567,600	-	-	-
Refunds of contributions	9,184	-	-	-
Administration expenses	16,226	-	-	-
Distribution from pooled investments	-	-	9,292,094	-
Beneficiary payments to individuals	-	11,489	-	-
General and administrative expenses	-	80	-	146,863
Depreciation	-	62	-	-
Transfers to taxing entities	-	250	-	88,047
Interest on debt	-	1,076	-	-
Payment of taxes to other governments	-	-	-	3,167,383
Payment of fees to other governments	-	-	-	270,025
Payment of grants to other governments	-	-	-	5,925
Payment of contributions to individuals	-	-	-	16,989
Payment of contributions to non-profits	-	-	-	14
Distribution of asset forfeitures	-	-	-	944
Distributions for operations	-	-	-	544
Total deductions	593,010	12,957	9,292,094	3,696,734
Change in net position	840,501	59	127,227	62,764
Net position - beginning of period, as reported	8,791,784	3,627	3,364,998	-
Cumulative effect of restatements	(2,510)	-	-	135,002
Net position - beginning of period, as restated	8,789,274	3,627	3,364,998	135,002
Net position - end of period	\$ 9,629,775	\$ 3,686	\$ 3,492,225	\$ 197,766

¹ Pension and OPEB balances reported for the year ended December 31, 2020.

The notes to the basic financial statements are an integral part of this statement.

COUNTY OF ALAMEDA, CALIFORNIA
NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

1. Summary of Significant Accounting Policies

A. Scope of Financial Reporting Entity

The County of Alameda is a political subdivision chartered on March 25, 1853, by the State of California, and as such, it can exercise the powers specified by the constitution and statutes of the State of California. The County operates under its charter and is governed by an elected five-member Board of Supervisors, providing the following services to its citizens, as authorized by its charter: election administration, public protection, public assistance, health care, road and transportation, recreation, and education.

The financial reporting entity consists of the County of Alameda (the primary government) and its component units. Component units are legally separate organizations for which the Board of Supervisors is financially accountable, or other organizations whose nature and significant relationship with the County are such that exclusion would cause the County's financial statements to be misleading or incomplete.

As required by accounting principles generally accepted in the United States, the County's basic financial statements present the County of Alameda and its component units, which are discussed below:

Blended and Fiduciary Component Units - Blended and fiduciary component units are, in substance, part of the County's operations and their financial data are combined with data of the primary government. These component units have a June 30 fiscal year-end, with the exception of the Alameda County Employees' Retirement Association (ACERA), which has a December 31 fiscal year-end. The financial activities of ACERA for the year ended December 31, 2020, are included herein.

• *Alameda County Flood Control and Water Conservation Districts (Flood Control Districts)*

The Flood Control Districts were established to provide flood control services within specific areas of the County. Although the Flood Control Districts are legally separate from the County, they are reported as if they were part of the primary government because the Flood Control Districts governing board is composed solely of the members of the County Board of Supervisors and the Board has operational responsibility for the Flood Control Districts. The financial transactions of the Flood Control Districts are reported within the flood control fund. The books and records for the Flood Control Districts are maintained by the County. Additional financial data for the Flood Control Districts may be obtained from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

• *Alameda County Fire Department (Fire Department)*

The Fire Department was established in 1993 as a consolidation of several County fire districts to provide fire protection services in the unincorporated areas of the County. Since then, the cities of San Leandro and Dublin have contracted with the Fire Department to provide fire protection services within their city limits as well. Although the Fire Department is legally separate from the County, it is reported as if it were part of the primary government because it is governed by the County Board of Supervisors and the Board has operational responsibility for the Fire Department. The activities of the Fire Department are reported within non-major governmental funds. The books and records for the Fire Department are maintained by the County. Additional financial data for the Fire Department may be obtained from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

• *Alameda County Employees' Retirement Association (ACERA)*

ACERA is a multiple-employer public retirement system organized under the 1937 Retirement Act. The County and its component unit, Alameda Health System, are the major participants and contribute 78.57 and 16.24 percent, respectively, of total employer contributions. ACERA is governed by a nine-member board that includes the County treasurer, four County citizens appointed by the Board of Supervisors and four members elected by the ACERA membership. Although ACERA is legally separate from the County, it is reported as part of the County's reporting entity because it benefits the County by providing substantial services to the County's

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

and its component units' employees. The activities of ACERA are reported within the pension and other employee benefit trust funds. Complete financial statements for ACERA may be obtained from the Alameda County Employees' Retirement Association, 475 14th Street, Suite 1000, Oakland, CA 94612.

Postemployment healthcare benefits currently provided by ACERA include medical, dental, and vision benefits. These benefits are reported in the pension and other employee benefits trust funds in the financial statements consistent with Governmental Accounting Standards Board (GASB) Statement No 74. Other forms of postemployment benefits provided by ACERA include supplemental cost of living allowance and death benefits. These benefits are reported in the pension and other employee benefits trust funds in the financial statements consistent with GASB Statement No. 67, as they are considered postemployment benefits.

• *Alameda County Public Facilities Corporation (Corporation)*

The Corporation is a legal entity established to account for the proceeds of certificates of participation issues and other financings for the County. The Board of Directors of the Corporation is comprised of the members of the Board of Supervisors; therefore, the Corporation is considered a component unit. The activities of the Corporation are reported within the debt service governmental fund because the Corporation provides services directly to the County. The books and records for the Corporation are maintained by the County. Additional financial data for the Corporation may be obtained from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

• *County Service Areas (CSA)*

CSAs are special districts established by the Board of Supervisors for the purpose of providing specific services to County residents. Although the CSAs are legally separate from the County, they are reported as if they were part of the primary government because they are governed by the County Board of Supervisors and the Board has operational responsibility for the CSAs. The books and records of these CSAs are maintained by the County, and their activities are reported within non-major governmental funds. Additional financial data for the CSAs may be obtained from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

• *Alameda County Tobacco Asset Securitization Authority (Authority)*

The Authority was established to account for the activities related to the tobacco securitization bonds and revenues generated from the master settlement agreement with the four largest U.S. tobacco manufacturers. The Authority is governed by a board consisting of five directors. It is a separate legal entity; however, it is presented as a blended entity because all members of the board are appointed by the Board of Supervisors and it provides services exclusively to the County. The activities of the Authority are reported within non-major governmental funds as a debt service fund. The books and records for the Authority are maintained by the County. Additional financial data for the Authority may be obtained from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

• *Alameda County Joint Powers Authority (Joint Powers Authority)*

The Joint Powers Authority was initially formed by and between the County and the Redevelopment Agency to assist the County in the financing of public capital improvements. Effective February 1, 2012, the Redevelopment Agency was dissolved, and pursuant to the California Health and Safety Code, the Successor Agency to the Redevelopment Agency was established for the purpose of winding down the affairs of the former redevelopment agency. On March 18, 2014, the joint exercise of powers agreement was amended to add the Surplus Property Authority as a member of the Joint Powers Authority and for the Successor Agency to withdraw as a member. The Joint Powers Authority is included as part of the primary government because the governing board consists of the members of the Board of Supervisors and it provides services exclusively to the County. The activities of the Joint Powers Authority are reported within the debt service governmental fund. The books and records for the Joint Powers Authority are maintained by the County. Additional financial data

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for the Joint Powers Authority may be obtained from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

Discretely Presented Component Unit - The following component unit is reported in a separate column in the government-wide financial statements to emphasize that it is legally separate from the County. Although it has a significant relationship with the County, the entity does not provide services solely to the County and, therefore, is presented discretely.

• *Alameda Health System (AHS)*

Alameda Health System (AHS) is a public hospital authority created originally under the name of Alameda County Medical Center. AHS is governed by an eleven-member board of trustees, appointed by a majority vote of the Board of Supervisors of the County. Pursuant to the agreement dated July 1, 1998, between the County and the AHS, the AHS manages and operates the county hospitals and clinics. The County pays the AHS for the provision of indigent care. The hospital facilities and related debt are presented in the governmental activities of the County's statement of net position. All equipment is the property of the AHS. The AHS has a June 30 fiscal year-end. The financial activities of the AHS for the year ended June 30, 2021, are shown herein. Complete financial statements for the AHS may be obtained from the Alameda Health System, 1411 E. 31st Street, Oakland, CA 94602.

The AHS's governing body is not substantially the same as the County's and the AHS does not provide services entirely or almost entirely to the County. However, the County is accountable for the AHS through the appointment of the AHS's board and the ability to remove appointed members at will.

Other Organizations - There are other governmental agencies that provide services within the County of Alameda. These entities have independent governing boards and the County is not financially accountable for them.

• *Alameda County Redevelopment Successor Agency (Successor Agency)*

The Successor Agency was formed to wind down the affairs, including all assets except the housing assets, of the former Redevelopment Agency, which was dissolved as a result of the State of California ABx1 26. The Successor Agency's governing board consists of the members of the Board of Supervisors. The books and records of the Successor Agency are maintained by the County and its activities are reported within the fiduciary funds as a private-purpose trust fund. Additional financial data for the Successor Agency may be obtained from the Alameda County Community Development Agency, 224 W. Winton Avenue, Hayward, CA 94544.

The County's basic financial statements, except for certain cash held by the County as an agent, do not reflect operations of the Alameda Alliance for Health, Alameda County Mosquito Abatement District, Alameda County Resource Conservation District, Alameda County Transportation Authority, Alameda County Schools Insurance Group (ACSIG), and Alameda County Office of Education. The County is represented in three regional agencies, the San Francisco Bay Area Rapid Transit District (BART), the Bay Area Air Quality Management District (BAAQMD), and the Metropolitan Transportation Commission (MTC), which are also excluded from the County's reporting entity.

B. Government-wide and Fund Financial Statements

The government-wide financial statements, i.e., the statement of net position and the statement of activities, report information on all of the non-fiduciary activities of the primary government and its component units. Governmental activities normally are supported by taxes and inter-governmental revenues. The discretely presented component unit is reported separately from the primary government due to its separate legal standing.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific

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function or segment. Program revenues include: (1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, of which the latter are excluded from the government-wide financial statements. Major individual governmental funds are reported in separate columns in the fund financial statements.

C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements, proprietary fund statements, and fiduciary fund statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. "Measurable" means the amount of the transaction can be determined. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. The County considers property tax revenues to be available if they are collected within 60 days of the end of the current fiscal period. All other revenues are considered to be available if they are collected within 180 days of the end of the current fiscal period. It is the County's policy to submit claims for federal and state grant revenues within 90 days of the end of the program cycle and payment is generally received within 90 days thereafter. Expenditures are recognized when the liability is incurred, except for interest on long-term debt and payments related to vacation, sick leave, claims and judgments, which are recorded when due.

Property taxes, other local taxes, licenses, interest, and intergovernmental revenues associated with the current fiscal period are all considered as being susceptible to accrual and have been recognized as revenues of the current fiscal period, to the extent they are considered available. All other revenue items are considered to be measurable and available only when the County receives cash.

The County reports the following major governmental funds:

The **General Fund** is the general operating fund of the County. It is used to account for all financial resources and transactions except those required to be accounted for in another fund.

The **Property Development Fund** accounts for the sale and development of surplus County land. The fund's revenue sources include proceeds from sale of surplus land, proceeds from the issuance of the Measure A1 general obligation bonds, and developer fees.

The **Disaster Response Fund** is used to account for financial resources to be used for general disaster relief programs.

The **Flood Control Fund** is used to account for taxes, assessments and other revenues collected in specific areas of the County, which are restricted for the provision of flood control services within those areas.

The **Capital Projects Fund** is used to account for financial resources to be used for the acquisition or construction of major capital facilities other than those financed by proprietary fund types and trust funds.

The **Debt Service Fund** is used to account for the accumulation of resources for, and the payment of, long-term debt principal, interest, and related costs.

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Additionally, the County reports the following fund types:

The **Internal Service Funds** are used to account for the financing of goods or services provided by one County department or agency to other departments or agencies of the County or to other governments on a cost-reimbursement basis. Internal Service funds account for the activities of the information technology, building maintenance, motor pool, and the County's risk management programs.

The **Pension, OPEB, and Other Employee Benefits Trust Funds** reflect the activities of the ACERA and the Employees' Cafeteria Benefit Plan. ACERA accounts for employee and County contributions to retirement and postemployment benefits and the earnings or losses from investments. It also accounts for the disbursements made for employee retirement benefits, withdrawals, postemployment benefits, disability and death benefits, as well as administrative expenses. The other employee benefits trust fund holds the benefit amount of the employees who exceed the annual limit as restricted by Section 415(b) of the Internal Revenue Code.

The **Private-Purpose Trust Fund** reflects the activities of the Alameda County Redevelopment Successor Agency for assets, except the housing assets, of the former Alameda County Redevelopment Agency and the activities of the Public Guardian and Court Wards in managing the assets of conservatees of the County.

The **Custodial Funds** account for all fiduciary activities not required to be reported in pension, OPEB, and other employee benefit trust funds, investment trust funds, or private-purpose trust fund. The external portion of the Treasurer's investment pool which is not held in trust is reported in a separate column under the custodial funds classification. This includes funds of the Alameda County school and community college districts, the Trial Courts, the Law Library, the Zone 7 Water Agency, and independent special districts that participate in the Treasurer's pool.

The effect of interfund activities have been eliminated from the government-wide financial statements. Exceptions to this rule are charges between functions because elimination of these charges would distort the direct costs and program revenues reported in the statement of activities.

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services in connection with the fund's principal ongoing operations. The principal operating revenues of the County's internal service funds are charges for customer services including vehicle usage and maintenance fees, building rent and maintenance fees, telecommunication and information technology system support, and charges for risk management activities. Operating expenses include the cost of services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

When both restricted and unrestricted resources are available for use, it is the County's policy to use restricted resources first, then unrestricted resources as they are needed.

Effect of Component Unit with Differing Fiscal Year-End

ACERA has a fiscal year ending on December 31. The amounts reflected in the June 30, 2021 financial statements are the balances as of ACERA's fiscal year ended December 31, 2020. The difference in the cash balance and interfund transactions are reconciled in the Cash and Investments footnote (Note 2).

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D. Cash and Investments

The County follows the practice of pooling cash and investments of all funds with the County Treasurer. Certain funds, which are held by outside custodians are classified as "Cash and investments with fiscal agents" on the accompanying financial statements. The earned interest yield on all funds held by the County Treasurer for fiscal year 2020-2021 was approximately 1.13 percent. The fair value of the Treasurer's pool is determined on a quarterly basis. The adjustment to the cash balance of all participants in the pool is based on the cash balance at the valuation date. The change in the fair value of the investments is recognized in the year in which the change occurred.

Investment in the Treasurer's Pool

The Treasurer's investment pool comprises two components: (1) pooled deposits and investments and (2) specific investments. Specific investments are individual investments that are made separately from the pooled investments at the request of a specific depositor in the County Treasury. The interest earnings on specific investments are recorded only in the fund from which the investment was made.

Pursuant to the California Education Code, receipts of college and school districts must be deposited with the appropriate county. The Alameda County schools and colleges account for 46.27 percent of the net position in the Treasurer's pool. The deposits held for these entities are included in the external investment pool.

The funds of the independent special districts and cities that participate in the Treasurer's pool are also accounted for in the external investment pool as a separate column under the custodial funds.

In addition to the Treasurer's investment pool, the County has other funds that are held by trustees. These funds are related to the issuance of debt and the investments of Surplus Property Development and ACERA.

Investment Valuation

Certain U.S. government securities that have a remaining maturity at time of purchase of one year or less are carried at amortized cost, which approximates fair value. Investments with maturity of more than one year, whether pooled or specific, are carried at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value of investments is determined using the fair value hierarchy defined by GASB Statement No. 72.

For pooled investments, the fair value of participants' position in the pool is the same as the value of the pool shares. The method used to determine the value of participants' equity withdrawn is based on the book value of the participants' percentage participation at the date of such withdrawal. In the event that a certain fund overdraws its share of pooled cash, the overdraft is reported as being due to the general fund.

Investment Income

Income from pooled investments is allocated to the individual funds or external participants at the end of each quarter based on the fund or participant's average daily cash balance during the quarter in relation to the average daily balance of total pooled cash. County management has determined that the investment income related to certain funds should be allocated to the general fund. The income is reported in the fund that earned the interest. A transfer is then recorded to transfer an amount equal to the interest earnings to the general fund.

It is the County's policy to charge interest to those funds that have a negative average daily cash balance. The interest charged is reported as negative interest revenue. In certain instances, County management or State law has determined that the negative interest related to the fund should be allocated to the general fund. The negative interest revenue is recorded in the fund that is charged with the interest. A transfer is then recorded to transfer an amount equal to the negative interest revenue from the general fund.

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Income from non-pooled investments is recorded based on the specific investments held by the fund. The interest income is recorded in the fund that earned the interest.

E. Taxes Receivable

The State of California Constitution Article XIII A provides that the combined maximum property tax rate on any given property may not exceed one percent of its assessed value unless an additional amount for general obligation debt has been approved by the voters. Assessed value is calculated at 100 percent of market value as defined by Article XIII A and may be adjusted by no more than two percent per year unless the property is sold or transferred. These general property tax rates do not apply to taxes levied to pay the interest and principal on any indebtedness incurred prior to June 6, 1978, or subsequently approved by the voters. Supplemental property taxes are levied on a pro rata basis when changes in assessed valuation occur due to sales transactions or the completion of construction. The State legislature has determined the method of distribution among the counties, cities, school districts and other districts of receipts from the 1 percent property tax levy.

The County assesses properties and collects property taxes as follows:

	<u>Secured</u>	<u>Unsecured</u>
Valuation dates	January 1	January 1
Lien dates	January 1	January 1
Due dates	50% on November 1 50% on February 1	Upon receipt of billing
Delinquent after	December 10 (for November) April 10 (for February)	August 31

Taxes are secured by liens on the property being taxed. The term "secured" refers to taxes on land and buildings, while "unsecured" refers to taxes on personal property other than land and buildings.

Secured taxes are distributed to the general fund, the flood control fund, the non-major governmental funds, the school districts and the cities of Alameda and Piedmont, who are participants in the Teeter Plan, as follows: 50 percent of the levy in December, 45 percent in April and the remaining 5 percent in August of each year. The remaining recipients of property tax revenues, who elected not to participate in the Teeter Plan, receive their share of actual current and delinquent taxes and penalties as they are collected.

F. Inter-fund Receivables/Payables

During the course of operations, transactions occur between funds to account for goods received or services rendered, cash overdraft and inter-fund loans. These receivables and payables are classified as "due from other funds" or "due to other funds" in the fund financial statements.

G. Inventory of Supplies

Supplies inventory is recorded at cost and charged on a weighted-average basis. In both the governmental and proprietary funds, supplies inventory is accounted for using the consumption method of inventory accounting. This method records an expenditure when supplies are consumed rather than when purchased.

H. Capital Assets

Capital assets, which include land, easements, construction in progress, structures and improvements, machinery and equipment, software, infrastructure assets, and a historical artifact, are reported in the government-wide financial statements. The County capitalizes equipment and computer software with minimum cost of \$5 thousand and \$250 thousand, respectively, and an estimated useful life in excess of one year. Structures and improvements and infrastructure with a value of at least \$250 thousand are capitalized. Land, entitlements, and items in collections costing at least \$5 thousand are capitalized. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are

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recorded at acquisition value at the date of donation. Capital additions are recorded as expenditures throughout the governmental funds and as assets in the government-wide financial statements to the extent that the County's capitalization threshold is met.

Capital assets, including capital leases, of the primary government and its component units are depreciated using the straight-line method applied over the estimated useful lives of the assets, using the following estimated useful lives:

<u>Type of Asset</u>	<u>Estimated Useful Life in Years</u>
Structures and Improvements	30
Machinery and Equipment	3-20
Software	5-10
Infrastructure	10-100

The majority of the infrastructure assets are being depreciated over a 30 to 60 year period. Land, easements, construction in progress, and collections are not depreciated.

I. Deferred Outflows and Inflows of Resources

In addition to assets, the statement of net position reports a separate section for deferred outflows of resources. This separate financial statement element represents a consumption of net position that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of net position and the balance sheet report a separate section for deferred inflows of resources. This separate financial statement element represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time.

The County reports the following deferred items:

Loss on Refunding Debt – A loss on refunding results from the difference in the carrying value of refunded debt and its reacquisition price. This amount is deferred and amortized over the shorter of the life of the refunded or refunding debt and reported in the government-wide statement of net position.

Unavailable Revenue – Resources collected after 180 days, except for property taxes that are collected after 60 days, are not recognized on the current financial resources measurement focus and modified accrual basis of accounting.

Deferred Outflows and Inflows of Resources Related to Pensions and OPEB – These deferred items are recognized and measured in financial statements prepared using the economic resources measurement focus and the accrual basis of accounting. The deferral is for changes in the net pension/OPEB liability that are not included in pension/OPEB expense and must be amortized in a systematic and rational manner over a closed period depending on cause beginning with the current period. These causes may include changes of future economic and demographic assumptions or other inputs, differences between expected and actual experience with regard to economic or demographic factors, differences between projected and actual earnings on pension/OPEB plan investments and changes in proportion and differences between actual and proportionate share of contributions.

Employer contributions subsequent to the measurement date of the net pension/OPEB liability are reported as deferred outflows of resources.

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J. Compensated Employee Absences

The County permits its employees to accumulate up to fifty days of unused vacation leave over their working career. The unused vacation leave, compensatory time, and unexpired in-lieu compensatory time are redeemed in cash upon termination or by extended absence immediately preceding retirement. Such cash payments of absences are recognized as expenditures of the governmental funds in the year of payment. Employees are not reimbursed for accumulated sick leave.

Estimated unpaid vacation leave, compensatory time, and unexpired in-lieu compensatory time at June 30, 2021, are accrued and recorded in the government-wide and proprietary fund financial statements. The estimated obligation includes an amount for salary-related payments (i.e. payroll taxes) associated with the compensated leaves. All retired or terminated employees as of June 30, 2021, have been compensated for any accumulated vacation, compensatory time, and unexpired in-lieu compensatory time. The funds used to liquidate the liability are based on the funds in which the employee's salaries are budgeted.

K. Bond Issuance Costs and Premiums/Discounts

In the government-wide and fiduciary fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities and fiduciary fund financial statements of net position. Bond premiums and discounts are amortized over the life of the bonds using a straight-line method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are expensed as incurred in the statement of activities.

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, in the year bonds are issued. Issuance costs, whether or not withheld from the actual debt proceeds received, are reported as debt service expenditures.

L. Fund Balances/Net Position

Fund Balances

As prescribed by Statement No. 54 of the GASB, fund balance should be reported in classifications that comprise a hierarchy based primarily on the extent to which the government is bound to honor constraints on the specific purposes for which amounts in those funds can be spent. The following are the fund balance classifications:

Nonspendable Fund Balance – amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact.

Restricted Fund Balance – amounts with constraints placed on their use either (a) externally imposed by creditors, grantors, contributors, or laws or regulations of other governments, or (b) imposed by law through constitutional provisions or enabling legislation.

Committed Fund Balance – amounts that are established for specific purposes pursuant to constraints imposed by formal action (through ordinance or resolution) of the Board of Supervisors, the County's highest level of decision-making authority. The Board of Supervisors establishes, modifies, or removes commitments of fund balance for specific purposes through ordinance or resolution. The commitments can be changed or rescinded only by taking the same formal action that imposed the constraint. An ordinance and a resolution are equally binding in effect and it is equally difficult to remove the constraints established by either an ordinance or resolution. The formal action that commits fund balance to a specific purpose must occur prior to the end of the reporting period but the amount may be determined in a subsequent period.

Assigned Fund Balance – amounts that are constrained by the County's intent to be used for specific purposes but are neither restricted nor committed. The Board of Supervisors has adopted an accounting policy whereby the authority to assign fund balance to specific purposes is delegated to the County Administrator in consultation with the County Auditor-Controller.

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Unassigned Fund Balance – residual classification for the general fund. It represents fund balance that has not been assigned to other funds and that has not been restricted, committed, or assigned to specific purposes within the general fund. This is also the residual for negative fund balances of other governmental funds.

It is the County's policy to apply expenditures to the appropriate fund balance components if they can be specifically identified and in the following order if not:

- Apply to restricted fund balance when both restricted and unrestricted (committed, assigned, or unassigned) fund balances are available, or
- Apply to committed fund balance, then assigned fund balance, and finally unassigned fund balance when committed, assigned, or unassigned fund balances are available.

Minimum Fund Balance

The County reserves an annual amount of up to five percent of the total general fund budget within a designated contingency account and establishes a goal of maintaining a designated fund balance at a level of at least ten percent of the general fund annual budgeted operating expenditures. These designated amounts are reported within committed fund balance. The County's policy is to pay current operating expenditures with current operating revenues. Budgetary procedures that fund current expenditures at the expense of future needs are avoided. The contingency account is to:

- Provide for non-recurring unforeseen expenditures of an emergency nature;
- Maximize short-term borrowable capital;
- Provide orderly budgetary adjustments when revenues are lost through the actions of other governmental bodies;
- Provide the local match or required "Maintenance of Effort" appropriation for public or provide programs and grants that may become available; and
- Meet unexpected nominal increases in service delivery costs.

The Board of Supervisors has the sole discretion in authorizing the use of this account.

Net Position

Net Investment in Capital Assets - This category of net position groups all capital assets into one component. Accumulated depreciation and the outstanding balances of debt and loss on refunding debt related to the acquisition, construction, or improvement of the capital assets reduce the balance in this category.

Restricted Net Position - Restricted net position are those assets, net of their related liabilities, that have constraints placed on their use by creditors, grantors, contributors, or by enabling legislation. Accordingly, restricted assets may include unexpended bond proceeds, unspent grant revenues, certain fees and charges and restricted tax revenues.

Unrestricted Net Position - Unrestricted net position is the residual amount of the net position not included in the net investment in capital assets or the restricted net position.

M. Self-Insurance

The County is self-insured for general liability, automobile liability, medical malpractice, workers' compensation and employer's liability, and dental insurance claims. Internal service funds are used to account for the County's self-insurance activities. It is the County's policy to provide in each fiscal year, by premiums charged to affected operating funds, amounts sufficient to cover the estimated charges for self-insured claims, excess

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insurance and administrative costs. The risk management internal service fund's estimated liability for claims and contingencies is actuarially determined and includes claims incurred but not reported.

N. Inter-fund Transfers

Inter-fund transfers are generally recorded as transfers in or out except for certain types of transactions that are described below.

- (1) Charges for services are recorded as revenues of the performing fund and expenditures of the requesting fund. Unreimbursed costs are recognized as an asset of the performing fund at the end of the fiscal year.
- (2) Reimbursements for expenditures, initially made by one fund that are properly applicable to another fund, are recorded as expenditures in the reimbursing fund and as a reduction of expenditures in the fund that is reimbursed.

O. Refunding of Debt

In the government-wide financial statements, gains or losses from refunding of debt are reported as deferred inflows or outflows of resources and amortized into interest expense over the shorter of the life of the refunded debt or refunding debt.

P. Cash Flows

A statement of cash flows is presented for proprietary fund types. Cash and cash equivalents include all unrestricted and restricted highly liquid investments with original purchase maturities of three months or less. Pooled cash and investments in the County's Treasury represent monies in a cash management pool. Such accounts are similar in nature to demand deposits.

Q. Pensions and Other Postemployment Benefits

For purposes of measuring the net pension/OPEB liability, deferred outflows of resources and deferred inflows of resources related to pensions/OPEB, and pension/OPEB expense, information about the fiduciary net position of the Alameda County Employees' Retirement Association (ACERA) and additions to/deductions from ACERA's fiduciary net position have been determined on the same basis as they are reported by ACERA. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value. The County does not make contributions to the ACERA OPEB Plan. The ACERA OPEB Plan receives transfers from the ACERA Pension Plan when there are investment earnings in excess of actuarial assumptions.

GASB Statement No. 68 and 75 require that the reported results must pertain to liability and asset information within certain defined timeframes. For ACERA's pension/OPEB plans, the following timeframes are used:

Valuation Date	December 31, 2019
Measurement Date	December 31, 2020
Measurement Period	January 1, 2020 to December 31, 2020

For the Fire Department, information about the fiduciary net position of the California Public Employees' Retirement System (CalPERS) Miscellaneous Plan, Safety Plan and OPEB Plan and additions to/deductions from CalPERS' fiduciary net position have been determined on the same basis as they are reported by CalPERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value. CalPERS audited financial statements are publicly available reports that can be obtained at CalPERS' website (www.calpers.ca.gov) under Forms and Publications.

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For CalPERS' pension/OPEB plans, the following timeframes are used:

Valuation Date	June 30, 2019 (Pension); June 30, 2020 (OPEB)
Measurement Date	June 30, 2020
Measurement Period	July 1, 2019 to June 30, 2020

Below is a summary of the aggregate amount of net pension and OPEB liabilities, and deferred outflows/inflows of resources related to all pension and OPEB plans as presented in the financial statements.

	Net Pension Liabilities	Deferred Outflows of Resources	Deferred Inflows of Resources	Pension Expense/ Expenditures
ACERA	\$ 1,706,972	\$ 1,328,483	\$ 418,458	\$ 215,456
Fire Department	136,253	38,667	1,437	27,069
Total	<u>\$ 1,843,225</u>	<u>\$ 1,367,150</u>	<u>\$ 419,895</u>	<u>\$ 242,525</u>
	Net OPEB Liabilities	Deferred Outflows of Resources	Deferred Inflows of Resources	OPEB Expense/ Expenditures
ACERA	\$ 5,101	\$ 70,414	\$ 205,836	\$ (11,461)
Fire Department	87,140	7,784	25,172	2,973
Total	<u>\$ 92,241</u>	<u>\$ 78,198</u>	<u>\$ 231,008</u>	<u>\$ (8,488)</u>

R. Joint Venture

The County is a participant with the City of Oakland in a joint exercise of powers agreement known as the Oakland-Alameda County Coliseum Authority (the Coliseum Authority), which was formed on July 1, 1995, to assist the City of Oakland and the County in the financing of public capital improvements in the Oakland-Alameda County Coliseum Complex pursuant to the Marks-Roos Local Bond Pooling Act of 1985. Under this agreement, which formed the Coliseum Authority, the County is responsible for funding up to 50 percent of the Coliseum Authority's operating costs and debt service requirements, to the extent such funding is necessary. See Note 17 for further information on the Coliseum Authority joint venture.

S. Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

T. New Accounting Standards Implemented

In January 2017, the GASB issued Statement No. 84, *Fiduciary Activities*. The objective of this statement is to improve guidance regarding the identification of fiduciary activities for accounting and financial reporting purposes and how those activities should be reported. This requires a new statement of changes in changes in fiduciary net position as part of the basic financial statements. The effect to the financial statements was a restatement of the beginning balances of the fund balance and net position. See Note 21 for more information.

In August 2018, the GASB issued Statement No. 90, *Majority Equity Interest — an amendment of GASB Statements No. 14 and No. 61*. The primary objectives of this Statement are to improve the consistency and comparability of reporting a government's majority equity interest in a legally separated organization and to improve the relevance of financial statement information for certain component units. It defines a majority equity interest and specifies that a majority equity interest in a legally separate organization should be reported as an

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investment if a government's holding of the equity interest meets the definition of an investment. A majority equity interest that meets the definition of an investment should be measured using the equity method, unless it is held by a special-purpose government engaged only in fiduciary activities, a fiduciary fund, or an endowment (including permanent and term endowments) or permanent fund. This statement did not have a significant impact to the County's financial statements.

In October 2021, the GASB issued Statement No. 98, *The Annual Comprehensive Financial Report*. This Statement establishes the term annual comprehensive financial report and its acronym ACFR to replace instances of comprehensive annual financial report and its acronym. This Statement was developed as a response to concerns raised by stakeholders that the common pronunciation for comprehensive annual financial report sounds like a profoundly objectionable racial slur. The introduction of this Statement is founded on the commitment to promote inclusiveness. This statement did not have a significant impact to the County's financial statements.

U. New Pronouncements

In June 2017, the GASB issued Statement No. 87, *Leases*. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities. This Statement is effective for the County's fiscal year ending June 30, 2022.

In June 2018, the GASB issued Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*. The objective of this Statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period. The Statement is effective for the County's fiscal year ending June 30, 2022.

In May 2019, the GASB issued Statement No. 91, *Conduit Debt Obligations*. The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures. This Statement is effective for the County's fiscal year ending June 30, 2023.

In January 2020, the GASB issued Statement No. 92, *Omnibus 2020*. The objectives of this Statement are to enhance the comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB statements. The Statement addresses a variety of topics including leases, pension plans, and fiduciary activities. This Statement is effective for the County's fiscal year ending June 30, 2022.

In March 2020, the GASB issued Statement No. 93, *Replacement of Interbank Offered Rates*. The objective of this Statement is to address the accounting and financial reporting implications that result from the replacement of an interbank offered rate for agreements in which variable payments are made or received and depend on an interbank offered rate, namely the London Interbank Offered Rate (LIBOR). The removal of LIBOR as an appropriate benchmark interest rate is effective for the County's fiscal year ending June 30, 2023. All other requirements of this Statement are effective for the County's fiscal year ending June 30, 2022.

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In March 2020, the GASB issued Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. The primary objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements. This Statement is effective for the County's fiscal year ending June 30, 2023.

In May 2020, the GASB issued Statement No. 96, *Subscription-Based Information Technology Arrangements*. This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements for government end users. This Statement is effective for the County's fiscal year ending June 30, 2023.

In June 2020, the GASB issued Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*. The primary objectives of this Statement are to increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution OPEB plans, and employee benefit plans other than pension or OPEB plans as fiduciary component units in fiduciary fund statements; and enhance the relevance, consistency and comparability of the accounting and financial reporting for Internal Revenue Code Section 457 deferred compensation plans that meet the definition of a pension plan and for benefits provided through those plans. The requirements of this Statement that exempt primary governments that perform the duties that a governing board typically performs from treating the absence of a governing board in determining whether they are financially accountable, and limit the applicability of the financial burden criterion to defined benefit pension plans and defined benefit OPEB plans that are administered through trusts are effective immediately. The requirements of this Statement that are related to the accounting and financial reporting for Section 457 plans are effective for the County's fiscal year ending June 30, 2022.

2. Cash and Investments

A. Deposits

As of June 30, 2021, the County's cash and deposits were as follows:

	<u>Bank Balance</u>	<u>Carrying Value</u>
Deposits with financial institutions	\$ 466,891	\$ 458,218
Cash on hand		65
Deposits in transit		522
Cash with County Treasurer for other employee benefits trust fund		17
Total cash and deposits		<u>\$ 458,822</u>

Custodial Credit Risk – Deposits

The custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the County will not be able to recover deposits or will not be able to recover collateral securities that are in the possession of an outside entity. The County's investment policy requires that deposits in banks must meet the requirements of California Government Code. Of the \$466.9 million in deposits with financial institutions, \$4.2 million was covered by federal depository insurance and \$462.7 million was collateralized by pledging financial institutions as required by California Government Code Section 53652.

Under the California Government Code, a financial institution is required to secure deposits in excess of \$250 thousand made by state or local governmental units by pledging securities held in the form of an undivided collateral pool. The market value of the pledged securities in the collateral pool must equal at least 110 percent of the total amount deposited by the public agencies. California law also allows financial institutions to secure public agency deposits by pledging first trust deed mortgage notes having a fair value of 150 percent of the secured public deposits. The collateral must be held at the pledging bank's trust department or at another bank, acting as

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the pledging bank's agent, in the public agency's name. The County may waive collateral requirements for cash deposits, which are fully insured up to \$250 thousand by the Federal Deposit Insurance Corporation. The County, however, has not waived the collateralization requirements.

As of December 31, 2020, ACERA reported a deposit of \$3.2 million. As of December 31, 2020, ACERA had no deposits that were exposed to custodial credit risk.

B. Investments

County investments consist of (a) Treasurer's investments, (b) Investments with fiscal agents and, (c) ACERA's investments.

a. Treasurer's Investments

Funds with the County Treasurer are invested pursuant to the annual investment policy established by the Treasurer and approved by the Board of Supervisors. The objectives of the policy are, in order of priority, preservation of capital, liquidity, and yield. The policy addresses the soundness of financial institutions in which the County deposits funds, the types of investment instruments and the percentage of the portfolio, which may be invested in certain instruments, as permitted by Section 53600 et seq. of the Government Code of the State of California.

On June 10, 1997, the Board of Supervisors created the Treasury Oversight Committee pursuant to Section 27131 of the Government Code. The Committee is responsible for ensuring that the Treasurer's investment pool is audited annually and for reviewing and monitoring the Treasurer's investment policy.

The County has adopted a written investment policy, which is more restrictive than state law as to terms of maturity, credit quality and types of investment. The table below identifies the investment types that are authorized by the investment policy. The table also identifies certain provisions of the investment policy that address interest rate risk and concentration of credit risk. The investment policy places maturity limits based on the type of security.

Authorized Investments	Maximum Percentage of Portfolio	Maximum Maturity
U.S. Treasury Obligations	100%	5 years
Federal Agencies	100%	5 years
Money Market Mutual Funds	20%	Daily Liquidity
Commercial Paper	25%	270 days
Negotiable CDs	30%	1 year
Medium Term Corporate Notes	30%	5 years
Asset-Backed Securities	20%	5 years
State and Local Governmental Bonds	20%	5 years
Repurchase Agreements (REPO)	20%	180 days
Reverse Repurchase Agreements (Reverse REPO)	20%	180 days
Banker's Acceptances	30%	180 days
Supranational Obligations	30%	5 years
LAIF	State Limit	Daily Liquidity
CalTRUST	2X LAIF	Daily Liquidity
California Asset Management Program (CAMP)	2X LAIF	Daily Liquidity
Collateralized/FDIC - Insured Time Deposits	30%	5 years
Collateralized Money Marker Bank Accounts	30%	Daily Liquidity

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There were no derivative investments in the investment pool for the year ended June 30, 2021.

As of June 30, 2021, Treasurer's investments consisted of the following:

Investment Type	Credit Rating S&P's/Moody's	Investment Maturities (in Years)			Fair Value
		Less than 1	1 to 5	More than 5	
Commercial paper	NR / P-1	\$ 249,914	\$ -	\$ -	\$ 249,914
Federal agency notes and bonds	AA+ / AA+ to AAA	387,412	2,021,924	-	2,409,336
Local agency investment funds	Not Rated	72,000	-	-	72,000
Asset-backed securities	AAA / AAA	3,865	155,617	-	159,482
Medium term notes	BBB+ to AAA / BAA2 to AAA	201,080	568,162	-	769,242
Negotiable certificates of deposit	NR / P-1	1,200,006	-	-	1,200,006
Municipal securities	AA- to AA / AA2 to Aa3	28,129	9,611	-	37,740
U.S. Treasury notes	AAA / AAA	450,924	634,951	-	1,085,875
Non-U.S. Treasury Notes*	AAA / AAA	10,016	198,193	-	208,209
California Asset Management Program	AAAm/Aaa-mf	130,000	-	-	130,000
Investment Trust of California	AAAm/Aaa-mf	40,000	-	-	40,000
Total Investments		\$ 2,773,346	\$ 3,588,458	\$ -	\$ 6,361,804

* Non-U.S. Treasury notes fall under the Washington Supranational Obligations category in the County's investment policy. These are U.S. dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by certain international banks that are eligible for purchase or sale in the United States.

Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will affect the fair value of an investment. In accordance with the investment policy, the Treasurer manages the risk exposure by limiting the weighted average maturity of its investment portfolio to not more than two years at any time. The weighted average maturity of the Treasurer's Pool at June 30, 2021 was 593 days.

Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Treasurer manages this risk exposure by complying with the Government Code and the Treasurer's more restrictive investment policy regarding the credit ratings of various types of investments. The investment policy, effective for calendar year 2021 prescribes the following rating requirements:

Money Market Mutual Funds: at least AAA rated when issued by two nationally recognized statistical rating organizations (NRSRO).

Commercial Paper: at least A-1, P-1, F-1 equivalent by one NRSRO.

Negotiable Certificates of Deposit: at least A-1 equivalent by two NRSROs.

Medium-Term Corporate Notes: at least A equivalent by two NRSROs.

Asset-Backed Securities: at least AAA equivalent by one NRSRO.

State and Local Government Bonds: at least A equivalent by one NRSRO.

Banker's Acceptances: at least A-1, P-1, F-1 equivalent by one NRSRO.

Supranational Obligations: at least AA equivalent by one NRSRO.

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Concentration of Credit Risk

Concentration of credit risk is the risk of loss attributed to the magnitude of the County's investment in a single issuer. The investment policy sets no limit on the amount the County may invest in any one issuer. As of June 30, 2021, more than 5 percent of the Treasurer's investments were under the following issuers:

<u>Issuer:</u>	<u>Percentage of Treasurer's Pool Portfolio as of June 30, 2021</u>
Federal National Mortgage Association	10.4%
Federal Home Loan Bank	9.2%
Federal Home Loan Mortgage Corporation	6.1%
Federal Agricultural Mortgage Corporation	5.0%

The following represents a condensed statement of net position and changes in net position for the Treasurer's pool for the year ended June 30, 2021. Cash and deposits do not include cash associated with department revolving funds or the Alameda Health System, which are held outside of the County Treasury.

Statement of Net Position:

Assets:	
Deposits and cash on hand	\$ 458,300
Deposits in Transit	522
Investments (at fair value)	6,361,804
Accrued Interest	16,035
Total assets	<u>\$ 6,836,661</u>
Liabilities:	<u>\$ 83,251</u>
Net Position	<u>\$ 6,753,410</u>
Equity of internal pool participants	\$ 3,261,185
Equity of external pool participants	3,492,225
Total Net Position	<u>\$ 6,753,410</u>

Statement of Changes in Net Position:

Net change in investments by pool participants	\$ (237,041)
Net position at July 1, 2020	6,990,451
Net position at June 30, 2021	<u>\$ 6,753,410</u>

The County has not provided nor obtained any legally binding guarantees during the year ended June 30, 2021, to support the value of shares in the pool.

As of June 30, 2021, the Treasurer's cash and investment pool was carried at fair value, based on the current market price of the investment holdings. During the fiscal year, the fair value of the cash and investment pool was determined quarterly and reported to the Board of Supervisors at the end of each calendar quarter.

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To request a copy of an Investment Report, contact the Investment Officer at the Office of the Alameda County Treasurer – Tax Collector at 1221 Oak Street, Room 131, Oakland or call (510) 272-6800 for the fair value, the principal amount, ranges of interest rates, and maturities dates of each investment classification for the Treasurer's Pool.

Each County fund's equity in the pool is the fund's actual cash position as of any given date. Any "value" that served to either increase or decrease the pool's valuation as a result of the current fair value of the pool on June 30, 2021, has been allocated to each fund based on the average cash balance during the last quarter of the fiscal year.

Other Disclosures

As of June 30, 2021, the County's investment in Local Agency Investment Fund (LAIF) is \$72 million. The LAIF is part of the Pooled Money Investment Account (PMIA), and the Local Investment Advisory Board, which consists of five members as designated by State statute, provides oversight for LAIF. All securities are purchased under the authority of Government Code Sections 16430 and 16480.4. The value of the pool shares in LAIF is determined on an amortized cost basis, which approximates fair value. LAIF is part of the Pooled Money Investment Account (PMIA), which is not SEC-registered. As of June 30, 2021, the PMIA balance was \$193.3 billion, of which 2.31% in structured notes and asset backed securities.

b. Investments with Fiscal Agents

The County's general fund, property development fund, capital projects fund, debt service fund, non-major governmental funds, internal service funds, and fiduciary funds have cash and investments with fiscal agents.

As of June 30, 2021, cash and investments with fiscal agents consisted of the following:

	Ratings (S&P / Moody's)	Investment Maturities (in Years)			Fair Value
		Less than 1	1 to 5	More than 5	
Cash & Cash Equivalents	NA	\$ 218,531	\$ 29,160	\$ 13,833	\$ 261,524
EBRCSA (*) revenue bonds	Not Rated	-	-	2,038	2,038
U.S. Treasury Securities	NR / AAA	15,600	7,514	5,014	28,128
Federal Agency Debt Securities	AA+ / AAA	88,199	56,187	345	144,731
Corporate Bonds	A- to AAA / A2 to AAA	30,328	62,780	-	93,108
Municipal Bonds	A+ to AA+ / A2 to AAA	2,112	61,569	-	63,681
Private Debt Obligations	Not Rated	-	-	2,179	2,179
Totals		\$ 354,770	\$ 217,210	\$ 23,409	\$ 595,389

* East Bay Regional Community System Authority

Interest Rate Risk

The investment policy for the property development fund limits the maximum maturity of any issue to no more than five years from the purchase date. The County's Financial Management Policy and various bond indentures do not contain provisions that address the interest rate risk of investments made by other County funds.

Credit Risk

The investment policy for the property development fund and various bond indentures for other funds limit the funds' investments to U.S. Treasury Bills, U.S. Government Notes, Federal Agency Notes, debt issues of the State of California, debt issues of local agencies within the State of California, commercial paper, guaranteed investment contracts, and money market funds to the highest two ratings issued by nationally recognized statistical rating organizations.

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Concentration of Credit Risk

As of June 30, 2021, more than five percent of total investments with fiscal agents were in the Federal Home Loan Banks (17.42%), Federal National Mortgage Associations (12.11%), Federal Home Loan Mortgage Corporations (6.98%) and Federal Farm Credit Banks (5.74%).

The investment policy for the property development fund and various bond indentures for other funds place no limit on the amount the funds may invest in any one issuer.

Fair Value Measurement

GASB Statement No. 72, *Fair Value Measurement and Application*, sets forth the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The investments in an external investment pool are not subject to reporting within the level hierarchy. The three levels of the fair value hierarchy are described below:

- Level 1: Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the County has the ability to access.
- Level 2: Inputs to the valuation methodology include quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets in inactive markets; inputs other than quoted prices that are observable for the asset or liability; or inputs that are derived principally from or corroborated by observable market data by correlation or other means. If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.
- Level 3: Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

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The County's cash equivalents and investments by fair value as of June 30, 2021, include the following:

Investments	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)
Investments subject to fair value hierarchy:			
Investments with County Treasury			
Commercial paper	\$ 249,914	\$ -	\$ 249,914
Federal agency notes and bonds	2,409,336	-	2,409,336
Asset-backed securities	159,482	-	159,482
Medium term notes	769,242	-	769,242
Negotiable certificates of deposit	1,200,006	-	1,200,006
Municipal securities	37,740	-	37,740
U.S. Treasury notes	1,085,875	1,085,875	-
Non-U.S. Treasury Notes	208,209	-	208,209
Total investments with County Treasury subject to fair value hierarchy	6,119,804	1,085,875	5,033,929
Investments with Fiscal Agents			
East Bay Regional Community System Authority revenue bonds	2,038	-	2,038
U.S. Treasury Securities	28,128	28,128	-
Federal agency debt securities	144,731	-	144,731
Corporate bonds	93,108	-	93,108
Municipal bonds	63,681	-	63,681
Private debt obligations	2,179	-	2,179
Total investments with fiscal agents subject to fair value hierarchy	333,865	28,128	305,737
Total investments subject to fair value hierarchy	\$ 6,453,669	\$ 1,114,003	\$ 5,339,666
Investments not subject to fair value hierarchy:			
Local agency investment funds held by County Treasury	\$ 72,000		
California Asset Management Program	130,000		
Investment Trust of California	40,000		
Total investments not subject to fair value hierarchy	\$ 242,000		

c. Investments of Alameda County Employees Retirement Association (ACERA)

Government Code Section 31595 allows the Board of Retirement to invest funds at its discretion. Instruments authorized by the Board of Retirement are U.S. equity, international equity, U.S. and international fixed income, real estate and Treasurer's pooled investments. ACERA is prohibited from investing in securities issued by the County of Alameda or any agency thereof. Additionally, ACERA may not invest in futures, written options, swaps or structured notes, unless specific authorization is obtained from the Board of Retirement in advance of the investment. The ACERA investments shown in the statement of fiduciary net position are as of ACERA's fiscal year ended December 31, 2020.

ACERA has chosen to manage the investment risks described by GASB Statement No. 40 and 53 by contractually requiring each portfolio investment manager to abide by restrictive investment guidelines specifically tailored to that individual manager rather than adopting across-the-board investment policies with respect to these investment risks. The guidelines stipulate the investment style, the performance objective, performance benchmarks, and portfolio characteristics. For example, in the case of foreign currency risk, the policy guidelines for the U.S. dollar equity portfolios differ from those for the non-U.S. dollar equity portfolios. Likewise, in the case of credit risk, the guidelines for one fixed income manager stipulate a minimum acceptable credit rating for each debt instrument while the guidelines for a different fixed income portfolio merely require that the average of credit ratings for a certain fair value percentage of the portfolio meet a minimum requirement. Each separate manager is likewise subject to a "manager standard of care" that establishes a fiduciary relationship requiring the manager to act prudently and solely in the best interest of ACERA. ACERA's guidelines require each manager's

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investment return performance to compare favorably with the performance of the relevant passive market index such as the Barclays Capital Aggregate Bond Index. ACERA's investment staff continually monitors all investment managers for compliance with the respective guidelines.

Concentration of Credit Risk

The individual investment guidelines for each fixed-income manager restrict concentrations greater than 5 percent in the securities of any one issuer (excluding all federal government and agency securities). As of December 31, 2020, ACERA had no investments in a single issuer that equaled or exceeded 5 percent of ACERA's net position.

Credit Risk

The individual investment guidelines for each fixed-income investment manager describe applicable restrictions on credit risk. The credit quality ratings of a security (e.g., from Moody's or S&P) give an indication of the degree of credit risk for that security. The Credit Risk Analysis table below discloses the fair value of debt investments by type and credit rating as of December 31, 2020.

Debt Investments by Type	Adjusted Moody's Credit Rating ⁽¹⁾								
	Total	Aaa	Aa	A	Baa	Ba	B	Caa	Ca and Below
Collateralized Mortgage Obligations	\$ 86,974	\$ 47,507	\$ 965	\$ 737	\$ 799	\$ 83	\$ 592	\$ 1,642	\$ 193
Convertible Bonds	16,551	-	-	-	690	-	-	4,691	-
Corporate Bonds	699,888	5,878	8,664	87,500	441,473	117,890	24,439	13,306	-
Federal Home Loan Mortgage Corp. (2)	42,097	-	-	-	-	-	-	-	-
Federal National Mortgage Assn. (2)	75,661	-	-	-	-	-	-	-	-
Government National Mortgage Assn. I, II (2)	13,696	-	-	-	-	-	-	-	-
Government Issues (3)	315,485	268,324	9,192	7,381	23,281	368	-	-	-
Municipals	3,326	113	627	2,586	-	-	-	-	-
Other Asset Backed Securities	32,719	20,003	695	1,039	1,930	1,172	-	1,607	3,394
Subtotal Debt Investments	1,286,397	341,825	20,143	99,243	468,173	119,513	25,031	21,246	3,587
External Investment Pools of Debt Securities									
Securities Lending Cash Collateral Fund									
Liquidation Pool (4)	116,321	-	-	-	-	-	-	-	-
Duration Pool (4)	808	-	-	-	-	-	-	-	-
Master Custodian Short-Term Investment Fund	141,973	-	-	-	-	-	-	-	-
Subtotal External Investment Pools	259,102	-	-	-	-	-	-	-	-
Total	\$ 1,545,499	\$ 341,825	\$ 20,143	\$ 99,243	\$ 468,173	\$ 119,513	\$ 25,031	\$ 21,246	\$ 3,587

¹ Adjusted Moody's Credit Rating: This schedule displays the fair value of investments by credit rating in increasing magnitude of risk. Investments are classified by Moody's credit rating, or by the Moody's rating that corresponds to the Standard & Poor's (S&P) credit rating if the investment has a S&P rating but not a Moody's rating. Also whenever both ratings for an investment exist and the S&P rating for the investment indicates a greater degree of risk than the Moody's rating, then the investment's Moody's credit rating is adjusted, solely for the purpose of this disclosure, to the Moody's rating corresponding to the greater degree of risk.

² The investments in the following debt instruments --i.e., Federal Home Loan Mortgage Corp., Federal National Mortgage Assn., and Government National Mortgage Assn., that are Not Rated are implicitly guaranteed by the U.S. Government.

³ In Government issues, the investments that are Not Rated are composed of foreign investments that are guaranteed by the foreign governments issuing the debt.

⁴ The external investment pools are not rated.

This table displays the fair value of investments by credit rating in increasing magnitude of risk. Investments are classified by Moody's credit rating. If a Moody's rating is not available, then the S&P rating is used. Also, whenever both ratings for an investment exist, then the lower of the two ratings is used.

Custodial Credit Risk

The individual investment guidelines for each investment manager require that managed investments be held and maintained with the master custodian in the name of ACERA. The master custodian may rely on sub-custodians. The custodial requirement does not apply to real estate investments, investments in commingled pools, and private equity and alternative investments. As of December 31, 2020, ACERA had no investments that were exposed to custodial credit risk.

ACERA's investments include collateral associated with derivatives activity. As of December 31, 2020, net collateral for derivatives was \$1.4 million. Each account is uninsured and uncollateralized, and subject to custodial credit risk.

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Interest Rate Risk

ACERA has investments in three fixed income portfolios containing individual debt securities as well as investments in external investment pools containing debt securities. All of these investments are subject to interest rate risk. ACERA has no general policy on interest rate risk for the fixed income portfolios or for the investments in external pools. ACERA manages interest rate risk for the three fixed-income portfolios by setting limits on portfolio duration for each portfolio.

The following Interest Rate Risk Analysis—Duration schedule discloses the duration of ACERA's debt investments by type and the duration of each of the external investment pools of debt securities. Duration is a measure of a debt investment's exposure to fair value changes arising from changing interest rates. It uses the present values of cash flows, weighted for those cash flows as a percentage of the investment's full price. The Master Custodian Short-Term Investment Fund had an average weighted maturity of 46 days as of December 31, 2020.

Debt Investments by Type	Fair Value	Duration In Years
Collateralized mortgage obligations	\$ 86,974	3.4
Convertible bonds	16,551	1.1
Corporate bonds	699,888	7.6
Federal Home Loan Mortgage Corp.	42,097	-0.7
Federal National Mortgage Assn.	75,661	0.9
Government National Mortgage Assn. I, II	13,696	-1.0
Government Issues	315,485	9.5
Municipals	3,326	7.3
Other Asset Backed Securities	32,719	2.5
	<u>\$ 1,286,397</u>	

External Investment Pools of Debt Securities	Fair Value	Duration in Days
Securities Lending Cash Collateral Fund		
Liquidity Pool	\$ 116,321	16
Duration Pool	808	17
Master Custodian Short-Term Investment Fund	141,973	-
Total	<u>\$ 259,102</u>	

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Fair Value Highly Sensitive to Changes in Interest Rate

The Interest Rate Risk Analysis table below discloses the degree to which ACERA's investments are sensitive to interest rate changes due simply to the remaining term to maturity. In contrast, ACERA's investments with fair values that are highly sensitive to interest rates due to other factors are disclosed on the Interest Rate Risk Analysis - Highly Sensitive schedule below. ACERA has no general investment policy with respect to investments with fair values that are highly sensitive to changes in interest rates.

**Interest Rate Risk Analysis – Highly Sensitive
Fair Value of Investments with Fair Values
Highly Sensitive to Changes in Interest Rates**

<u>Investment Type</u>	<u>Investment Description</u>	<u>Interest Rates</u>	<u>Fair Value</u>
	Federal Home Loan Mortgage Corporation		
Collateralized Mortgage Obligations	Structured Agency Credit Risk (STACR) securities	1.00%	\$ 689
Corporate Bonds	Various debt related securities	1.00% to 7.69%	76,226
Government Issues	Various debt related securities	1.75% to 8.50%	22,006

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

ACERA's cash equivalents and investments by fair value as of December 31, 2020, include the following:

Investments	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Investments by Fair Value Level				
Cash Equivalents				
Government Issues	\$ 26,661	\$ 26,661	\$ -	\$ -
STIF-Type Instrument	141,974	-	141,974	-
Total Cash Equivalents	168,635	26,661	141,974	-
Fixed Income Securities				
Asset-Backed Securities	32,719	-	32,719	-
Commercial Mortgage-Backed Securities	86,973	-	86,973	-
Convertible Bonds	16,552	-	16,552	-
Corporate bonds	699,888	-	699,888	-
FHLMC	42,097	-	42,097	-
FNMA	75,661	-	75,661	-
GNMA I	1,268	-	1,268	-
GNMA II	12,429	-	12,429	-
Government Issues	315,485	152,298	163,187	-
Municipal Bonds	3,326	-	3,326	-
Mutual Funds	28,584	-	28,584	-
Non-Security Assets	127,851	-	127,851	-
Total Fixed Income Securities	1,442,833	152,298	1,290,535	-
Equity Securities				
Non-U.S. Equity	1,296,336	1,294,128	2,208	-
Pooled Investments	3,620,160	3,413,352	206,808	-
U.S. Equity	562,387	562,387	-	-
Total Equity Securities	5,478,883	5,269,867	209,016	-
Real Assets				
Mutual Funds	360,931	-	360,931	-
Total Real Assets	360,931	-	360,931	-
Real Estate Properties	72,474	-	-	72,474
Collateral from Securities Lending	117,171	-	117,171	-
Total investments subject to fair value hierarchy	7,640,927	\$ 5,448,826	\$ 2,119,627	\$ 72,474
Investments Measured at Net Asset Value (NAV)				
Real Assets (1)	106,955			
Private Equity (2)	726,180			
Absolute Return (3)	645,134			
Real Estate (4)	528,671			
Private Credit (5)	57,747			
Total Investments Measured at NAV	2,064,687			
Total investments subject to fair value hierarchy	\$ 9,705,614			
Derivatives				
Futures	\$ 236	\$ 236	\$ -	\$ -
Forwards and Spot Contracts	5,853	5,853	-	-
Total Derivatives	\$ 6,089	\$ 6,089	\$ -	\$ -

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS (amounts in tables expressed in thousands) JUNE 30, 2021

- The Real Assets portfolio consists of 9 funds which include 8 limited partnerships and 1 separately managed account. The eight limited partnerships are commingled vehicles that invest in private infrastructure and natural resources. Two of the eight limited partnerships were committed to in 2020, but had yet to call capital by 12/31/20. These limited partnerships are valued at net asset value on a quarterly basis and, due to contractual limitations, none of these vehicles are eligible for redemption but rather distribute capital proceeds over the funds' lifespans, which are up to 12 years. The one separately managed account holds shares in three commingled vehicles. These commingled vehicles invest in publicly traded infrastructure and natural resources equities, commodity futures, and total return swaps. This separately managed account is not measured at net asset value and classified as level 2 in fair value hierarchy.*
- Private Equity – The Private Equity portfolio consists of 54 funds, which invest primarily in buyout, debt-related, special situations, and venture capital opportunities. The fair value of these funds is determined using net asset value represented in the audited financial statements plus/minus the latest quarterly cash flows. These funds are not eligible for redemption but rather distribute capital proceeds over the funds' lifespans in either cash or "in-kind" shares of the funds' portfolio companies. Distributions to the funds' investors occur over the span of approximately 8 to 15 years.*
- Absolute Return – The Absolute Return portfolio consists of 8 funds that include a variety of commingled, liquid and illiquid idiosyncratic strategies and one fund of hedge funds account. There are three illiquid limited partnerships. These vehicles are valued at net asset value on a quarterly basis. Due to contractual limitations, two of these vehicles are not eligible for redemption for up to 6 years, while the third vehicle can be terminated by majority limited partners vote or by the general partner. There are five hedge fund model limited partnerships and limited liability companies, including the fund of hedge funds account. Valuations occur monthly. Redemptions can occur between daily and quarterly with a range of one day to 90 days' notice.*
- Real Estate – The Real Estate portfolio consists of 14 funds and a separate building (1), which also serves as ACERA's headquarters. The Real Estate funds in the portfolio invest primarily in U.S. commercial real estate (office, industrial, retail, multi-family, and other). These funds are designed as commingled funds or as limited partnerships (private equity structure). The investments that are structured as private equity or limited partnerships are not eligible for redemption but rather distribute proceeds over the funds' lifespan as distributions or return of capital. The primary objectives of the real estate portfolio are income and appreciation; distribution income is typically made on a quarterly basis throughout the lives of the funds. The fair value of these funds is determined using third-party appraisals every three years or an internal appraisal. Net asset values are typically reported one quarter in arrears, plus/minus the latest quarter's cash flows (capital calls and distributions). The commingled accounts are eligible for redemption, typically, with up to 90 days' notice. These commingled funds are also subject to a withdrawal queue.*
- Private Credit – The Private Credit Portfolio is comprised of 3 Funds. The funds are illiquid limited partnerships and are valued at net asset value on a quarterly basis. Due to contractual limitations, the funds are not eligible for redemption but rather distribute capital proceeds over the funds' lifespans, which are up to nine years. Private Credit investments are typically performing senior secured, first or second lien loans secured against the assets of a company. Two funds were committed in 2020 but had yet to call capital by 12/31/2020 which are included in total funds.*

Foreign Currency Risk

Foreign currency risk is the risk that changes in exchange rates will adversely affect the fair value of an investment or deposit. ACERA has no general investment policy with respect to foreign currency risk. The Foreign Currency Risk Analysis table below shows the fair value of investments by currency denomination and investment type, as of December 31, 2020. This provides an indication of the magnitude of ACERA's foreign currency risk for each foreign currency.

Foreign Currency Risk Analysis												
Currency	Common Stock	Corporate Bonds	Foreign Currency	Government Issues	Collateralized Mortgage Obligations	Depository Receipts	Currency Swap	Limited Partnership	Preferred Stock	Real Estate Investment Trust	Warrants /Rights	Net Exposure
Argentine Peso	\$ -	\$ -	\$ 12	\$ 315	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 327
Australian Dollar	7,842	-	120	24,105	-	-	(656)	-	-	-	-	31,411
Brazilian Real	8,132	-	-	-	-	-	302	-	3,985	-	-	12,419
Canadian Dollar	14,087	-	453	-	-	-	51	-	-	5,650	-	20,241
Chilean Peso	-	-	-	-	-	-	1,514	-	-	-	-	1,514
Czech Koruna	-	-	-	-	-	-	482	-	-	-	-	482
Danish Krone	36,814	-	26	-	-	-	-	-	-	-	-	36,840
Euro Currency	344,502	-	366	-	571	290	(14)	33,725	691	376	-	380,507
Hong Kong Dollar	121,780	-	14	-	-	-	-	-	-	801	-	122,595
Hungarian Forint	-	-	-	-	-	-	258	-	-	-	-	258
Iceland Krona	3,377	-	-	-	-	-	-	-	-	-	-	3,377
Indian Rupee	-	-	-	-	-	-	199	-	-	-	-	199
Indonesian Rupiah	7,446	-	-	-	-	-	-	-	-	-	-	7,446
Japanese Yen	240,200	-	1,641	-	-	-	185	-	-	129	-	242,155
Malaysian Ringgit	-	-	-	6,479	-	-	-	-	-	-	-	6,479
Mexican Peso	820	371	-	19,559	-	-	880	-	-	-	-	21,630
New Israeli Shekel	472	-	7	-	-	-	-	-	-	-	-	479
New Taiwan Dollar	14,546	-	-	-	-	-	-	-	-	-	-	14,546
New Zealand Dollar	2,306	-	3	-	-	-	-	-	-	-	-	2,309
Norwegian Krone	8,068	-	4	-	-	-	340	-	-	-	-	8,412
Philippine Peso	171	-	-	-	-	-	-	-	-	-	-	171
Polish Zloty	2,315	-	-	902	-	-	(30)	-	-	-	-	3,187
Pound Sterling	184,923	-	398	-	-	-	1,479	-	-	66	-	186,866
Russian Ruble	-	-	-	-	-	-	235	-	-	-	-	235
Singapore Dollar	21,956	-	58	-	-	-	-	-	-	-	-	22,014
South African Rand	6,310	-	-	368	-	-	57	-	-	-	-	6,735
South Korean Won	7,465	-	-	-	-	-	571	-	-	-	-	8,036
Swedish Krona	29,012	-	22	-	-	-	-	-	-	-	-	29,034
Swiss Franc	56,381	-	100	-	-	-	-	-	-	-	4	56,485
Thailand Baht	2,408	-	-	-	-	-	-	-	-	-	-	2,408
UAE Dirham	141	-	-	-	-	-	-	-	-	-	-	141
Yuan Renminbi	8,945	-	-	-	-	-	-	-	-	-	-	8,945
TOTAL	\$1,130,419	\$ 371	\$ 3,224	\$ 51,728	\$ 571	\$ 290	\$ 5,853	\$ 33,725	\$ 4,676	\$ 7,022	\$ 4	\$1,237,883

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

Securities Lending Activity

The Board of Retirement policies authorize ACERA to participate in a securities lending program. Securities lending transactions are short-term collateralized loans of ACERA's securities for the purpose of generating additional investment income. ACERA has a securities lending agreement in place that authorizes the securities lending agent to lend ACERA's securities to broker-dealers and banks pursuant to a loan agreement. For securities on loan, ACERA receives either cash or non-cash collateral. ACERA invests the cash collateral in a pooled short-term investment fund maintained by the securities lending agent and receives earnings on it in exchange for paying a loan rebate fee to the borrower. In the case of non-cash collateral, the borrower pays ACERA a loan premium.

For the year ended December 31, 2020, on behalf of ACERA, the securities lending agent lent ACERA's securities (government bonds, corporate stocks, corporate bonds, international equities, and international fixed income) to borrowers under the securities lending agreement and ACERA received cash (U.S. and foreign currency), securities issued or guaranteed by the United States government, and sovereign debt or irrevocable bank letters-of-credit as collateral.

ACERA did not have the ability to pledge or sell collateral securities delivered absent a borrower default (therefore, such non-cash collateral is not reported on the Statement of Fiduciary Net Position). Borrowers were required to deliver collateral for each loan equal to:

- Loaned securities denominated in U.S. dollars or sovereign debt issued by foreign governments, with a margin of at least 102% of the fair value of the loaned securities; or
- Loaned securities not denominated in U.S. dollars, or whose primary trading market was not located in the United States, with a margin of at least 105% of the fair value of the loaned securities.

Moreover, borrowers were required to maintain the designated margin percentage of collateral on a daily basis.

ACERA did not impose any restrictions for the year ended December 31, 2020, on the amount of the loans that the securities lending agent made on its behalf. In the event the borrower failed to return the loaned securities, the securities lending agent indemnified ACERA by agreeing to purchase replacement securities. If the collateral was inadequate to replace the securities lent, the securities lending agent supplemented the amount of cash collateral.

If the borrower failed to pay ACERA for any income distributions on loaned securities, the securities lending agent will also supplement the income amount due to ACERA. There were no losses during the year ended December 31, 2020, resulting from a default of the borrowers or the securities lending agent.

For the year ended December 31, 2020, ACERA and the borrowers maintained the right to terminate securities lending transactions upon notice. The cash collateral received on each loan was invested, together with the cash collateral of other qualified tax-exempt plan lenders in a short-term investment pool managed by the securities lending agent. For the year ended December 31, 2020, the short-term investment fund is separated into two investment pools: (a) a liquidity pool and (b) a duration pool. As of December 31, 2020, the Quality D Short-Term investment fund liquidity pool had an average duration of 16 days and an average weighted final maturity of 76 days for U.S. dollars collateral. The Quality D Short-Term investment fund duration pool had an average duration of 17 days and an average weighted final maturity of 1,539 days for U.S. dollars collateral. For the year ended December 31, 2020, ACERA had no credit risk exposure to borrowers because, for each borrower, the value of borrower collateral held exceeded the value of the securities on loan to the borrower.

As of December 31, 2020, ACERA had securities on loan with a total fair value of \$173.53 million; however, the cash collateral held against the loaned securities was \$178.29 million which is less than the total fair value of loaned securities by \$4.76 million.

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

Summary of County Deposits and Investments

The following table is a summary of the deposits and investments as of June 30, 2021:

Cash	
Cash on Hand and Deposits in Transit	\$ 587
Cash in Bank - with County Treasurer	458,218
Cash with fiscal agents	258,288
Restricted Cash - With Component Unit (AHS)	13,971
Retiree Trust Cash Balance	17
ACERA cash balance at 12/31/20	3,236
Total Cash	<u>734,317</u>
Investments	
In Treasurer's Pool	6,361,804
with ACERA	9,601,845
with fiscal agents	333,865
Securities Lending - ACERA	117,171
Total Investments	<u>16,414,685</u>
Total Cash and Investments	<u>\$17,149,002</u>
Primary Government	
Component Unit (AHS)	13,971
Total Cash and Investments	<u>\$17,149,002</u>

¹ Cash held with AHS is not included in cash and investments with the County Treasurer.

Total County deposits and investments at fair value are as follows:

	Primary Government			
	<u>Governmental</u>	<u>Fiduciary</u>	<u>Total</u>	<u>Component</u>
	<u>Activities</u>	<u>Funds</u>		<u>Unit</u>
Cash and investments with County Treasurer	\$ 2,877,703 ¹	\$ 3,942,923 ²	\$ 6,820,626	\$ -
Cash and investments with fiscal agents	451,917	9,607,268	10,059,185	13,669
Restricted Assets:				
Cash with fiscal agents	138,049	-	138,049	-
Cash with Component Unit (AHS)	-	-	-	302
Invested securities lending collateral	-	117,171	117,171	-
Total cash and investment	<u>\$ 3,467,669</u>	<u>\$ 13,667,362</u>	<u>\$ 17,135,031</u>	<u>\$ 13,971</u>
Deposits and cash on hand			\$ 720,346	\$ 13,971
Investments			16,414,685	-
Total deposits and investments			<u>\$ 17,135,031</u>	<u>\$ 13,971</u>

¹ Includes cash and investments with the County Treasurer of total governmental funds (\$2,635,782) and internal service funds (\$241,921).

² Includes deposits and investments with the County Treasurer of pension and other employee benefits trust funds (\$17), private-purpose trust fund (\$21,704), custodial external investment pool fund (\$3,567,867) and other custodial funds (\$353,335).

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

3. Receivables

Receivables as of June 30, 2021, for the County's individual major funds, non-major funds in the aggregate, and the internal service funds, including the applicable allowances for uncollectible accounts, are as follows:

	Governmental Funds							Internal	Governmental
	General	Property Development	Disaster Response	Flood Control	Capital Projects	Debt Service	Nonmajor Governmental Funds	Service Funds	Activities Total
Interest	\$ 5,631	\$ 81	\$ 272	\$ 552	\$ 185	\$ 84	\$ 653	\$ 478	\$ 7,936
Taxes	49,422	-	-	2,415	-	-	8,773	-	60,610
Departmental accounts	188,761	-	-	-	-	-	-	-	188,761
Federal and state grants and subventions	218,214	-	-	3,308	64	-	2,420	-	224,006
Charges for services	75,885	-	-	274	-	-	9,752	5,658	91,569
Other	5,924	65,000	-	-	-	-	8,460	-	79,384
Gross receivables	543,837	65,081	272	6,549	249	84	30,058	6,136	652,266
Less: allowance for uncollectibles	(163,834)	-	-	-	-	-	-	-	(163,834)
Net total receivable - governmental activities	<u>\$ 380,003</u>	<u>\$ 65,081</u>	<u>\$ 272</u>	<u>\$ 6,549</u>	<u>\$ 249</u>	<u>\$ 84</u>	<u>\$ 30,058</u>	<u>\$ 6,136</u>	<u>\$ 488,432</u>

The departmental accounts receivable, net of allowance for uncollectibles, in the amount of \$24.8 million is reported as unavailable revenue and classified as deferred inflows of resources. It is not practical to determine the amount that will be collected in the subsequent year.

Other receivables for pension and other employee benefits trust funds at December 31, 2020 are as follows:

Contributions	\$ 21,756
Investments sold	96,400
Investment receivables	8,673
Other	6,050
Total other receivables at December 31, 2019	<u>\$ 132,879</u>

4. Loans Receivable

Loans receivable consist of operating loan to a public entity and loans to individuals and multi-family affordable housing projects. Loans to individuals include loans for acquisition and rehabilitation of owner-occupied housing, and silent deeds for financing to first time homebuyers, and bear interest at annual rates ranging from zero to seven percent. Loans to multi-family affordable housing projects, including shelters, shared housing, and apartment complexes, may be deferred or amortized and bear interest at annual rates from zero to seven percent. Deferred and amortized housing loans receivable are secured by recorded liens on properties for which the loans are made. Loans receivable as of June 30, 2021, for the County's individual major funds and non-major funds in the aggregate are as follows:

	General	Property Development	Non-major Governmental Funds	Total
Affordable housing	<u>\$ 89,540</u>	<u>\$ 160,823</u>	<u>\$ 34,276</u>	<u>\$ 284,639</u>

In fiscal year 2021, there was an increase of \$81.9 million in Property Development loans receivable due to the increased activity of the Measure A1 affordable housing bond programs.

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

5. Capital Assets

Capital asset activities of the primary government for the year ended June 30, 2021, are as follows:

GOVERNMENTAL ACTIVITIES					
	Balance July 1, 2020	Increases	Decreases	Transfers	Balance June 30, 2021
Capital assets, not being depreciated:					
Land and easements	\$ 80,417	\$ 6,889	\$ -	\$ -	\$ 87,306
Construction in progress	166,290	68,986	-	(24,178)	211,098
Collections	50	-	-	-	50
Total capital assets, not being depreciated	<u>246,757</u>	<u>75,875</u>	<u>-</u>	<u>(24,178)</u>	<u>298,454</u>
Capital assets, being depreciated:					
Structures and improvements	1,804,656	27,637	-	418	1,832,711
Machinery and equipment	232,479	15,624	13,385	-	234,718
Software	33,815	299	-	-	34,114
Infrastructure	1,061,502	231	-	23,760	1,085,493
Total capital assets, being depreciated	<u>3,132,452</u>	<u>43,791</u>	<u>13,385</u>	<u>24,178</u>	<u>3,187,036</u>
Less accumulated depreciation for:					
Structures and improvements	753,998	44,930	-	-	798,928
Machinery and equipment	171,963	14,364	13,165	-	173,162
Software	32,847	264	-	-	33,111
Infrastructure	577,656	25,148	-	-	602,804
Total accumulated depreciation	<u>1,536,464</u>	<u>84,706</u>	<u>13,165</u>	<u>-</u>	<u>1,608,005</u>
Total capital assets, being depreciated, net	<u>1,595,988</u>	<u>(40,915)</u>	<u>220</u>	<u>24,178</u>	<u>1,579,031</u>
Governmental activities capital assets, net	<u>\$ 1,842,745</u>	<u>\$ 34,960</u>	<u>\$ 220</u>	<u>\$ -</u>	<u>\$ 1,877,485</u>

Depreciation expense was charged to functions of the primary government as follows:

Governmental Activities	
General government	\$ 5,828
Public protection	24,608
Public assistance	2,322
Health and sanitation	22,789
Public ways and facilities	20,765
Recreation and cultural services	420
Education	1,285
Capital assets held by the County's internal service funds	6,689
Total depreciation expense – governmental activities	<u>\$ 84,706</u>

In fiscal year 2021, the County completed eleven road projects with a total cost of \$14.8 million and a crossing improvement for \$8.9 million.

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

The County has active construction projects as of June 30, 2021. The projects include construction of new facilities such as community centers, tiny homes, and improvements to roadways and flood control channels. The County's outstanding commitments with contractors as of June 30, 2021 are as follows:

Project	Spent-to-Date	Remaining Commitment
Road improvements	\$ 36,818	\$ 28,454
Flood control channel improvements	21,290	6,613
Other projects	52,049	16,393
Total governmental funds	<u>\$ 110,157</u>	<u>\$ 51,460</u>

Debt proceeds finance the commitment for construction of health care facilities. The youth offender facility is funded by state funding, fines and penalties imposed on criminal offenses, and reserve. Gas tax and state and federal aid provide funding for the commitment for road improvements. The commitment for flood control channel improvements is being funded from general flood zone benefit assessments and property taxes.

Capital Leases

The County has entered into leases for a building and water efficiency improvements. The lease for the building qualifies as capital lease for accounting purposes because the present value of the minimum lease payments at the inception of the lease equals at least 90% of the fair value of the leased property. The leased building was recorded at fair value at the date of the lease agreement. The lease agreement for the water efficiency improvements contains a bargain purchase option; hence, the water efficiency improvements were capitalized as structures and improvements at an amount equal to the present value of the minimum lease payments as of the beginning of the lease term.

The assets acquired through capital leases for governmental activities are as follows:

Structures and Improvements	\$ 4,896
Less accumulated amortization	<u>(2,924)</u>
Net book value	<u>\$ 1,972</u>

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
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JUNE 30, 2021

FIDUCIARY FUNDS – Pension, OPEB, and Other Employee Benefits Trust Funds

Capital asset activities of the pension, OPEB, and other employee benefits trust funds for the year ended December 31, 2020, are as follows:

	Balance January 1, 2020	Increases	Decreases	Balance December 31, 2020
Capital assets, being depreciated:				
Equipment and furniture	\$ 3,084	\$ 10	\$ -	\$ 3,094
Right-to-Use Leased Office Equipment*	205	8	-	213
Electronic document management system	4,163	9	-	4,172
Information systems	10,457	-	-	10,457
Leasehold improvements	2,585	-	-	2,585
Total capital assets, being depreciated	<u>20,494</u>	<u>27</u>	<u>-</u>	<u>20,521</u>
Capital assets, not being depreciated:				
Construction-in-progress	1,113	1,779	19	2,873
Less accumulated depreciation and amortization for:				
Equipment and furniture	3,020	23	-	3,043
Right-to-Use Leased Office Equipment*	44	42	-	86
Electronic document management system	4,163	1	-	4,164
Information systems	10,457	-	-	10,457
Leasehold improvements	1,230	95	-	1,325
Total accumulated depreciation	<u>18,914</u>	<u>161</u>	<u>-</u>	<u>19,075</u>
Total capital assets, being depreciated, net	<u>1,580</u>	<u>1,645</u>	<u>-</u>	<u>1,446</u>
Fiduciary fund capital assets, net	<u>\$ 2,693</u>	<u>\$ 1,645</u>	<u>\$ 19</u>	<u>\$ 4,319</u>

* Restatement to correct beginning balances

COMPONENT UNIT – Alameda Health System

Capital asset activities of the Alameda Health System for the year ended June 30, 2021, are as follows:

	Balance July 1, 2020	Increases	Transfers	Balance June 30, 2021
Capital assets, not being depreciated:				
Construction in progress	\$ 21,584	\$ 15,785	\$ (5,998)	\$ 31,371
Land	9,021	-	-	9,021
Total capital assets, not being depreciated	<u>30,605</u>	<u>15,785</u>	<u>(5,998)</u>	<u>40,392</u>
Capital assets, being depreciated:				
Structures and improvements	68,472	180	70	68,722
Machinery and equipment	251,452	3,128	(27,476)	227,104
Total capital assets, being depreciated	<u>319,924</u>	<u>3,308</u>	<u>(27,406)</u>	<u>295,826</u>
Less accumulated depreciation for:				
Structures and improvements	25,320	3,038	652	27,706
Machinery and equipment	128,267	29,217	32,752	124,732
Total accumulated depreciation	<u>153,587</u>	<u>32,255</u>	<u>33,404</u>	<u>152,438</u>
Total capital assets, being depreciated, net	<u>166,337</u>	<u>(28,947)</u>	<u>5,998</u>	<u>143,388</u>
Component unit capital assets, net	<u>\$ 196,942</u>	<u>\$ (13,162)</u>	<u>\$ -</u>	<u>\$ 183,780</u>

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO BASIC FINANCIAL STATEMENTS
(amounts in tables expressed in thousands)
JUNE 30, 2021

6. Accounts Payable and Accrued Expenditures/Expenses

Accounts payable and accrued expenditures/expenses as of June 30, 2021, for the County's individual major funds, non-major funds in the aggregate, and internal service funds are as follows:

	Governmental Funds						Nonmajor Governmental Funds	Subtotal	Internal Service Funds	Governmental Activities Total
	General	Property Development	Disaster Response	Flood Control	Capital Projects	Debt Service				
Accounts payable	\$ 200,315	\$ 12,527	\$ 22,171	\$ 6,943	\$ 2,507	\$ 557	\$ 13,335	\$ 258,355	\$ 12,905	\$ 271,260
Outstanding warrants	36,740	-	-	-	-	-	-	36,740	-	36,740
Accrued payroll	63,555	14	-	1,606	-	-	6,277	71,452	3,642	75,094
Total accounts payable and accrued expenditures	<u>\$ 300,610</u>	<u>\$ 12,541</u>	<u>\$ 22,171</u>	<u>\$ 8,549</u>	<u>\$ 2,507</u>	<u>\$ 557</u>	<u>\$ 19,612</u>	<u>\$ 366,547</u>	<u>\$ 16,547</u>	<u>\$ 383,094</u>

Payables for pension, OPEB, and other employee benefits trust funds at December 31, 2020 are as follows:

Purchase of securities	\$ 100,393
Investment-related payables	12,191
Member benefits	6,155
Accrued administrative expenses	2,858
Lease liability	145
Other	276
Total accounts payable and accrued expenses	<u>\$ 122,018</u>

Payables for the custodial funds consist of outstanding warrants and estate funds held by the Public Administrator.

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7. Long-Term Obligations

The following is a summary of long-term obligations of the County as of June 30, 2021:

GOVERNMENTAL ACTIVITIES

Type of Obligation and Purpose	Maturity	Interest Rates	Original Issue	Outstanding
Certificates of participation:				
Public Facilities Corporation:				
2007A Refunding (a)	12/1/2021	4 - 5.625	\$ 37,010	\$ 3,055
Certificates of participation-principal				3,055
Tobacco settlement asset-backed bonds				
Tobacco Securitization bonds 2002 (e)	6/1/2042	2.25 - 6.00	220,525	110,620
Tobacco Securitization capital appreciation bonds 2006 - A & B (e)	6/1/2050	6.2 - 6.7	51,475	51,475
Tobacco Securitization capital appreciation bonds 2006 - C (e)	6/1/2055	7.55	16,384	16,384
Tobacco Securitization bonds-principal				178,479
Tobacco Securitization capital appreciation bonds 2006 - accretion (e)				117,755
Lease revenue bonds				
Alameda County Joint Powers Authority:				
Juvenile Justice Refunding Bonds 2016 (a)	6/1/2035	2.0 - 5.0	98,470	83,145
Multiple Capital Projects Bonds 2010A (a)	12/1/2044	7.046	320,000	320,000
North County Center Bonds 2004 (a)	12/1/2035	3.07 - 4.38	45,675	34,075
Lease Revenue Refunding Bonds 2012 (a)	12/1/2021	1.5 - 5	75,915	4,580
Multiple Capital Projects Bonds 2013A (a)	12/1/2035	3 - 5.25	287,380	252,760
Taxable Lease Revenue Bonds 2018 (f)	6/1/2028	2.27 - 3.60	73,495	49,235
Lease revenue bonds				743,795
General obligation bonds				
Measure A1 bonds 2018 - A (g)	8/1/2038	2.56 - 4.00	240,000	191,300
Capital leases				
Water efficiency measures (a)	10/30/2023	4.08	3,000	595
Other long-term obligations				
Loans payable (d)	6/22/2026	1.0 - 4.1	59,613	3,306
Compensated employee absences payable (c)				105,925
Estimated liability for claims and contingencies (d)				177,399
Obligation to fund Authority deficit (see Note 17) (a)				22,705
Other long-term obligations				309,349
Governmental activities total long-term obligations				\$ 1,544,328

Debt service payments are generally made from the following sources:

- (a) Discretionary revenues of the general fund.
- (b) Discretionary revenues of the fund that received the benefit of the asset, purchased or constructed.
- (c) Discretionary revenues of the fund in which the employee's salary is charged; approximately eighty percent of the employees' salaries are charged to the general fund.
- (d) User-charge reimbursements from the general fund and the non-major governmental funds.
- (e) Revenues from tobacco master settlement agreement.
- (f) 1998 Escrow Securities from the issuance of the 2002 Tobacco Securitization bonds
- (g) Ad valorem taxes levied on taxable property located within the County

The Alameda County Tobacco Asset Securitization Authority has pledged all revenues received from the tobacco master settlement agreement with four U.S. tobacco manufacturers to repay the outstanding amount as of June 30, 2021 of \$110.62 million in tobacco securitization bonds issued in October 2002 and \$67.86 million of tobacco securitization capital appreciation bonds issued in February 2006. The bonds were issued to finance the acquisition of the County Tobacco Assets from the County of Alameda. Total principal, interest, and interest accretion remaining on the bonds is \$1.68 billion, payable through June 2055. The tobacco revenue is determined by applying a rate to the number of cigarettes sold; hence, the amount to be received over the term of the bonds is not estimable. During the year, principal and interest payments were \$17.1 million while tobacco settlement revenue was \$16.7 million. The shortfall of \$0.4 million in revenue was offset by the interest earned in the escrow fund to pay for the debt.

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COMPONENT UNIT

<u>Type of Obligation</u>	<u>Outstanding</u>
Alameda Health System	
Compensated employee absences payable	\$ 39,024
Estimated liability for claims and contingencies	33,770
Component unit total long-term obligations	<u>\$ 72,794</u>

Debt Compliance

The County is in compliance with all significant limitations and restrictions contained in the various bond indentures.

Legal Debt Limit and Legal Debt Margin

As of June 30, 2021, the County's debt limit (1.25% of total assessed value) was \$4.18 billion. The County's outstanding general obligation debt is \$191.3 million and therefore \$3.9 billion is still available of the debt limit.

Arbitrage

Under U.S. Treasury Department regulations, all governmental tax-exempt debts issued after August 31, 1986, are subject to arbitrage rebate requirements. The requirements stipulate, in general, that the excess of earnings from the investment of tax-exempt bond proceeds over related interest expenditures on the bonds must be remitted to the Federal government on every fifth anniversary of each bond issue. The County has evaluated each outstanding debt obligation that is subject to the arbitrage rebate requirements and there is no arbitrage rebate liability as of June 30, 2021.

Conduit Debt

In addition to the long-term obligations discussed above, the following types of long-term obligations have been issued in the name of the County or agencies of the County. Neither the County, nor its agencies, is obligated in any manner for the repayment of these obligations. Accordingly, they are not included in the accompanying financial statements, as noted below.

Mortgage revenue bonds – In order to facilitate affordable housing to first time home buyers, the County issued mortgage revenue bonds with an outstanding aggregate balance of \$31.3 million as of June 30, 2021. These obligations are secured by the related mortgage indebtedness.

Industrial development bonds – In order to encourage industrial development within the County, the County has issued industrial development bonds with an outstanding aggregate balance of \$26.2 million as of June 30, 2021. These obligations are the liability of the businesses that receive the proceeds of the bonds.

The County administers the general obligation debt of school districts and special districts under local boards that are located within the County. The County has no direct or contingent liability for their debts and, accordingly, such amounts are not included in the accompanying basic financial statements.

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Changes in Long-Term Obligations

The changes in long-term obligations for governmental activities for the year ended June 30, 2021, are as follows:

	Balance July 1, 2020	Additional Obligations, Interest Accretion, and Net Increases	Current Maturities, Retirements, and Net Decreases	Balance June 30, 2021	Amounts Due Within One Year
Governmental activities:					
Certificates of participation and bonds payable					
Certificates of participation	\$ 5,985	\$ -	\$ (2,930)	\$ 3,055	\$ 3,055
Tobacco securitization bonds	188,384	-	(9,905)	178,479	-
Lease revenue bonds	772,055	-	(28,260)	743,795	29,525
General obligation bonds	218,000	-	(26,700)	191,300	7,555
Total certificates of participation and bonds payable before accretion	1,184,424	-	(67,795)	1,116,629	40,135
Accretion on capital appreciation certificates and bonds					
Tobacco Securitization bonds	105,975	11,780	-	117,755	-
Total certificates of participation and bonds payable at accreted value	1,290,399	11,780	(67,795)	1,234,384	40,135
Other debt-related items					
Issuance premiums	29,423	-	(2,701)	26,722	2,702
Issuance discount	(3,030)	-	136	(2,894)	(136)
Total bonds and certificates payable	1,316,792	11,780	(70,360)	1,258,212	42,701
Loans	24,201	-	(20,895)	3,306	915
Compensated employee absences payable	84,391	45,913	(24,379)	105,925	35,748
Estimated liability for claims and contingencies	165,687	45,972	(34,260)	177,399	38,336
Capital leases	1,466	-	(871)	595	248
Obligation to fund Coliseum Authority deficit	27,722	-	(5,017)	22,705	5,268
Governmental activity long-term obligations	<u>\$ 1,620,259</u>	<u>\$ 103,665</u>	<u>\$ (155,782)</u>	<u>\$ 1,568,142</u>	<u>\$ 123,216</u>

Internal service funds predominantly serve the governmental funds, the long-term liabilities of which are included as part of the above totals for governmental activities. At the year ended June 30, 2021, \$5.02 million of accrued compensated employee absences are included in the above amounts.

The changes in long-term obligations for the component unit for the year ended June 30, 2021, are as follows:

Component Unit:	Balance July 1, 2020	Increases	Decreases	Balance June 30, 2021	Amounts Due Within One Year
Compensated employee absences payable	\$ 35,818	\$ 3,206	\$ -	\$ 39,024	\$ 20,508
Estimated liability for claims and contingencies	31,346	2,424	-	33,770	7,896
Total component unit long-term obligations	<u>\$ 67,164</u>	<u>\$ 5,630</u>	<u>\$ -</u>	<u>\$ 72,794</u>	<u>\$ 28,404</u>

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Annual debt service requirements for long-term obligations outstanding as of June 30, 2021, are as follows:

GOVERNMENTAL ACTIVITIES

For the Year Ending June 30	Lease Revenue Bonds		General Obligation Bonds		Tobacco Securitization Bonds			Total Bonds		
					Accreted			Accreted		
	Principal	Interest	Principal	Interest	Principal	Interest	Interest	Principal	Interest	Interest
2022	\$ 29,525	\$ 42,232	\$ 7,555	\$ 7,149	\$ -	\$ -	\$ 6,594	\$ 37,080	\$ -	\$ 55,975
2023	26,045	41,009	7,855	6,840	-	-	6,594	33,900	-	54,443
2024	27,230	39,824	8,170	6,520	-	-	6,594	35,400	-	52,938
2025	28,465	38,584	8,495	6,187	-	-	6,594	36,960	-	51,365
2026	29,805	37,253	8,835	5,840	-	-	6,594	38,640	-	49,687
2027-2031	146,910	163,938	49,605	23,745	-	-	32,971	196,515	-	220,654
2032-2036	158,390	126,029	59,425	13,720	34,370	-	30,952	252,185	-	170,701
2037-2041	150,655	79,217	41,360	2,409	-	-	22,875	192,015	-	104,501
2042-2046	146,770	21,197	-	-	76,250	-	4,575	223,020	-	25,772
2047-2051	-	-	-	-	51,475	764,585	-	51,475	764,585	-
2052-2056	-	-	-	-	16,384	616,926	-	16,384	616,926	-
Total	\$ 743,795	\$ 589,283	\$ 191,300	\$ 72,410	\$ 178,479	\$ 1,381,511	\$ 124,343	\$ 1,113,574	\$ 1,381,511	\$ 786,036

For the Year Ending June 30	Total Bonds			Certificates of Participation		Other Long-Term Obligations		Total Debt		
	Accreted							Accreted		
	Principal	Interest	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Interest
2022	\$ 37,080	\$ -	\$ 55,975	\$ 3,055	\$ 63	\$ 1,163	\$ 85	\$ 41,298	\$ -	\$ 56,123
2023	33,900	-	54,443	-	-	1,193	54	35,093	-	54,497
2024	35,400	-	52,938	-	-	899	25	36,299	-	52,963
2025	36,960	-	51,365	-	-	469	10	37,429	-	51,375
2026	38,640	-	49,687	-	-	177	3	38,817	-	49,690
2027-2031	196,515	-	220,654	-	-	-	-	196,515	-	220,654
2032-2036	252,185	-	170,701	-	-	-	-	252,185	-	170,701
2037-2041	192,015	-	104,501	-	-	-	-	192,015	-	104,501
2042-2046	223,020	-	25,772	-	-	-	-	223,020	-	25,772
2047-2051	51,475	764,585	-	-	-	-	-	51,475	764,585	-
2052-2056	16,384	616,926	-	-	-	-	-	16,384	616,926	-
Total	\$ 1,113,574	\$ 1,381,511	\$ 786,036	\$ 3,055	\$ 63	\$ 3,901	\$ 177	\$ 1,120,530	\$ 1,381,511	\$ 786,276

It is not practical to determine the specific year of payment for the accrued compensated employee absences payable, the estimated liability for claims and contingencies, and the obligation to fund Coliseum Authority deficit. Amounts due within one year for the accrued compensated employee absences and the estimated liability for claims and contingencies are estimates based on prior year experience.

Events of Default, Termination Events and Acceleration Clauses

Refunding Certificates of Participation, Series 2007A (Santa Rita Jail)

The County is required to pay the base and additional rental for the property which should be sufficient to pay the principal and interest and all administrative costs, including any taxes, assessments and governmental charges and trustee fees. The County would be considered to be in default if one or more of the following events occurs: (i) failure to pay the base and additional rent when due; (ii) failure to comply with the terms, covenants or conditions of the agreement and failed to remedy any breach within a period of 30 days after written notice or, if such breach cannot be

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remedied within such 30-day period, failure to institute corrective action within such 30-day period and diligently pursue the same to completion.

Following an event of default, the Corporation or its assignee shall have the right (i) to reenter the property and eject all parties in possession therefrom or (ii) to enforce all of its rights and remedies under the facility lease, including the right to recover base rental payments as they become due under the facility lease so long as the facility lease is not terminated or the County's possession of the property.

Notwithstanding any other provision of the facility lease or the agreement, there shall be no right under any circumstances to accelerate the payment of any base rental under the facility lease.

Tobacco Settlement Asset-Backed Bonds (Series 2002 and 2006)

The California Statewide Financing Authority issued the bonds to finance the acquisition of the County Tobacco Assets from the County of Alameda. The County uses revenues received from the tobacco master settlement agreement to repay the principal and interest. No payments will be made with respect to the Series 2006 bonds prior to the payment in full of all the indebtedness under the Series 2002 bonds. The Authority would be considered to be in default if one or more of the following events occurs: (i) failure to pay the debt service when due; (ii) failure to comply with covenants and conditions of the Indenture, if not remedied within 60 days after the written notice is given to the Authority by the trustee or the bondholders of at least 25% of the bond outstanding; (iii) bankruptcy, reorganization, arrangement or similar debtor relief proceedings.

Following an event of default, the trustee may pursue its rights and remedies at law or in equity. If an event of default occurs in Series 2002 bonds, it will be redeemed after payment of all current and past due principal and interest on the outstanding debt from all available funds in the reserve and prepayment account established under the Indenture. If the Series 2002 bonds are not paid in accordance with the terms, the bondholders may suffer a complete loss of their investment in Series 2006 bonds and would have no remedy for the loss. If the accreted value of Series 2006 bonds is not paid when due at maturity or upon prior redemption, it will be converted to a current interest bond with a principal amount equal to its accreted value and bear interest at the default rate.

All Outstanding Lease Revenue Bonds

The County has covenanted in the lease agreement to pay for the base rental payment for all the leased property plus additional payments of all costs and expenses incurred in connection with the leased property. Generally, the County would be considered to be in default if one or more of the following events occurs (i) the failure to pay any rental payable when due, (ii) the failure to keep, observe or perform any term, covenant or condition of the lease agreement or the indenture to be kept or performed by the County after notice and the elapse of a 30-day grace period and (iii) the filing of bankruptcy or insolvency.

Following an event of default under the lease agreement, the trustee may exercise any and all remedies available pursuant to law or under the agreement to enforce payment of base rental payments when due, or to exercise all remedies. The trustee, in addition to all other rights and remedies it may have at law, has the option to do any of the following: (i) terminate the lease agreement and retake possession of the leased property; (ii) without terminating the lease agreement, collect each installment of rent as it becomes due and enforce any other term or provision of the lease agreement to be kept or performed by the County, and/or exercise any and all rights to retake possession of the leased property.

Remedies, upon an event of default, do not include accelerating the obligations of the County to pay base rental payments under the lease agreement.

General Obligation Bonds (Measure A1) 2018 Series A

The County covenanted that the money for the payment of principal and interest on the Series 2018A bonds will be raised by ad valorem taxation without limitation as to rate or amount upon all property located within the County subject to taxation. The County would be considered to be in default if one or more of the following events occurs: (i)

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failure to pay any installment of interest on any bond when due; (ii) failure to pay the principal or redemption price of any bond when due.

Following an event of default under the lease agreement, the County shall immediately transfer to the trustee all tax revenues held by it, if any, and the trustee shall apply all the revenues and any other funds then held or thereafter received by the trustee under any of the provisions of the trust agreement to the payment of the whole amount of obligation then due on the bonds, with interest at the rate or rates of interest borne by the respective bonds, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or redemption price of any bonds which shall have become due, whether at maturity, by call for redemption or otherwise, in the order of their due dates, with interest on the overdue obligation at the rate borne by the respective bonds, and, if the amount available shall not be sufficient to pay in full all the bonds due on any date, together with such interest, then to the payment thereof on a proportionate basis, according to the amounts of principal plus accrued interest due on such date to the persons entitled thereto, without any discrimination or preference.

The trust agreement does not contain a provision allowing for the acceleration of the Series 2018A bonds if an event of default occurs and is continuing.

Lease Revenue Tax-Exempt Commercial Paper Notes

The County may issue up to \$100 million in aggregate principal amount of commercial paper notes to provide financing and refinancing the costs of various capital improvement projects. As of June 30, 2021, The County does not have any outstanding commercial paper notes. The occurrence of any of the following shall be an "event of termination" (i) failure to pay any liquidity advance including interest or term loan when due; (ii) failure to comply with the terms and covenants of the agreement or (iii) bankruptcy or similar debtor relief proceedings. During the period that an event of termination has occurred, the bank may pursue its rights and remedies at law or in equity. With respect to payment defaults, the bank may demand payment of amounts past due with interest, to the extent permitted by law.

8. Operating Lease Obligations

The County has numerous operating leases for office space. Rental expense for operating leases for fiscal year 2020-21 was \$34.4 million. Future minimum lease payments for operating leases at June 30, 2021, are as follows:

2022	2023	2024	2025	2026	2027-31	Total
\$ 22,694	\$ 19,586	\$ 17,195	\$ 14,473	\$ 12,612	\$ 42,645	\$ 129,205

9. Fund Deficits

Individual fund deficits at June 30, 2021 are as follows:

Alameda Health System	\$ 270,333
Disaster Response Fund	\$ 20,938
Internal Service Fund - Building Maintenance	\$ 27,722
Internal Service Fund - Information Technology	\$ 16,749

The fund deficit of the disaster response fund is expected to be funded by grants from the Federal Emergency Management Agency and the State. The fund deficits of the internal service funds are expected to be funded by increased user charges. The fund deficit of AHS is expected to remain in the succeeding years as the County is to provide ongoing liquidity support until 2034.

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10. Fund Balances

Details of the fund balance classifications of the major and non-major governmental funds as of June 30, 2021 are as follows:

	General	Property Development	Disaster Response	Flood Control	Capital Projects	Debt Service	Non-major	Total
Nonspendable:								
Inventory	\$ -	\$ -	\$ -	\$ 3	\$ -	\$ -	\$ 151	\$ 154
Long-term receivables	3,666	-	-	-	-	-	-	3,666
Properties held for resale	51,513	-	-	-	-	-	-	51,513
Prepaid items	-	-	-	-	-	-	42	42
Total Nonspendable	55,179	-	-	3	-	-	193	55,375
Restricted for:								
Public protection	279,461	-	-	269,304	-	-	108,052	656,817
Public assistance	4,653	59,389	7,427	-	-	-	423	71,892
Health and sanitation	165,201	-	-	-	-	-	16,120	181,321
Public ways and facilities	-	-	-	-	-	-	139,766	139,766
Education	-	-	-	-	-	-	22,752	22,752
Debt service	-	-	-	-	-	92,453	73,573	166,026
Other purposes	20,290	-	-	-	-	-	-	20,290
Total Restricted	469,605	59,389	7,427	269,304	-	92,453	360,686	1,258,864
Committed to:								
Fiscal management rewards	140,809	-	-	-	-	-	-	140,809
Settlement claims	79,559	-	-	-	-	-	-	79,559
General contingencies	75,268	-	-	-	-	-	-	75,268
Capital projects	88,694	-	-	-	73,339	-	-	162,033
Pension liability reduction	100,000	-	-	-	-	-	-	100,000
Capital projects and related debt	-	414,468	-	-	-	-	-	414,468
Public assistance	5,573	-	-	-	-	-	-	5,573
Public protection	2,194	-	-	-	-	-	-	2,194
Other commitments	97,298	-	-	-	-	-	-	97,298
Total Committed	589,395	414,468	-	-	73,339	-	-	1,077,202
Assigned to:								
Appropriations in subsequent year	20,217	-	-	-	-	-	-	20,217
General government	9,888	-	-	-	-	-	-	9,888
Public protection	53,848	-	-	-	-	-	15,794	69,642
Public assistance	98,239	-	-	-	-	-	-	98,239
Health and sanitation	154,698	-	-	-	-	-	-	154,698
Public ways and facilities	351	-	-	-	-	-	-	351
Recreation and cultural services	30	-	-	-	-	-	-	30
Other purposes	282	-	-	-	-	-	-	282
Total Assigned	337,553	-	-	-	-	-	15,794	353,347
Unassigned	154,255	-	(28,365)	-	-	-	-	125,890
Total fund balances	\$ 1,605,987	\$ 473,857	\$ (20,938)	\$ 269,307	\$ 73,339	\$ 92,453	\$ 376,673	\$ 2,870,678

Encumbrance balances by major funds and non-major funds as of June 30, 2021 are:

	Restricted	Committed	Assigned	Total
General Fund	\$ 15,097	\$ -	\$ 305,770	\$ 320,867
Property Development	53,919	180	-	54,099
Disaster Response	-	-	21,272	21,272
Flood Control	29,456	-	-	29,456
Capital Projects	-	28,684	-	28,684
Non-major Governmental Funds	50,347	-	362	50,709
Total encumbrances	\$ 148,819	\$ 28,864	\$ 327,404	\$ 505,087

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11. Restricted Net Position

Restricted net position is net position that is subject to constraints either externally imposed by creditors, grantors, contributors, or by enabling legislation. Restricted net position as of June 30, 2021 for governmental activities is as follows:

Restricted for Public Protection		
Flood	\$269,434	
Consumer Protection	63,004	
Sheriff	35,299	
Public Safety	36,425	
Criminal Justice and Courthouse Construction	234	
Vital Records	24,635	
Child Support Enforcement	6,033	
Community Development	7,690	
Criminal Justice Programs	22,109	
Vehicle Theft Prevention	4,973	
Survey Monument Preservation	762	
Domestic Violence	128	
Probation	311	
Other	1,222	\$472,259
Restricted for Public Assistance		
Housing and Commercial Development	91,607	
Emergency Rental Assistance Program	603	
Social Services Programs	485	
Child Protective Services	1,172	93,867
Restricted for Health and Sanitation		
Behavioral Health Services	70,059	
Public Health	38,871	
Emergency Medical Services	27,310	
Environmental Health	40,815	177,055
Restricted for Public Ways and Facilities		
Roads and Bridges Maintenance	130,018	
Streets and Highway Lighting	9,068	139,086
Restricted for Education		
Library Services		22,832
Restricted for Other Purposes		
Legal Settlements	2,043	
Property Taxes	6,424	
Assessor	4,587	
Sheriff	309	13,363
Total Restricted Net Position-Governmental Activities		<u>\$918,462</u>

Included in governmental activities restricted net position as of June 30, 2021 is net position restricted by enabling legislation of \$150.7 million.

12. Interfund Receivables, Payables, and Transfers

"Due to" and "due from" balances have been recorded for cash overdraft and inter-fund loans. The composition of inter-fund balances as of June 30, 2021, is as follows:

	Due to other funds		Total Due from
	Non-major Governmental Funds	Internal Service Funds	
Due from other funds			
General fund	<u>\$ 821</u>	<u>\$ 1,103</u>	<u>\$ 1,924</u>

As of June 30, 2021 advances to and from other funds between general and internal service funds is \$4.4 million.

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During the course of operations, transactions occur between the County and AHS for goods received or services rendered and for loans. These receivables and payables are classified as “due from component unit” and “due to component unit” on the basic financial statements.

Due to/from primary government and component unit:

<u>Receivable Entity</u>	<u>Payable Entity</u>	<u>Amount</u>
Primary government-governmental	Alameda Health System	<u>\$ 45,682</u>
Primary government-governmental		\$ 45,682
Less allowance for uncollectibles		<u>(31,000)</u>
Net		<u>\$ 14,682</u>
Alameda Health System	Primary government-governmental	<u>\$ 77,834</u>

Transfers between funds for the year ended June 30, 2021, are as follows:

	Transfers In:						Total Transfers Out
	General Fund	Flood Control Fund	Capital Projects Fund	Debt Service Fund	Non-major Governmental Funds	Internal Service Funds	
Transfers out:							
General fund	\$ -	\$ -	\$ 47,779	\$ 54,876	\$ -	\$ 3,005	105,660
Property development fund	6,615	-	-	8,157	-	-	14,772
Disaster response	21,994	-	4,624	-	-	-	26,618
Flood control fund	-	-	149	-	-	-	149
Capital projects fund	706	-	-	-	-	-	706
Debt service fund	-	-	40	-	-	-	40
Non-major governmental funds	250	1	4,000	8,025	2,000	-	14,276
Internal service funds	1,552	-	-	3,844	-	-	5,396
Total transfers in	<u>\$ 31,117</u>	<u>\$ 1</u>	<u>\$ 56,592</u>	<u>\$ 74,902</u>	<u>\$ 2,000</u>	<u>\$ 3,005</u>	<u>\$ 167,617</u>

The \$105.6 million General Fund transfer out includes \$54.9 million to provide for the payment of other debt service, \$47.8 million to provide funding for capital projects and \$3.0 million for vehicle purchase and maintenance projects.

The \$14.8 million Property Development Fund transfer out includes \$8.1 million for the payment of Juvenile Justice Refunding bond, \$6.3 million for the purchase of hotels related to the Homekey program and \$0.3 million to provide funding for Surplus Property administrative expenditures.

The \$26.6 million Disaster Respond Funds transfer out includes \$22.0 million for reimbursement of eligible expenditures from the general fund and \$4.6 million to provide funding for the construction of the new Tiny Homes.

The \$14.3 million Non-major Governmental Funds transfer out includes \$8.0 million for debt payments, \$4 million to provide funding for the construction of the Alameda County Fire Department Training Facility and \$2.0 million to cover operating costs of the bridges.

The \$5.3 million Internal Service Funds transfer out includes \$3.8 million for the payment of debt service and \$1.5 million for payment of energy loans and leases.

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13. Defined Benefit Pension Plan – ACERA

A. Plan Description

The County is the major participant in the Alameda County Employees' Retirement Association (ACERA). The total payroll covered by ACERA for all participants was \$1.16 billion as of December 31, 2020. ACERA began operations on January 1, 1948 and is governed by the California Constitution, the County Employees Retirement Law of 1937, the California Public Employees' Pension Reform Act (PEPRA) of 2012 and the bylaws, policies and procedures adopted by the Board of Retirement.

ACERA operates as a cost-sharing, multiple-employer, defined benefit plan for the County, the Alameda Health System, the Superior Court of California for the County of Alameda, and four participating special districts located in the County, but not under the control of the County Board of Supervisors. All full-time employees of participating entities, except for Alameda Health System, appointed to permanent positions are required by statute to become members of ACERA. Safety membership includes employees who are in active law enforcement, deferred firefighters, probation officers, and juvenile hall group counselors. General membership includes all other eligible classifications.

ACERA provides service and disability retirement benefits, annual cost-of-living adjustments and death benefits to plan members and beneficiaries. Benefit and contribution provisions are established by State Law and are subject to amendment only by an act of the State of California legislature. Alternative benefit and contribution schedules are permissible with the Board of Supervisors' approval. All risks and costs, including benefit costs, are shared by the participating entities.

There are separate retirement benefits for General and Safety members. Any new member who becomes a member on or after January 1, 2013 is placed into Tier 4 and is subject to the provisions of California Public Employees' Pension Reform Act of 2013 (PEPRA), California Government Code 7522 et seq. and Assembly Bill (AB) 197. General members enrolled in Tiers 1, 2, or 3 are eligible to retire once they attain the age of 70 regardless of service or at age 50 with five or more years of retirement service credit and a total of 10 years of qualifying membership. A non-Tier 4 General member with 30 years of service is eligible to retire regardless of age. General members enrolled in Tier 4 are eligible to retire once they have attained the age of 52 and have acquired five years of retirement service credit, or at age 70 regardless of service. Safety members enrolled in Tiers 1, 2, 2C, or 2D are eligible to retire once they attain the age of 70 regardless of service or at age 50 with five or more years of retirement service credit and a total of 10 years of qualifying membership. A non-Tier 4 Safety member with 20 years of service is eligible to retire regardless of age. Safety members enrolled in Tier 4 are eligible to retire once they have attained the age of 50 and have acquired five years of retirement service credit, or at age 70 regardless of service. The retirement benefit the member will receive is based upon age at retirement, final average compensation, years of retirement service credit and retirement plan and tier. For members enrolled in Tiers 1, 2, 2C, 2D, or 3, the maximum monthly retirement allowance is 100% of final compensation. There is no maximum for members enrolled in Tier 4.

ACERA provides an annual cost-of-living benefit to all retirees. The cost-of-living adjustment, based upon the Consumer Price Index for the San Francisco-Oakland-San Jose Area (with 1982-84 as the base period), is capped at 3.0% for General Tiers 1 and 3 and Safety Tier 1, and at 2.0% for General Tiers 2 and 4 and Safety Tiers 2, 2C, 2D, and 4.

ACERA also provides other postemployment benefits for retired members and their beneficiaries. The payment of those benefits is subject to available funding and must be annually reauthorized by the Board of Retirement. These benefits include supplemental cost of living adjustment (COLA) and retired member death benefit. The supplemental COLA is to maintain each retiree's purchasing power at no less than 85% of the purchasing power of the original benefit. The retired member death benefit is a one-time \$1,000 lump sum payment to the beneficiary of a retiree.

An actuarial valuation is performed annually for the pension plan as a whole. ACERA's financial statements and required supplementary information are audited annually by independent auditors. The audit report and

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December 31, 2020 financial statements may be obtained by writing to Alameda County Employees' Retirement Association, 475 14th Street, Suite 1000, Oakland, CA 94612.

B. Funding Policy

The pension plan under the 1937 Act has no legal or contractual maximum contribution rates. The employers and members contribute to ACERA based on rates recommended by an independent actuary and adopted by the Board of Retirement. Covered employees are required by statute to contribute toward their pensions. Member contribution rates are formulated on the basis of their age at the date of entry and the actuarially calculated benefits, and are between 5.41 and 23.73 percent of their annual covered salary effective September 2020. Member contributions are refundable upon termination from the retirement system.

State and Federal laws as well as the California Constitution provide the authority for the establishment of ACERA benefit provisions. In most cases where the 1937 Act provides options concerning the allowance of credit for service, the offering of benefits, or the modification of benefit levels, the law generally requires approval of the employers' governing board for the option to take effect. Separately, in 1984 the Alameda Board of Supervisors and the Board of Retirement approved the adoption of Article 5.5 of the 1937 Act. This adoption permitted the establishment of a Supplemental Retirees Benefit Reserve (SRBR) for ACERA.

Article 5.5 provides for the systematic funding of the SRBR and stipulates that its assets be used only for the benefit of retired members and their beneficiaries. The 1937 Act grants exclusive authority over the use of the SRBR funds to the Board of Retirement. Supplemental benefits currently provided through the SRBR include supplemental COLA, retiree death benefit, and retiree health benefits including the Monthly Medical Allowance (MMA), dental and vision care, and Medicare Part B reimbursement. The provision of all supplemental benefits from the SRBR is subject to available funding and annual review and authorization by the Board of Retirement. SRBR benefits are not vested.

In 2006 the Board of Retirement approved the allocation of SRBR funds to Postemployment Medical Benefits and Other Pension Benefits. These two plans provide the supplemental benefits described above.

The County is required by statute to contribute the amounts necessary to finance the estimated benefits accruing to the employees. For the year ended June 30, 2021, the County made contributions of \$1.04 billion to ACERA, which included a one-time \$800 million contribution to reduce the net pension liability.

C. Pension Liabilities

As of June 30, 2021, the County reported a liability of \$1.71 billion for its proportionate share of the net pension liability. The net pension liability was measured as of December 31, 2020, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of December 31, 2019. The County's proportion of the net pension liability was based on a projection of the County's long-term share of contributions to the pension plan relative to the projected contributions of all participants, actuarially determined. At December 31, 2020, the County's proportion was 77.7 percent, which was a decrease of 0.12 percent from its proportion measured as of December 31, 2019.

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D. Pension Expense and Deferred Flows of Resources Related to Pensions

For the year ended June 30, 2021, the County recognized pension expense of \$215.46 million. At June 30, 2021, the County reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 41,827	\$ 7,728
Changes of assumptions	289,533	72,286
Net difference between projected and actual earnings on investments	-	282,946
Changes in proportion and differences between County contributions and proportionate share of contributions	67,957	55,498
County contributions subsequent to the measurement date	929,166	-
Total	\$ 1,328,483	\$ 418,458

County contributions of \$929.1 million are reported as deferred outflows of resources to pensions and will be recognized as a reduction of the net pension liability in the year ended June 30, 2022. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Year Ended June 30:	
2022	\$ (7,709)
2023	46,665
2024	(81,276)
2025	12,956
2026	10,223

E. Actuarial Assumptions

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. The total pension liability at December 31, 2020 measurement date was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Valuation Date	December 31, 2019
Inflation	2.75%
Salary Increases	General: 3.65% to 8.35% Safety: 4.05% to 11.25% Vary by service, including inflation
Investment Rate of Return	7.00%, net of pension plan investment expense, including inflation
Mortality Tables	Pub-2010 Amount -Weighted Mortality Tables, projected generationally with the two-dimensional mortality improvement scale MP-2019.
Date of Experience Study	December 1, 2016 through November 30, 2019

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The long-term expected rate of return on pension plan investments for funding valuation purposes was determined using a building-block method in which expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. This information is combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation and subtracting expected investment expenses and a risk margin. The target allocation and projected arithmetic real rates of return for each major asset class, after deducting inflation, but before investment expenses and a risk margin, used in the derivation of the long-term expected investment rate of return assumption are summarized in the following table:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
US Large Cap Equity	22.40 %	5.43 %
US Small Cap Equity	2.50	6.21
International Developed Equity	17.00	6.67
International Small Cap Equity	3.00	7.36
Emerging Markets Equity	5.00	8.58
Core Plus Fixed Income	11.50	1.10
High Yield Bonds	1.60	2.91
Global Fixed Income	3.00	-0.63
Private Equity	10.50	10.00
Core Real Estate	8.00	4.58
Commodities	0.75	3.46
Infrastructure	1.75	7.80
Private Credit	4.00	8.50
Absolute Return	9.00	3.70
Total	<u>100.00 %</u>	

Discount Rate – The discount rate used to measure the total pension liability was 7.00% as of December 31, 2020, which was a 0.25% decrease from last year. Article 5.5 of the 1937 Act, which authorizes the allocation of 50% excess earnings to the SRBR, does not allow the use of a different investment return assumption for funding than is used for interest crediting. In order to reflect the provisions of Article 5.5, future allocations to the SRBR have been treated as an additional outflow against ACERA's fiduciary net position in the GASB crossover test. It is estimated that the additional outflow would average approximately 0.60% of assets over time, based on the results of the actuarial stochastic modeling of the 50% allocation of future excess earnings to the SRBR.

The projection of cash flows used to determine the discount rate assumes plan member contributions will be made at the current member contribution rates, and that employer contributions will be made at rates equal to the actuarially determined contribution rates plus additional future contributions that would follow from the future allocation of excess earnings to the SRBR. Projected employer contributions that are intended to fund the service costs for future plan members and their beneficiaries, as well as projected contributions from future plan members, are not included. Based on those assumptions, ACERA's fiduciary net position was projected to be available to make all projected future benefit payments for current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Sensitivity of the Proportionate Share of the Net Pension Liability to Changes in the Discount Rate – The following presents the County's proportionate share of the net pension liability calculated using the discount rate of 7.00 percent, as well as what the County's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.00 percent) or 1-percentage-point higher (8.00 percent) than the current rate:

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	<u>1% Decrease</u> <u>(6.00%)</u>	<u>Discount Rate</u> <u>(7.00%)</u>	<u>1% Increase</u> <u>(8.00%)</u>
County's proportionate share of the net pension liability	\$ 2,729,863	\$ 1,706,972	\$ 865,315

F. Pension Plan Fiduciary Net Position

Detailed information about pension plan fiduciary net position is available in the separately issued ACERA financial reports, which can be obtained at ACERA's website (www.acera.org) under Forms and Publications.

14. Defined Benefit Pension Plan – Alameda County Fire District (ACFD)

A. Plan Description

The ACFD Miscellaneous Plan (Miscellaneous Plan) is a cost-sharing, multiple-employer, defined benefit plan and the ACFD Safety Plan (Safety Plan) is an agent multiple-employer, defined benefit plan. Both plans are administered by CalPERS. The Miscellaneous Plan and the Safety Plan provide retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. CalPERS acts as a common investment and administrative agent for participating public entities within the State of California. Benefit provisions and all other requirements are established by state statute and County ordinance.

All permanent ACFD non-safety employees classified as full-time are required to participate in the Miscellaneous Plan. Members hired before January 1, 2013 become eligible for service retirement upon attainment of age 50 with at least five years of credited service (total service across all CalPERS employers, and with certain other retirement systems with which CalPERS has reciprocity agreements). PEPRAs members become eligible for service retirement upon attainment of age 52 with at least five years of service.

All permanent ACFD safety employees classified as full-time are required to participate in the Safety Plan. Members become eligible for service retirement upon attainment of age 50 with at least five years of credited service (total service across all CalPERS employers, and with certain other retirement systems with which CalPERS has reciprocity agreements).

The service retirement benefit is equal to the product of the benefit factor, years of service, and final compensation. The benefit factor depends on the benefit formula specified in the contract. The years of service is the amount credited by CalPERS to a member while employed in this group (or for other periods that are recognized under the employer's contract with CalPERS). The final compensation is the monthly average of the member's highest 36 or 12 consecutive months' full-time equivalent monthly pay (no matter which CalPERS employer paid this compensation). The standard benefit is 36 months. Employers had the option of providing a final compensation equal to the highest 12 consecutive months for classic plans only.

The non-industrial disability retirement benefit is available to both ACFD safety and non-safety employees if the employee becomes disabled and has at least 5 years of credited service. There is no special age requirement and the illness or injury does not have to be job related. The employee must be active employed at the time of disability in order to be eligible for this benefit.

The industrial disability retirement is available only to ACFD safety employees. An employee is eligible for this benefit if the disability is work-related illness or injury, which is expected to be permanent or to last indefinitely.

Upon the death of retiree, a one-time lump sum payment of \$500 will be available to the retiree's designated survivor(s) or to the retiree's estate for both Plans.

A full description of the ACFD Miscellaneous and Safety Plan benefit provisions and membership information is available in the separately issued CalPERS Annual Actuarial Valuation Reports.

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B. Funding Policy

Section 20814(c) of the California Public Employees' Retirement Law (PERL) requires that the employer contribution rates for all public employers be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change in the rate. The total plan contributions are determined through the CalPERS' annual actuarial valuation process. The Miscellaneous Plan's actuarially determined rate is based on the estimated amount necessary to pay the Miscellaneous Plan's allocated share of the risk pool's costs of benefits earned by employees during the year, and any unfunded accrued liability. ACFD is required to contribute the difference between the actuarially determined rate and the contribution rate of employees. For the measurement period ended June 30, 2020, the active employee contribution rate is 7.00 percent of annual pay for non-PEPRA members and 6.75 percent of annual pay for PEPRA members. ACFD contribution rate is 11.03 percent of annual payroll for non-PEPRA members and 7.73 percent of annual payroll for PEPRA members.

The Safety Plan's actuarially determined rate is based on the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. ACFD is required to contribute the difference between the actuarially determined rate and the contribution rate of employees. For the measurement period ended June 30, 2020, the active employee contribution rate is 9.00 percent of annual pay for non-PEPRA members and 11.50 percent of annual pay for PEPRA members. ACFD contribution rate is 20.52 percent of annual payroll.

ACFD's contribution rates may change if plan contracts are amended. The contribution requirements of employees and ACFD are established and may be amended by CalPERS.

C. Net Pension Liability

Miscellaneous Plan

As of June 30, 2021, ACFD reported a liability of \$3.56 million for its proportionate share of the net pension liability for the Miscellaneous Plan. The net pension liability was measured as of June 30, 2020, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2019. ACFD's proportion of the net pension liability was based on a projection of ACFD's long-term share of contributions to the pension plan relative to the projected contributions of all participants, actuarially determined. At June 30, 2021, ACFD's proportion was 0.035 percent, which was an increase of 0.005 percent from its proportion measured as of June 30, 2020.

Safety Plan

As of June 30, 2021, ACFD reported a liability of \$132.7 million for its Safety Plan net pension liability. The net pension liability was measured as of June 30, 2020, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2019.

As of the measurement date June 30, 2020, the following numbers of participants were covered by the benefit terms:

	Number of Covered Participants
Active employees	348
Retired and receiving pension	389
Total	737

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The following table summarizes the changes in the net pension liability:

	Increase (Decrease)		
	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability
	(a)	(b)	(a) - (b)
Balance at June 30, 2020	\$ 486,608	\$ 365,112	\$ 121,496
Changes for the year:			
Service cost	14,304	-	14,304
Interest	34,628	-	34,628
Differences between expected and actual	2,137	-	2,137
Contributions - employer	-	17,174	(17,174)
Contributions - employee	-	4,974	(4,974)
Net investment income	-	18,240	(18,240)
Benefit payments ¹	(23,174)	(23,174)	-
Administrative expenses	-	(515)	515
Net changes for the year	27,895	16,699	11,196
Balances at June 30, 2021	\$ 514,503	\$ 381,811	\$ 132,692

¹ Including refunds of employee contributions

D. Pension Expense and Deferred Flows of Resources Related to Pensions

Miscellaneous Plan

For the year ended June 30, 2021, ACFD recognized pension expense of \$1.30 million. At June 30, 2021, ACFD reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ 106	\$ -
Changes of assumptions	-	25
Differences between expected and actual experience	183	-
Changes in proportion and differences between ACFD contributions and proportionate share of contributions	508	-
ACFD contributions subsequent to the measurement date	950	-
Total	\$ 1,747	\$ 25

ACFD contributions of \$950 thousand are reported as deferred outflows of resources to pensions and will be recognized as a reduction of the net pension liability in the year ended June 30, 2022. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Year Ended June 30:	
2022	\$ 299
2023	267
2024	155
2025	51

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Safety Plan

For the year ended June 30, 2021, ACFD recognized pension expense of \$25.77 million. At June 30, 2021, ACFD reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on pension plan investments	\$ 3,368	\$ -
Changes of assumptions	8,062	664
Differences between expected and actual experience	6,557	748
ACFD contributions subsequent to the measurement date	18,933	-
Total	<u>\$ 36,920</u>	<u>\$ 1,412</u>

ACFD contributions of \$18.93 million are reported as deferred outflows of resources to pensions and will be recognized as a reduction of the net pension liability in the year ended June 30, 2022. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

Year Ended June 30:	
2022	\$ 3,852
2023	6,238
2024	2,937
2025	2,947
2026	566
2027	35

E. Actuarial Assumptions

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. The total pension liability at June 30, 2020 measurement date was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Valuation Date	June 30, 2019
Discount Rate	7.15%
Inflation Rate	2.50%
Salary Increases	Varies by entry age and service
Mortality Rate Table ¹	Derived using CalPERS' membership data for all funds
Post Retirement Benefit Increase	Contract COLA up to 2.50% until purchasing power protection allowance floor on purchasing power applies, 2.50% thereafter

¹The mortality table used was developed based on CalPERS' specific data. The table includes 15 years of mortality improvements using Society of Actuaries Scale 90% of scale MP 2016. For more details on this table, please refer to the December 2017 experience study report.

The long-term expected rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

The table below reflects the long-term expected real rate of return by asset class. The rate of return was calculated using the capital market assumptions applied to determine the discount rate and asset allocation. These geometric rates of return are net of administrative expenses.

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Asset Class	Target Allocation	Real Return Years 1-10¹	Real Return Years 11+²
Global Equity	50.00%	4.80%	5.98%
Fixed Income	28.00%	1.00%	2.62%
Inflation Assets	---	0.77%	1.81%
Private Equity	8.00%	6.30%	7.23%
Real Estate	13.00%	3.75%	4.93%
Liquidity	1.00%	---	-0.92%

¹ An expected inflation rate of 2.00% is used for this period

² An expected inflation rate of 2.92% is used for this period

Discount Rate – The discount rate used to measure the total pension liability of both the Miscellaneous Plan and the Safety Plan was 7.15 percent as of June 30, 2020, which is the same as last year. The projection of cash flows used to determine the discount rate assumes plan member contributions will be made at the current member contribution rates, and that employer contributions will be made at rates equal to the actuarially determined contribution rates. Based on those assumptions, both the Miscellaneous Plan and the Safety Plan's fiduciary net position was projected to be available to make all projected future benefit payments for current plan members. Therefore, the long-term expected rate of return on pension plan investments was applied to all periods of projected benefit payments to determine the total pension liability.

Miscellaneous Plan

Sensitivity of the Proportionate Share of the Net Pension Liability to Changes in the Discount Rate – The following presents ACFD's proportionate share of the net pension liability of the Miscellaneous Plan calculated using the discount rate of 7.15 percent, as well as what ACFD's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.15 percent) or 1-percentage-point higher (8.15 percent) than the current rate:

	1% Decrease (6.15%)	Discount Rate (7.15%)	1% Increase (8.15%)
ACFD's proportionate share of the net pension liability	\$ 6,144	\$ 3,561	\$ 1,427

Safety Plan

Sensitivity of the Net Pension Liability to Changes in the Discount Rate – The following presents ACFD's net pension liability for the Safety Plan calculated using the discount rate of 7.15 percent, as well as what the ACFD's net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.15 percent) or 1-percentage-point higher (8.15 percent) than the current rate:

	1% Decrease (6.15%)	Discount Rate (7.15%)	1% Increase (8.15%)
ACFD's net pension liability	\$ 202,096	\$ 132,692	\$ 75,308

F. Pension Plan Fiduciary Net Position

Detailed information about the pension plan fiduciary net position is available in separately issued CalPERS financial reports, which can be obtained at CalPERS' website (www.calpers.ca.gov) under Forms and Publications.

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15. Other Postemployment Benefits - ACERA

A. Plan Description

ACERA administers a medical benefits plan for retired members and their eligible dependents. The County participates in the plan. The OPEB plan is a cost-sharing, multiple-employer, defined benefit plan. The OPEB plan is not a benefit entitlement program and benefits are subject to modification and/or deletion by the ACERA Board of Retirement. Annually, based on the recommendation of the Board of Retirement, the Board of Supervisors designates a portion of the County's contribution to retirement towards medical premiums of retirees. The OPEB plan provides healthcare benefits for eligible retired members through health care subsidy in the form of the monthly medical allowance (MMA), Medicare Part B reimbursement, and dental and vision subsidies. Retirees can also purchase medical benefits for eligible dependents on an out-of-pocket basis.

The County arranges health insurance coverage for employees, negotiating coverage levels and premium rates annually with several carriers. Employees who meet certain eligibility conditions and make the required contributions may continue coverage in those same health plans after retirement until they become Medicare eligible. Currently, the County uses a single blended rate for budgeting and setting premium and contribution rates for both active employees and non-Medicare eligible retirees. The County funds the premiums for employees while ACERA funds the premiums for retirees. ACERA establishes the amount of the MMA.

The maximum MMA in 2020 was \$578.65 and remains unchanged for 2021 for retirees who are not purchasing individual insurance through the Medicare exchange. For those purchasing individual insurance through the Medicare exchange, the MMA was \$414 for 2019 and increases to \$443.28 for 2020 and remains unchanged for 2021. These allowances are subject to the following schedule:

Completed Years of Service	Percentage Subsidized
10-14	50%
15-19	75%
20+	100%

The ACERA Board of Retirement annually reviews the maximum MMA and does not index the MMA to increase automatically. In addition, the MMA can only be used to pay for retiree medical benefits. If the actual cost of coverage is less than the MMA, the benefit is limited to the cost of the medical insurance.

B. Funding Policy

The postemployment medical, dental and vision benefits are currently provided through the Supplemental Retirees Benefit Reserve (SRBR) as described in the ACERA Defined Benefit Pension Plan note. The SRBR is a funded trust that receives fifty percent of the investment earnings that are in excess of the assumed investment rate of return of the ACERA Defined Benefit Pension Plan. The County does not make postemployment medical benefit payments directly to retirees and does not have the ability to fund these benefits. However, the County's pension contribution to ACERA would be lower if not for the excess interest transfer to the SRBR.

C. OPEB Liabilities

As of June 30, 2021, the County reported a liability of \$5.10 million for its proportionate share of the net OPEB liability. The net OPEB liability was measured as of December 31, 2020, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as December 31, 2019. The County's proportion of the net OPEB liability was based on a projection of the County's long-term share of contributions to the pension plan relative to the projected contributions of all participants, actuarially determined. At December 31, 2020, the County's proportion was 76.26 percent, which was an increase of 0.22 percent from its proportion measured as of December 31, 2019.

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D. OPEB Expense and Deferred Flows of Resources Related to OPEB

For the year ended June 30, 2021, the County recognized OPEB expense of negative \$11.46 million. At June 30, 2021, the County reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ -	\$ 49,389
Changes of assumptions	61,969	4,796
Net difference between projected and actual earnings on investments	-	144,359
Changes in proportion and differences between County contributions and proportionate share of contributions	8,445	7,292
Total	\$ 70,414	\$ 205,836

Amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Year Ended June 30:	
2022	\$ (44,598)
2023	(16,526)
2024	(49,810)
2025	(30,485)
2026	3,248
Thereafter	2,749

E. Actuarial Assumptions

The total OPEB liability at the December 31, 2020 measurement date was determined using the following actuarial assumptions, applied to all periods included in the measurement, unless otherwise specified:

Valuation Date	December 31, 2019
Inflation	2.75%
Investment Rate of Return	7.00%, net of OPEB plan investment expense, including inflation
Health care premium trend rates	
Non-Medicare medical plan	Graded from 6.75% to ultimate 4.50% over 9 years
Medicare medical plan	Graded from 6.25% to ultimate 4.50% over 7 years
Dental/Vision	0.00% for the first two and four years respectively to reflect a three-year guarantee and 4.00% thereafter
Medicare Part B	4.50%
Mortality Tables	Pub-2010 Healthy Retiree Headcount-Weighted Above-Meridian Mortality Table, projected generationally with two-dimensional MP-2019 projection scale. The generational projection is a provision for future mortality improvement.
Date of Experience Study	December 1, 2016 through November 30, 2019

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The long-term expected rate of return on OPEB plan investments was determined using a building-block method in which expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These returns are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation and subtracting expected investment expenses and a risk margin. The target allocation and projected arithmetic real rates of return for each major asset class, after deducting inflation, but before investment expenses and a risk margin, used in the derivation of the long-term expected investment rate of return assumption are summarized in the following table:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
US Large Cap Equity	22.40 %	5.43 %
US Small Cap Equity	2.50	6.21
International Developed Equity	17.00	6.67
International Small Cap Equity	3.00	7.36
Emerging Markets Equity	5.00	8.58
Core Plus Fixed Income	11.50	1.10
High Yield Bonds	1.60	2.91
Global Fixed Income	3.00	-0.63
Private Equity	10.50	10.00
Core Real Estate	8.00	4.58
Commodities	0.75	3.46
Infrastructure	1.75	7.80
Private Credit	4.00	8.50
Absolute Return	9.00	3.70
Total	<u>100.00 %</u>	

Discount Rate – The discount rate used to measure the total OPEB liability was 7.00% as of December 31, 2020, which was a 0.25% decrease from last year. The projection of cash flows used to determine the discount rate assumes benefits are paid from current SRBR assets. Based on this assumption, the SRBR's Fiduciary Net Position was projected to be available to make all projected future benefits payments for current plan members. Therefore the long-term expected rate of return on OPEB plan investments was applied to all periods of projected benefit payments to determine the total OPEB liability.

Sensitivity of the Proportionate Share of the Net OPEB Liability to Changes in the Discount Rate – The following presents the County's proportionate share of the net OPEB liability calculated using the discount rate of 7.00 percent, as well as what the County's proportionate share of the net OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.00 percent) or 1-percentage-point higher (8.00 percent) than the current rate:

	1% Decrease (6.00%)	Discount Rate (7.00%)	1% Increase (8.00%)
County's proportionate share of the net OPEB liability	\$ 123,347	\$ 5,101	\$ (92,887)

Sensitivity of the Proportionate Share of the Net OPEB Liability to Changes in the Healthcare Cost Trend Rates – The following presents the County's proportionate share of the net OPEB liability calculated using the current trend rate, as well as what the County's proportionate share of the net OPEB liability would be if it were calculated using a trend rate that is 1-percentage-point lower (5.75 percent decreasing to 3.5 percent) or 1-percentage-point higher (7.75 percent decreasing to 5.5 percent) than the current rate:

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	1% Decrease (5.75%) decreasing to 3.5%)	Healthcare Cost Trend Rates (6.75%) decreasing to 4.5%)	1% Increase (7.75%) decreasing to 5.5%)
County's proportionate share of the net OPEB liability	\$ (111,815)	\$ 5,101	\$ 149,926

F. OPEB Plan Fiduciary Net Position

Detailed information about OPEB plan's fiduciary net position is available in the separately issued ACERA financial reports, which can be obtained at ACERA's website (www.acera.org) under Forms and Publications.

16. Other Postemployment Benefits – ACFD

A. Plan Description

The ACFD administers a defined benefit OPEB plan through CalPERS, an agent-multiple employer retirement system, for all eligible retired employees and their eligible dependents. Retirees are eligible if they retire from the ACFD with a minimum of five years of employment with the ACFD and ten years of service credit with CalPERS. The ACFD currently provides three tiers of medical benefit coverage to retirees, based on the hire date and years of service: tier 1- hire date before April 1, 2009, tier 2 – hire date on or after April 1, 2009 and before January 1, 2015; tier 3 – hire date on or after January 1, 2015. The ACFD pays the Minimum Employer Contribution (MEC) to CalPERS and provides eligible retirees with a stipend to offset medical benefit costs.

Tier 1 employees retiring from the ACFD with a minimum of five (5) years of services are eligible to receive a stipend amount, less the MEC, equal to the costs of the premium for the medical plan selected, up to the amount necessary for actual enrollment in Kaiser Single, Kaiser Two-Party, or Kaiser Family. For eligible retirees who are 65 years of age or older and enrolled in Medicare, the ACFD contribution will be a stipend amount, less the MEC, equal to the costs of the premium for the medical plan selected, not to exceed the premium for Kaiser Single, Kaiser Two-Party, or Kaiser Family Medicare medical coverage as applicable.

Tire 2 employees retiring from the ACFD with a minimum of five (5) years of services with the ACFD and a minimum of 10 years of total service credit with CalPERS, are eligible to receive percentage of post-retirement benefit from ACFD based on the following table:

Credited Years Of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

The ACFD's contribution will equal to the costs of the premium for the medical plan selected, not to exceed the premium for Kaiser Single, Kaiser Two-Party, or Kaiser Family Medicare medical coverage as applicable, less the MEC, with the application of the percentage of employer contribution. In no event will the department contribution be less than the MEC.

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Tire 3 employees retiring from the ACFD with a minimum of five (5) years of services with the ACFD and a minimum of 10 years of total service credit with CalPERS, are eligible to receive post-retirement benefit from ACFD. The ACFD's maximum contribution will be based on ninety percent of either the Kaiser single or two-party rate (as applicable) less the MEC with the application of the formula as Tier 2, but in no event will the department contribution be less than the MEC.

At June 30, 2020, the following numbers of participants were covered by the benefit terms:

	Number of Covered Participants
Inactives currently receiving benefits	310
Inactives entitled to but not yet receiving benefits	21
Active employees	400
Total	731

B. Funding Policy

The ACFD's current funding policy for postemployment medical benefits is pay-as-you-go, with employees making contribution to the CalPERS California Employers' Retiree Benefit Trust (CERBT) as a percentage of salary. For measurement year 2020, the ACFD's contribution is \$9.3 million. This amount includes \$2.5 million of employee contributions and \$6.8 million of employer contributions. The employer contributions are comprised of \$1.7 million in contributions to the trust, \$4.2 million in cash benefit payments, and \$918 thousand in implied subsidy benefit payments. The ACFD is working with an actuary and its contract agencies to develop a funding strategy and accounting methodology for its net OPEB liability.

C. Net OPEB Liability

As of June 30, 2021, ACFD reported a net OPEB liability of \$87.14 million. The net OPEB liability was measured as of June 30, 2020, and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as June 30, 2020.

The following table summarizes the changes in the net OPEB liability:

	Increase (Decrease)		
	Total OPEB Liability	Plan Fiduciary Net Position	Net OPEB Liability
	(a)	(b)	(a) - (b)
Balance at June 30, 2020	\$ 115,564	\$ 28,025	\$ 87,539
Changes for the year:			
Service cost	4,077	-	4,077
Interest	7,902	-	7,902
Changes of assumptions	(2,050)	-	(2,050)
Contributions - employer	-	6,809	(6,809)
Contributions - employee	-	2,484	(2,484)
Net investment income	-	1,062	(1,062)
Benefit payments	(5,103)	(5,103)	-
Administrative expenses	-	(27)	27
Net changes for the year	4,826	5,225	(399)
Balance at June 30, 2021	\$ 120,390	\$ 33,250	\$ 87,140

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D. OPEB Expense and Deferred Flows of Resources Related to OPEB

For the year ended June 30, 2021, ACFD recognized OPEB expense of \$2.97 million. At June 30, 2021, ACFD reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Net difference between projected and actual earnings on plan investments	\$ 639	\$ -
Changes of assumptions	-	21,835
Differences between expected and actual experience	-	3,337
ACFD contributions subsequent to the measurement date	7,145	-
Total	\$ 7,784	\$ 25,172

ACFD contributions of \$7.14 million are reported as deferred outflows of resources to OPEB and will be recognized as a reduction of the net OPEB liability in the year ended June 30, 2022. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Year Ended June 30:	
2022	\$ (4,558)
2023	(4,457)
2024	(4,432)
2025	(4,447)
2026	(3,434)
Thereafter	(3,205)

E. Actuarial Assumptions

Actuarial valuations of an ongoing plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. The total OPEB liability at June 30, 2020 measurement date was determined using the following actuarial assumptions, applied to all periods included in the measurement:

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Actuarial Valuation Date	June 30, 2020										
Contribution Policy	Employer contributions are made on an ad hoc basis Employees contribute based on current MOUs										
Discount Rate	Based on crossover test 6.75% at June 30, 2020 6.75% at June 30, 2019										
Long-Term Expected Rate of Return on Investments	Expected contributions projected to keep sufficient plan assets to pay all benefits from trust										
Municipal Bond Rate	3.50% at June 30, 2019 3.87% at June 30, 2018 Bond Buyer 20-Bond GO Index										
Crossover Test Assumptions	Projected contributions based on average over prior 5 years Administrative expenses = 0.05% of Fiduciary Net Position No Crossover										
General Inflation	2.75% per annum										
Mortality, Retirement, Disability, Termination	CalPERS 1997-2015 Experience Study										
Mortality Improvement	Post-retirement mortality projected fully generational with Scale MP-2019										
Salary Increases	Aggregate - 3% Merit - CalPERS 1997-2015 Experience Study										
Medical Trend	Non-Medicare - 7.25% for 2021, decreasing to an ultimate rate of 4% in 2076 and later years Medicare - 6.3% for 2021, decreasing to an ultimate rate of 4% in 2076 and later years										
Healthcare participation for future retirees	Hired before 4/1/09: 100% if currently covered, 90% if not currently covered Hired on or after 4/1/09: <table border="0"> <tr> <td>Service</td><td>Participation</td></tr> <tr> <td><10</td><td>60%</td></tr> <tr> <td>10-14</td><td>90%</td></tr> <tr> <td>15-19</td><td>95%</td></tr> <tr> <td>20+</td><td>100%</td></tr> </table>	Service	Participation	<10	60%	10-14	90%	15-19	95%	20+	100%
Service	Participation										
<10	60%										
10-14	90%										
15-19	95%										
20+	100%										

The long-term expected rate of return on plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

The table below reflects the long-term expected real rate of return by asset class. The rate of return was calculated using the capital market assumptions applied to determine the discount rate and asset allocation. These geometric rates of return are net of administrative expenses.

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Asset Class	Target Allocation CERBT-Strategy 1	Expected Real Rate of Return
Global Equity	59.00 %	4.82 %
Fixed Income	25.00	1.47
TIPS	5.00	1.29
Commodities	3.00	0.84
REITs	8.00	3.76
Total	<u>100.00 %</u>	

Assumed long-term inflation rate of 2.75%

Expected long-term net rate of return of 6.75%

Discount Rate – The discount rate used to measure the total OPEB liability was 6.75 percent as of June 30, 2020. The projection of cash flows used to determine the discount rate assumes plan member contributions will be made at the current member contribution rates, and that employer contributions will be made at rates equal to the actuarially determined contribution rates. Based on those assumptions, the Plan's fiduciary net position was projected to be available to make all projected future benefit payments for current plan members. Therefore, the long-term expected rate of return on plan investments was applied to all periods of projected benefit payments to determine the total OPEB liability.

Sensitivity of the Net OPEB Liability to Changes in the Discount Rate – The following presents ACFD's net OPEB liability calculated using the discount rate of 6.75 percent, as well as what the ACFD's net OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower (5.75 percent) or 1-percentage-point higher (7.75 percent) than the current rate:

	1% Decrease (5.75%)	Discount Rate (6.75%)	1% Increase (7.75%)
ACFD's net OPEB liability	\$ 103,383	\$ 87,140	\$ 73,823

Sensitivity of the Net OPEB Liability to Changes in the Healthcare Cost Trend Rates – The following presents ACFD's net OPEB liability calculated using the current trend rate, as well as what ACFD's net OPEB liability would be if it were calculated using a trend rate that is 1-percentage-point lower (6.5 percent decreasing to 3.0 percent) or 1-percentage-point higher (8.5 percent decreasing to 5.0 percent) than the current rate:

	1% Decrease (6.25% decreasing to 3.0%)	Current Trend Rate (7.25% decreasing to 4.0%)	1% Increase (8.25% decreasing to 5.0%)
ACFD's net OPEB liability	\$ 71,121	\$ 87,140	\$ 107,133

F. OPEB Plan Fiduciary Net Position

Detailed information about OPEB plan fiduciary net position is available in the separately issued CalPERS financial reports, which can be obtained at CalPERS' website (www.calpers.ca.gov) under Forms and Publications.

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17. Joint Venture

The County is a participant with the City of Oakland (City) in a joint exercise of powers agreement forming the Oakland-Alameda County Coliseum Authority (Coliseum Authority), which was formed on July 1, 1995 to assist the City and County in the financing of public capital improvements in the Oakland-Alameda County Coliseum Complex (Coliseum Complex) pursuant to the Marks-Roos Local Bond Pooling Act of 1985. The Oakland-Alameda County Coliseum Financing Corporation (Financing Corporation) is reported as a blended component unit of the Coliseum Authority. The eight-member Board of Commissioners of the Coliseum Authority consists of two council members from the City, two members of the Board of Supervisors from the County, two appointees of the City Council, and two appointees of the Board of Supervisors. The Board of Directors of the Financing Corporation consists of the City Manager and the County Administrator.

Stadium Background

In August 1995, the Coliseum Authority issued \$9.2 million in Fixed Rate Refunding Lease Revenue Bonds and \$188.5 million in Variable Rate Lease Revenue Bonds (collectively known as the Stadium Bonds) to satisfy certain obligations of the Coliseum Authority, the City, the County, the Financing Corporation and Oakland-Alameda County Coliseum Inc. (Coliseum Inc.), which then managed the operations of the Coliseum Complex, to finance the costs of remodeling the stadium portion of the Coliseum complex as well as relocating the Raiders to the City.

On May 31, 2012, the Coliseum Authority issued \$122.8 million in Refunding Bonds Series 2012 A with coupons of 2 to 5 percent to refund and defease all outstanding variable rate 2000 Series C Refunding Bonds. The bonds were priced at a premium, bringing total proceeds to \$138.1 million.

These funds coupled with \$13 million in the 2000 Series C reserve fund generated available funds of \$151.1 million which was used to refund the 2000 C Refunding Bonds of \$137.4 million, fund a reserve fund of \$12.8 million and to pay underwriter's discount and issuance cost of \$0.9 million. The all-in-interest cost of the 2012A refunding bonds was 3.04 percent.

There was an economic loss of \$23 million (difference between the present value of the old and the new debt service payments) due to the low variable interest rates on the old bonds and the higher fixed rates on the new bonds. The Coliseum Authority was unable to maintain the bonds at a variable rate because it was not able to renew the letters of credit as required due to the tightening of the credit markets since 2008. However, the Coliseum Authority was able to take advantage of the fixed rate market with historically low interest rates and issued fixed rate bonds that generated a premium of \$15.3 million.

The Stadium Bonds are limited obligations of the Coliseum Authority payable solely from certain revenues of the Coliseum Authority, including revenues from the Stadium and Arena Complex and base rental payments from the City and the County. The source of the Coliseum Authority's revenues relating to football games consists primarily of a portion of the club dues, concession, and parking payments. The Coliseum Authority has pledged the base rental payments and most other revenues received under the Master Lease from the lessees, the City and the County, to the trustee to pay debt service on the bonds. In the event that football revenues and other revenues received in connection with the Stadium are insufficient to make base rental payments, the City and the County are obligated to make up the shortfall in the base rental payments from their respective general funds. The City and the County each have covenanted to appropriate \$11 million annually to cover such shortfall in revenue; however, the City and the County are jointly and severally liable to cover such shortfall, which means that the County could have to pay up to \$22 million annually in the event of default by the City. Base rental payments are projected to cover one hundred percent of the debt service requirements over the life of the bonds. The obligation of the City and the County to make such payments is reduced to the extent the Coliseum Authority receives revenues generated at the complex to pay debt service and for operations and maintenance. The Stadium Bonds are not general obligations of either the City or the County.

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Arena Background

On August 2, 1996, the Coliseum Authority issued \$70 million Series A-1 and \$70 million Series A-2 Variable Rate Lease Revenue Bonds (Arena Bonds) to finance the costs of remodeling the Coliseum Arena (Arena) and to satisfy certain obligations of the Coliseum Authority, the City, the County, and Coliseum Inc. in connection with the retention of the Golden State Warriors (the Warriors) to play professional basketball at the Arena for at least 20 basketball seasons, beginning with the 1997-98 season. These obligations are evidenced in a series of agreements (the Warriors Agreements) among the Warriors and the City, the County, Coliseum Inc., and the Coliseum Authority.

On April 14, 2015, the Authority issued \$79.7 million in Refunding Bonds Series 2015 with coupons of 0.8 to 3.8 percent to refund and defease all outstanding variable rate 1996 Series A-1 and A-2 Bonds. The bonds were sold at par, bringing total proceeds to \$79.7 million.

These funds coupled with \$3.3 million in the 1996 Series A reserve fund generated available funds of \$83 million which was used to refund the 1996 Series A Refunding Bonds of \$79.7 million to fund a reserve fund of \$2.1 million, to pay underwriter's discount and issuance cost of \$660 and \$491 was returned to the Authority's general fund. The all-in true interest cost of the 2015A refunding bonds was 3.3 percent.

There was an economic loss of \$13.4 million (difference between the present value of the old and the new debt service payments) due to the low variable interest rates on the old bonds and the higher fixed rates on the new bonds. The Authority was unable to maintain the bonds at a variable rate because it was not able to renew the letters of credit as required due to the tightening of the credit markets since 2008. However, the Authority was able to take advantage of the fixed rate market with historically low interest rates and issued fixed rate bonds.

Under the Bond Agreements, the Arena Bonds are limited obligations of the Coliseum Authority, payable solely from revenues received by the Coliseum Authority on behalf of the City and the County. Revenues consist of base rental payments from the City and County, including certain payments from the Warriors of up to \$7.4 million annually from premium seating revenues. If necessary to prevent default, additional premium revenues up to \$10.0 million may be pledged to service Arena debt. If the revenues received from the Warriors and from Arena operations are not sufficient to cover the debt service requirements in any fiscal year, the City and the County are obligated to make up the shortfall in the base rental payments from their respective general funds. The County and the City each have covenanted to appropriate up to \$9.5 million annually to cover such shortfalls in revenue; however, the City and the County are jointly and severally liable to cover such shortfall, which means that the County could have to pay up to \$19.0 million annually in the event of default by the City. The Warriors' challenge to their obligation to pay the project debt shortfall was not successful. The 2018 Arbitration Interim Award in favor of the Coliseum Authority (and indirectly the City and the County) regarding the Warriors' ongoing contractual obligation under the license agreement to annually reimburse the Coliseum Authority for any principal balance remaining on the Arena Bonds debt obligation if the net operating revenues are not sufficient to pay scheduled debt service through the term of the debt issuance, was confirmed by the San Francisco Superior Court and by the California First District Court of Appeal. The Warriors Petition for Review was denied by the California Supreme Court, ending their appeal. Since August 2019, the Warriors have paid the debt service installments that have come due and it is anticipated that they will continue to do so until the Arena Bond debt obligation is satisfied in 2025.

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Debt Obligations

Long-term debt outstanding as of June 30, 2021 is as follows:

<u>Type of Indebtedness</u>	<u>Maturity</u>	<u>Interest Rate</u>	<u>Authorized and Issued</u>	<u>Outstanding</u>
Stadium Bonds				
2012 Refunding Series A Lease Revenue Bonds	February 1, 2025	5%	\$ 122,815	\$ 45,410
Arena Bonds				
2015 Refunding Series A Lease Revenue Bonds	February 1, 2026	1% - 4%	<u>79,735</u>	<u>41,135</u>
Total Long-term debt			<u>\$ 202,550</u>	<u>\$ 86,545</u>

Debt payments during the fiscal year ended June 30, 2021 were as follows:

	<u>Stadium</u>	<u>Arena</u>	<u>Total</u>
Principal	\$ 10,035	\$ 7,600	\$ 17,635
Interest	<u>2,772</u>	<u>1,650</u>	<u>4,422</u>
Total	<u>\$ 12,807</u>	<u>\$ 9,250</u>	<u>\$ 22,057</u>

The following is a summary of long-term debt transactions for the year ended June 30, 2021:

Outstanding lease revenue bonds, July 1, 2020	\$ 104,180
Principal repayments	<u>(17,635)</u>
Outstanding lease revenue bonds, June 30, 2021	86,545
Amount due within one year	<u>(18,735)</u>
Amount due beyond one year	<u>\$ 67,810</u>

Annual debt service requirements to maturity for the lease revenue bonds, including interest payments, are as follows:

<u>For the Period Ending June 30</u>	<u>Stadium Bonds</u>		<u>Arena Bonds</u>		<u>Total</u>	
	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>
2022	\$ 10,535	\$ 2,271	\$ 8,200	\$ 1,426	\$ 18,735	\$ 3,697
2023	11,065	1,744	8,800	1,167	19,865	2,911
2024	11,615	1,190	9,250	873	20,865	2,063
2025	12,195	610	10,000	550	22,195	1,160
2026	-	-	4,885	185	4,885	185
Total	<u>\$ 45,410</u>	<u>\$ 5,815</u>	<u>\$ 41,135</u>	<u>\$ 4,201</u>	<u>\$ 86,545</u>	<u>\$ 10,016</u>

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The Authority relies on the City and the County to make base rental payments in order to fulfill its debt service obligations. The Authority would be considered to be in default if one or more of the following events occurs: (1) the City and the County fail to pay any rental payable when it becomes due and payable, (2) the City and the County fail to comply with the terms, covenants and conditions of the Master Lease Agreement and (3) the City or the County declare bankruptcy or insolvency.

If an event of default occurs, the trustee may declare the principal of all bonds then outstanding and the interest accrued thereon to be due and payable immediately. The Authority may (1) terminate the master lease and recover certain damages, (2) re-enter or re-let the facilities, or (3) continue to collect rent from the City and the County on an annual basis by seeking a separate judgment each year for that year's defaulted base rental payments. Upon an event of default, there is no remedy of acceleration of the total base rental payments due over the term of the master lease.

Management of Coliseum Authority

The Coliseum Authority entered into an agreement with the Oakland Coliseum Joint Venture (OCJV) to manage the entire Coliseum complex beginning July 1, 1998. On January 1, 2001, the Coliseum Authority terminated its agreement with OCJV and reinstated its operating agreement with Coliseum Inc. Coliseum Inc. subcontracted all of the operations of the Coliseum Complex to OCJV. The operating agreement between the Coliseum Authority and Coliseum Inc. expired, by its terms, on July 31, 2006. The Coliseum Authority entered into a termination agreement whereby, in return for certain consideration, the Coliseum Authority agreed to perform the duties of Coliseum, Inc. on and after August 1, 2006. The Authority's management agreement with OCJV expired in June 2012. In July 2012, AEG Management Oakland, LLC took over management of the Coliseum Complex after signing a ten-year agreement.

Under the joint exercise of power agreement, which formed the Coliseum Authority, the County is responsible for funding up to 50 percent of the Coliseum Authority's operating costs and debt service requirements to the extent such funding is necessary. During the year ended June 30, 2021, the County made contributions of \$375,000 to fund its share of operating deficits and debt service payments of the Coliseum Authority.

The Coliseum Authority has anticipated a deficit for operating costs and repayment of its Stadium Bonds, such that the City and the County will have to contribute to base rental payments. Of the \$22.0 million appropriated in the general fund as part of the above agreements, it is estimated that the County will have to contribute \$12.0 million for the year ending June 30, 2022. There are many uncertainties in the estimation of revenues for the Coliseum Authority beyond one year into the future; therefore, the County has established a contingent liability to fund the Coliseum Authority deficit in the statement of net position in an amount equal to its contingent share (50 percent) of the outstanding Stadium Bonds, in the amount of \$22.7 million. The County has not established a contingent liability for the Arena Bonds because management is of the opinion that revenues from the Arena, including payments from the Warriors and revenues from Arena operations, will be sufficient to cover the debt payments.

On December 14, 2021, the Coliseum Authority issued the Lease Revenue Notes, 2021 Refunding Series A (Stadium Notes) as federally taxable obligations to refund the Stadium Bonds. A portion of the proceeds of the Stadium Notes will be used, together with certain amounts to be contributed from the debt service reserve fund and the debt service fund associated with the Stadium Bonds, to provide cash that will be placed into an escrow account to currently refund the Stadium Bonds. The escrow agent will pay the scheduled debt service requirements of the Stadium Bonds on February 1, 2022 and will redeem those Stadium Bonds maturing on February 1, 2023 and thereafter, at a redemption price equal to 100% of par, on February 1, 2022, which is the first optional redemption date for those bonds.

Complete financial statements for the Coliseum Authority can be obtained from the County Auditor-Controller's Office at 1221 Oak Street, Room 249, Oakland, CA 94612.

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18. Alameda Health System Discretely Presented Component Unit

Alameda Health System (AHS) operates medical and health facilities within Alameda County. In accordance with the Master Contract (Contract) between the County and AHS dated June 23, 1998, effective July 1, 1998, AHS became a public hospital authority pursuant to California Health and Safety Code Section 101850. Accordingly, the governance, administration and operation of Fairmont Hospital, Highland Hospital and John George Hospital (Facilities) were transferred from the County to AHS.

In accordance with the Medical Facilities Lease between AHS and the County dated June 12, 1998, AHS is leasing certain land, facilities and equipment, collectively, the facilities, from the County for the annual sum of \$1. In accordance with a transfer agreement, Fairmont Hospital and Highland Hospital remain the property of the County. Accordingly, such assets, along with the John George Hospital, are accounted for within the governmental activities of the County. Under the terms of the contract, the County has agreed to provide AHS unrestricted use of the facilities.

During the year ended June 30, 2014, AHS completed the acquisitions of the San Leandro Hospital (SLH) and the Alameda Hospital (AH). AHS continued to operate SLH as an acute care hospital with 36 acute staffed beds, and AH with 64 acute staffed beds, 35 sub-acute staffed beds, 146 skilled nursing staffed beds, and clinics. SLH is located at 13855 East 14th Street, San Leandro, California. AH is located at 2070 Clinton Avenue, Alameda, California.

During fiscal year 2004, the Alameda Health System Foundation's (Foundation) Articles of Incorporation and bylaws were amended to require AHS to approve Foundation board members and to allow that upon dissolution, the Foundation's remaining assets would be distributed to AHS. The Foundation distributed \$1.8 million to AHS during fiscal year 2021.

As of July 1, 2001, AHS no longer participates in the County's self-insurance program. In September 2006, the County and AHS agreed to wholly and fully resolve any and all prior disputes and disagreements and any and all past, present and future insurance claims and insurance expenses of any kind. The County made a one-time payment of \$5.76 million to AHS for the full satisfaction and settlement of any and all past, present and future issues and matters related to insurance expenses, the satisfaction and exhaustion of outstanding claims and the apportionment of insurance coverage premiums and all other matters related to general liability, medical malpractice liability, workers' compensation liability, premises liability and other liabilities, regardless of when reported or claimed. Effective July 1, 2001, AHS became self-insured for workers' compensation. AHS maintains stop-loss insurance to limit its liability for claims under its self-insurance program.

Changes in the balance of the net self-insurance liabilities during the past two fiscal years are as follows:

	2020/21	2019/20
Estimated liability for claims and contingencies at the beginning of the fiscal year	\$ 31,346	\$ 31,546
Additional obligations	2,424	773
Payments	-	(973)
Estimated liability for claims and contingencies at the end of the fiscal year	\$ 33,770	\$ 31,346

AHS has experienced significant operating losses and negative cash flows from operations in recent years. AHS has financed its working capital needs through loans from the County. AHS expects to require ongoing working capital support from the County in fiscal year 2022.

In 2004, the voters of Alameda County approved Measure A, which provides funding, beginning in fiscal year 2005, for emergency medical, hospital inpatient, outpatient, public health, mental health, and substance abuse services to indigent, low-income and uninsured adults, children, families, seniors and other residents of Alameda County through an increase in Alameda County's sales tax revenue of 0.5 percent. Seventy-five percent of the funds are to be used by AHS. On June 3, 2014, the voters of Alameda County approved Measure AA, which extends the expiration date of Measure A from June 30, 2019 to June 30, 2034.

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In August 2004, the County placed a \$200 million limitation on net loans to AHS. As defined, this limitation is calculated as gross loans to AHS, reduced by board-designated funds held by the County on behalf of AHS. In fiscal year 2016, a permanent agreement was approved that sets a schedule of repayment of AHS net loans and a net loan limit of \$120 million at June 30, 2021. The net loan of \$44.5 million at June 30, 2021 is classified as long-term in the accompanying statement of net position. Should AHS, as a hospital authority, be terminated, the County may be required to assume the liabilities of AHS related to the operation of hospitals and clinics.

A. Net Patient Service Revenue

Net patient service revenues are reported at the estimated net realizable amounts from patients, third-party payors, including the State of California, and others for services rendered at AHS, including estimated retroactive adjustments under reimbursement agreements with third-party payors. Retroactive adjustments are accrued on an estimated basis in the period the related services are rendered and adjusted in future periods, as final settlements are determined.

B. Medi-Cal and Medicare Programs

A substantial portion of AHS's revenues is derived from services provided to patients eligible for benefits under the Medi-Cal and Medicare programs. Revenues from Medi-Cal and Medicare programs represent approximately 57.8 percent and 26.7 percent, respectively, of gross patient service revenues, excluding certain federal aid revenues, for the year ended June 30, 2021. Reimbursement rates are tentative and final reimbursement for services is determined after submission of annual cost reports and audits by third-party intermediaries.

C. Other Program Revenues

AHS also receives significant revenues from components of the Medi-Cal Waiver Program. Beginning in fiscal year 2006, California Senate Bill 1100 (SB1100) provides additional funding to hospitals that provide a significant portion of their services to Medi-Cal and medically indigent recipients. SB1100 provides additional funds through a reimbursement rate increase for each Medi-Cal patient day provided, up to a maximum number of days. Effective January 1, 2016, California's Section 1115 Waiver Renewal was approved and established the Global Payment Program (GPP) of statewide funding for the uninsured, and the Public Hospital Redesign and Incentives in Medi-Cal (PRIME) program funding for improved quality of care and better care coordination through safety net providers. AHS recognized \$92.8 million in revenues for Section 1115 waiver programs for the year ended June 30, 2021. This amount includes the net intergovernmental transfers for the year ended June 30, 2021 and adjustment to prior year revenues for changes in state allocations.

D. Charity Care

Counties are required by federal statute, Section 17000 of the Health and Welfare Act, to provide charity care to patients who are unable to pay. AHS provides services to patients who are financially screened and qualified to receive charity care under the guidelines of AB 774. AHS captures the amount of unreimbursed costs for services and supplies for patients who qualify for the charity care program and County programs. The following table summarizes the estimated cost of charity care for the year ended June 30, 2021:

Charity care at cost	\$ 9,454
Percent of operating expenses	0.9 %

In addition to the direct cost of charity care, AHS recognizes the unreimbursed costs of care provided to medically indigent patients covered by the Health Plan of Alameda County (HPAC) as contractual allowances. The following table summarizes the estimated HPAC unreimbursed costs for the year ended June 30, 2021:

HPAC unreimbursed cost	\$3,011
Percent of operating expenses	0.3 %

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E. Accounts Receivable

Accounts receivable at June 30, 2021, comprised the following:

Patient accounts receivable	\$ 236,571
Due from State of California	33,427
Other accounts receivable	25,659
Total	<u>\$ 295,657</u>

Patient accounts receivable include amounts due from third party payors, patients, and other agencies for patient services rendered and is net of \$79.1 million in estimated contractual adjustments and uncollectible accounts. Other accounts receivable include professional and other fees earned on patient services and services provided to various outside agencies. Also included in other accounts receivable are reimbursement claims for grants expenditures, amounts owed to AHS from the State for payments under the SB 1100 program, and uncollected contributions to the Foundation.

F. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses at June 30, 2021, comprised the following:

Accounts payable	\$ 36,479
Accrued payroll	36,030
Due to third-party payors	274,141
	<u>\$ 346,650</u>

G. Pension Obligation Bond Commitments

The County issued pension obligation bonds in 1995 and 1996 and contributed the net bond proceeds to the pension plan. A portion of the obligation is attributable to the participation of AHS employees in ACERA and allows ACERA to provide pension obligation bond credits to AHS, thus reducing contributions otherwise payable to ACERA over time. AHS has fully paid its share of the debt payments in FY 2021.

H. Defined Benefit Pension Plan

AHS is a participant in ACERA. ACERA is governed by the California Constitution, the County Employees Retirement Law of 1937, and the bylaws, procedures, and policies adopted by the Board of Retirement. ACERA operates a cost-sharing multiple employer defined benefit plan. ACERA provides service and disability retirement benefits, annual cost of living adjustments, and death benefits to plan members and beneficiaries. Benefit and contribution provisions are established by State law and are subject to amendment only by an act of the State of California legislature. An actuarial valuation is performed annually for the system as a whole.

The 1937 Act provides the authority for the establishment of ACERA benefit provisions. In most cases where the law provides options concerning the allowance of credit for service, the offering of benefits, or the modification of benefit levels, the law generally requires approval of the employers' governing boards for the option to take effect. Separately, in 1984 the Alameda County Board of Supervisors and the Board of Retirement approved the adoption of Article 5.5 of the 1937 Act. This adoption permitted the establishment of a Supplemental Retirees Benefit Reserve (SRBR) for ACERA.

Article 5.5 of the 1937 Act provides for the systematic funding of the SRBR and stipulates that it be used only for the benefit of retired members and beneficiaries. The law grants discretionary authority over the use of the SRBR funds to the Board of Retirement. Supplemental benefits currently provided through the SRBR include supplemental cost-of-living allowance, supplemental retired member death benefits, and the retiree monthly medical allowance, vision, dental, and Medicare Part B coverage. The payment of supplemental benefits from the

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SRBR is subject to available funding and must be periodically re-authorized by the Board of Retirement. SRBR benefits are not vested.

In 2006, the Board of Retirement approved the allocation of SRBR funds to Postemployment Medical Benefits and Other Pension Benefits. These two programs provide the supplemental benefits described above.

As of measurement date June 30, 2020, the proportionate share of net pension liability was \$356.3 million.

ACERA and AHS separately issue their stand-alone financial statements which can be directly obtained from their respective offices.

I. Other Postemployment Benefits

AHS also participates in an OPEB plan administered by ACERA for retired members and their eligible dependents. The OPEB plan is not a benefit entitlement program and benefits are subject to modification and/or deletion by the ACERA Board of Retirement. Annually, based on the recommendation of the Board of Retirement, the Board of Supervisors designates a portion of the County's and Health System's contribution to retirement towards medical premiums of retirees.

Retired employees from AHS receive a monthly medical allowance toward the cost of their health insurance from the SRBR. The SRBR is a funded trust that receives fifty percent of the investment earnings that are in excess of the target investment return of the ACERA pension fund. AHS does not make postemployment medical benefit payments directly to retirees and does not have the ability to fund these benefits.

As of measurement date June 30, 2020, the proportionate share of net OPEB liability was \$1.1 million.

ACERA and AHS separately issue their stand-alone financial statements which can be directly obtained from their respective offices.

19. Self-Insurance and Contingencies

A. Self-insurance and Purchased Insurance

The County is exposed to various risks of loss related to torts (theft, damage, and/or destruction of assets, errors and omissions, injuries to employees, natural disasters or medical malpractice); unemployment claims; and dental benefits provided to employees. The County maintains risk-financing internal service funds in which assets are set aside for claim settlements associated with general, automobile, and medical malpractice liability; workers' compensation; unemployment; and dental benefits to employees.

The County uses a combination of self-insurance, participation in insurance pools, and purchased insurance coverage for protection against adverse losses. Excess general liability, workers' compensation, and medical malpractice coverage is provided by Public Risk, Innovations, Solutions, and Management (PRISM) formerly known as CSAC-Excess Insurance Authority (CSAC-EIA), a joint powers authority whose purpose is to develop and fund programs of excess and primary insurance for its member counties and other California public entities. A Board of Directors consisting of one representative from each member county and seven members selected by the public entity membership governs the Authority. Purchased insurance includes primary all-risk property insurance for the County's entire real and personal property, equipment and vehicles; earthquake insurance for selected real property; Public Officials Dishonesty Bond coverage for losses related to theft of funds; and other coverage as listed below (amounts not in thousands). In fiscal year 2021, there was a reduction in certain coverage limits mainly due to the capacity available in the market and pricing.

The County utilizes a combination of self-insurance, pooled retentions, and excess insurance for the following property insurance programs. Amounts in excess of the limits listed for each program are self-insured. None of the insurance settlements over the past four years have exceeded insurance limits.

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PRIMARY GOVERNMENT

Property insurance is purchased on a March 31 policy year. Therefore, the information provided in the table below is for property insurance policies covering the period March 31, 2021 to March 31, 2022.

amounts in tables expressed in dollars

Property Insurance – Declared values as of March 31, 2021 for Policy Period March 31, 2021 to March 31, 2022			
	Funding Sources and Coverage Limits		
Coverage type and declared value, if applicable	Deductible	Pooled Retention Limit (CSAC-EIA)	Excess Insurance Limit (Various carriers)
All Risk		5,000,000 per occurrence, \$20,000,000 Aggregate, reinsured by EIO, a captive of PRISM	\$600,000,000
Real and personal property and rents: \$3,279,027,259	\$50,000		
Vehicles and mobile equipment (excluding buses): \$160,821,722	\$10,000 vehicles		
Buses: \$4,135,824	\$100,000		
Fine Arts (scheduled): \$1,952,093	\$50,000		
Terrorism	\$50,000	\$200,000	\$550,000,000
Flood: \$3,279,027,259	\$50,000 (5% per unit subject to minimum per occurrence based on total insurable value and a maximum of \$5 million per occurrence)	\$75,000	\$225,000,000 flood per tower
Earthquake: \$3,133,777,745	2%* of total values per unit \$100,000 per occurrence subject to a minimum of \$100,000 and \$50,000,000 maximum for Towers I, II, III, IV and V combined less the PRISM Buy-Down credit PRISM Deductible Buy-Down Credit: For all Earthquake events occurring in a single policy year in Towers I-VIII, the Authority is responsible for a maximum credit of 3% of total values per unit per occurrence per covered party subject to a maximum of \$30,000,000 per occurrence and annual aggregate for all covered parties. It is further understood and agreed that if the \$30,000,000 annual aggregate PRISM Deductible Buy-Down credit is exceeded by an accumulation of loss(es) from one or more events in a single policy year, the payments to individual covered parties will be made on a proportional basis.	Pooled retention is \$0. Alameda County is a member of the PRISM (formerly CSAC-EIA) property insurance program. Member properties are separated into eight different groups (towers) to achieve geographical diversity within each group and spread the risk of loss from a single earthquake. Alameda County property is spread between three groups (Towers I, II, and IV) with \$100 million in purchased coverage for each tower and an additional \$365 million in annual aggregate purchased coverage shared among all members in Towers I –VI only, for total purchased earthquake coverage of \$965M, subject to limits of \$465 million per tower. The total limit available to Alameda County across the three towers in which its property is scheduled is \$665 million: \$100 million per tower and \$365 million in annual aggregate coverage	

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The County utilizes a combination of self-insurance, pooled retentions, and excess insurance for the following programs:

amounts in tables expressed in dollars

Program Description	Funding Sources and Coverage Limits		
	Self-Insured Retention	Pooled Retention Limit (PRISM)	Excess Insurance Limit (Various carriers)
General and Auto Liability	\$1,000,000	\$37,750,000 group corridor retention in primary layer, reinsured by PRISM ARC, a captive of PRISM.	\$25,000,000 (inclusive of retention)
Medical Malpractice	\$25,000 deductible	\$1,500,000	\$17,975,000
Workers' Compensation	\$3,000,000	A single shared corridor retention of \$47,765,027 reinsured by EIO, a captive of PRISM	Statutory
Employer's Liability	\$3,000,000	N/A	N/A
Pollution Liability	\$250,000	\$0	\$10 million per pollution condition / \$10 million member aggregate limit of liability / \$50 million policy aggregate for all members combined

The County purchases insurance for the following exposures:

amounts in tables expressed in dollars

Description	Deductible	Limit
Aircraft Coverage:		
Aircraft Liability	\$0	\$25,000,000
Aircraft Hull (2000 Cessna 206H)	\$0	Property damage (PD) value: \$680,000
Aircraft Hull (1980 Cessna U206)	\$0	PD value: \$125,000
Aircraft Hull (Bell 505)	\$0	PD value: \$2,693,463
Watercraft Coverage:		
Watercraft Protection and Indemnity	\$1,000	\$1,000,000
Watercraft Collision and Towers	\$1,000	\$1,000,000
Watercraft Hull and Machinery	\$1,000	\$1,000,000
Foster Parents Liability	not renewed effective 7/14/21	
Crime Bond / Employee Dishonesty	\$2,500	\$15,000,000
Cyber Liability	\$250,000	\$12 million each member subject to \$70 million program aggregate between all layers combined
Cyber Liability – Enhanced Option	100,000 Notified Individuals	100,000 Notified Individuals
Public Official Bond	\$0	\$1,000,000
Notary Bonds	N/A	N/A
Notary Public Errors and Omissions	\$0	\$10,000

The estimated liability for claims and contingencies included in the risk management internal service fund is based on the results of actuarial studies and includes amounts for claims incurred but not reported. The estimated liability for claims and contingencies is calculated considering the effects of inflation, recent claim settlement trends, including frequency and amount of pay-outs, and other economic and social factors. It is the County's practice to obtain full actuarial studies annually for the workers' compensation, general liability, and medical malpractice programs. Annual charges to departments are calculated for insurance and self-insurance costs using a cost allocation method which uses multiple cost pools and allocation bases utilizing both paid claim

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experience and appropriate measures of loss exposures, such as payroll for employee-related costs or square footage occupied for costs associated with property.

Changes in the balances of the estimated liability for claims and contingencies during the past two fiscal years for all self-insurance funds are as follows:

	<u>General Liability</u>		<u>Workers' Compensation</u>		<u>Total</u>	
	<u>2020/21</u>	<u>2019/20</u>	<u>2020/21</u>	<u>2019/20</u>	<u>2020/21</u>	<u>2019/20</u>
Estimated liability for claims and contingencies at the beginning of the fiscal year	\$ 27,133	\$ 25,636	\$ 138,554	\$ 131,122	\$ 165,687	\$ 156,758
Incurring claims and claim adjustment expenses	6,899	10,513	39,073	31,419	45,972	41,932
Payments	(10,118)	(9,016)	(24,142)	(23,987)	(34,260)	(33,003)
Total estimated liability for claims and contingencies at the end of the fiscal year	<u>\$ 23,914</u>	<u>\$ 27,133</u>	<u>\$ 153,485</u>	<u>\$ 138,554</u>	<u>\$ 177,399</u>	<u>\$ 165,687</u>

B. Litigation

Various lawsuits have been instituted and claims have been made against the County, with provisions for potential losses included in the basic financial statements. In the opinion of County Counsel, it is not possible to accurately predict the County's liability under these actions, but final disposition should not materially affect the financial position of the County.

C. Federal and State Grants

The County participates in a number of federal and state grants programs subject to financial and compliance audits by the grantors or their representatives. Audits of certain grant programs for or including the year ended June 30, 2021, have not yet been conducted or settled. Accordingly, the County's compliance with applicable grant requirements will be established at some future date. The amount, if any, of expenditures which may be disallowed by the granting agencies cannot be determined at this time. However, management does not believe that any audit disallowances would have a significant effect on the financial position of the County.

D. Medicare and Medi-Cal Reimbursements

Alameda Health System's Medicare and Medi-Cal cost reports for certain prior years are in various stages of review by third-party intermediaries and have not yet been settled. AHS believes that it has adequately provided for any potential liabilities which may arise from the intermediaries' reviews.

20. Alameda County Redevelopment Successor Agency Private-Purpose Trust Fund

On December 29, 2011, the California Supreme Court upheld Assembly Bill x1 26 (ABx1 26) that provides for the dissolution of all redevelopment agencies in the State of California. This action impacted the reporting entity of the County that previously had reported the Alameda County Redevelopment Agency as a blended component unit. ABx1 26 provides that upon dissolution of a redevelopment agency, either the County or another unit of local government will agree to serve as the "successor agency" to hold the assets until they are distributed to other units of state and local government. On January 10, 2012, via board resolution R#2012-6, File #27856, Item #12A, the County Board of Supervisors designated the County as the successor agency, in accordance with ABx1 26.

After enactment of the law, which occurred on June 28, 2011, redevelopment agencies in the State of California cannot enter into new projects, obligations or commitments. Subject to the control of a newly established oversight board, remaining assets can only be used to pay enforceable obligations in existence at the date of dissolution (including the completion of any unfinished projects that were subject to legally enforceable contractual commitments).

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In future fiscal years, successor agencies will only be allocated revenue in the amount that is necessary to pay the estimated annual installment payments on enforceable obligations of the former redevelopment agency until all enforceable obligations of the prior redevelopment agency have been paid in full and all assets have been liquidated.

In accordance with the timeline set forth in ABx1 26 (as modified by the California Supreme Court on December 29, 2011) all redevelopment agencies in the State of California were dissolved and ceased to operate as a legal entity as of February 1, 2012. After the date of dissolution, as allowed in ABx1 26, the County elected to retain the housing assets and functions previously performed by the former redevelopment agency. The assets and activities of the Housing Successor Assets special revenue fund are reported within non-major governmental funds of the County. The remaining assets, liabilities, and activities of the dissolved Alameda County Redevelopment Agency are reported in the Alameda County Redevelopment Successor Agency private-purpose trust fund.

Capital asset activities of the private-purpose trust fund for the year ended June 30, 2021, are as follows:

	<u>Balance</u> <u>July 1, 2020</u>	<u>Increases</u>	<u>Decreases</u>	<u>Balance</u> <u>June 30, 2021</u>
Capital assets, being depreciated:				
Infrastructure	\$ 3,111	\$ -	\$ -	\$ 3,111
Less accumulated depreciation for:				
Infrastructure	(814)	(62)	-	(876)
Total capital assets, being depreciated, net	<u>\$ 2,297</u>	<u>\$ (62)</u>	<u>\$ -</u>	<u>\$ 2,235</u>

The changes in liabilities, other than long-term debt, of the private-purpose trust fund for the year ended June 30, 2021 are as follows:

	<u>Balance</u> <u>July 1, 2020</u>	<u>Increases</u>	<u>Decreases</u>	<u>Balance</u> <u>June 30, 2021</u>	<u>Amounts</u> <u>Due</u> <u>Within</u> <u>One Year</u>
Due to other governmental units	<u>\$ 4,890</u>	<u>\$ -</u>	<u>\$ (1,485)</u>	<u>\$ 3,405</u>	<u>\$ 1,566</u>

The outstanding tax allocation bonds of the Alameda County Redevelopment Successor Agency as of June 30, 2021:

<u>Type of Obligation and Purpose</u>	<u>Maturity</u>	<u>Interest</u> <u>Rates</u>	<u>Original</u> <u>Issue</u>	<u>Outstanding</u>
Tax allocation bonds				
Alameda County Successor Agency				
Eden Area Redevelopment Bonds	8/1/2036	4.0 - 5.0 %	\$ 34,735	\$ 23,450

On February 2, 2006, the Alameda County Redevelopment Agency issued \$34.7 million in tax allocation bonds Series 2006A to finance redevelopment eligible activities in Castro Valley, Cherryland, and San Lorenzo project areas. Interest on the bonds varies from 4.0 to 5.0 percent and is payable twice a year, August 1 and February 1, while principal on the bonds is payable on August 1 every year. Total principal and interest remaining on the bonds is \$33.5 million, with the final payment due on August 1, 2036. The tax allocation bonds are secured by and to be serviced from tax increment revenues of the project areas. All project tax increment revenues except dedicated housing tax increment allocation are the security for the bonds. These revenues have been pledged until the year 2036. Pledged tax increment revenue recognized during the year ended June 30, 2020 was \$2.0 million as against the total debt service payment of \$2.1 million. Pursuant to California Assembly Bill ABx1 26, the responsibility for the payment of this debt was transferred to the Alameda County Redevelopment Successor Agency private-purpose trust fund.

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The changes in the tax allocation bonds of the Alameda County Redevelopment Successor Agency for the year ended June 30, 2021, are as follows:

	Balance July 1, 2020	Additional Obligations and Net Increases	Current Maturities, Retirements, and Net Decreases	Balance June 30, 2021	Amounts Due Within One Year
Tax allocation bonds	\$ 24,450	\$ -	\$ (1,000)	\$ 23,450	\$ 1,040
Unamortized bond premium	197	-	(13)	184	12
Total private-purpose trust bonds payable	<u>\$ 24,647</u>	<u>\$ -</u>	<u>\$ (1,013)</u>	<u>\$ 23,634</u>	<u>\$ 1,052</u>

Annual debt service requirements for Alameda County Redevelopment Successor Agency tax allocation bonds outstanding as of June 30, 2021 are as follows:

For the Year Ending June 30	Tax Allocation Bonds		
	Principal	Interest	Total
2022	\$ 1,040	\$ 1,063	\$ 2,103
2023	1,085	1,017	2,102
2024	1,130	970	2,100
2025	1,180	921	2,101
2026	1,230	870	2,100
2027-2031	6,995	3,487	10,482
2032-2036	8,765	1,645	10,410
2037-2041	2,025	51	2,076
	<u>\$ 23,450</u>	<u>\$ 10,024</u>	<u>\$ 33,474</u>

21. Restatement of Beginning Net Position and Fund Balance

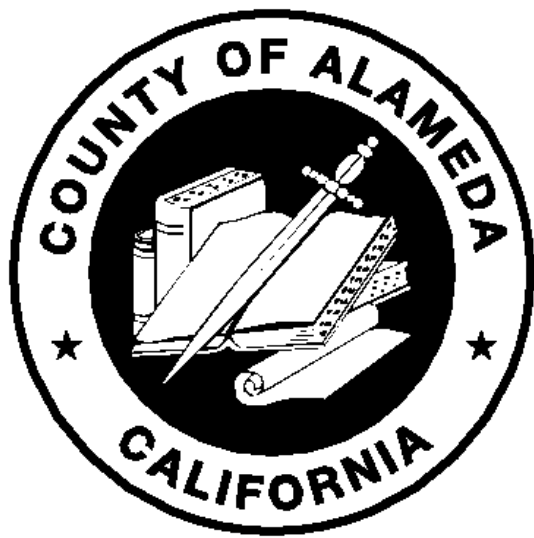
In fiscal year 2021, the County restated the beginning net position as a result of GASB Statement No. 84 implementation.

The beginning net position was restated in the government activities and fiduciary funds as follows:

	Governmental Activities	Pension, OPEB & Other Employee Benefit Trust Trust Funds	Custodial Funds
Net position- beginning of period, as reported	\$ 2,178,847	\$ 8,791,784	\$ -
Cumulative effect of GASB 84 implementation	2,499	(2,510)	135,002
Net position- beginning of period, as restated	<u>\$ 2,181,346</u>	<u>\$ 8,789,274</u>	<u>\$ 135,002</u>

The beginning fund balance was restated in the general fund as follows:

	General Fund
Fund balance- beginning of period, as reported	\$ 3,396,868
Cumulative effect of GASB 84 implementation	2,499
Fund balance- beginning of period, as restated	<u>\$ 3,399,367</u>



**REQUIRED SUPPLEMENTARY
INFORMATION**

COUNTY OF ALAMEDA, CALIFORNIA

REQUIRED SUPPLEMENTARY INFORMATION
(amounts expressed in thousands)
JUNE 30, 2021

Schedule of Proportionate Share of the Net Pension Liability and Related Ratios

ACERA

Fiscal Year	Proportion of Net Pension Liability (NPL)	Proportionate Share of NPL (a)	Covered Payroll (b)	NPL Proportion as percentage of Covered Payroll (a/b)	Plan Fiduciary Net Position as a percentage of Total Pension Liability
2021	77.79 %	\$ 1,706,972	\$ 776,023	219.96 %	79.37 %
2020	77.58	1,660,819	748,170	221.98	78.51
2019	75.96	2,099,536	719,298	291.89	77.93
2018	77.54	1,561,392	686,402	227.47	77.93
2017	76.56	1,717,410	660,415	260.05	77.01
2016	76.26	1,615,549	658,750	245.24	73.43
2015	77.01	1,340,553	614,704	218.08	77.26

CalPERS Miscellaneous Plan

Fiscal Year	Proportion of Net Pension Liability (NPL)	Proportionate Share of NPL (a)	Covered Payroll (b)	NPL Proportion as percentage of Covered Payroll (a/b)	Plan Fiduciary Net Position as percentage of Total Pension Liability
2021	0.033 %	\$ 3,561	\$ 7,294	48.82 %	75.10 %
2020	0.030	3,081	7,206	42.74	75.26
2019	0.028	2,652	6,737	39.37	73.31
2018	0.027	2,720	6,311	43.10	73.31
2017	0.025	2,181	6,134	35.56	74.06
2016	0.023	1,600	5,951	26.88	78.40
2015	0.026	1,614	5,244	30.77	83.03

These schedules are intended to show information for ten years, information will be added as it becomes available.

COUNTY OF ALAMEDA, CALIFORNIA

REQUIRED SUPPLEMENTARY INFORMATION
(amounts expressed in thousands)
JUNE 30, 2021

Schedule of Changes in the Net Pension Liability and Related Ratios

CalPERS Safety Plan

	<u>Fiscal Year 2021</u>	<u>Fiscal Year 2020</u>	<u>Fiscal Year 2019</u>	<u>Fiscal Year 2018</u>	<u>Fiscal Year 2017</u>	<u>Fiscal Year 2016</u>	<u>Fiscal Year 2015</u>
Total pension liability							
Service cost	\$ 14,304	\$ 14,261	\$ 13,865	\$ 13,986	\$ 13,168	\$ 13,449	\$ 14,144
Interest	34,628	32,718	30,560	29,083	27,452	25,746	23,869
Changes of assumptions	-	-	(1,306)	24,186	-	(6,244)	-
Differences between expected and actual experience	2,137	6,701	(1,356)	692	(352)	1,544	-
Benefit payments, including refunds of employee contributions	(23,174)	(21,682)	(20,592)	(18,785)	(17,229)	(15,559)	(13,785)
Net change in total pension liability	27,895	31,998	21,171	49,162	23,039	18,936	24,228
Total pension liability, beginning	486,608	454,610	433,439	384,277	361,238	342,302	318,074
Total pension liability, ending	<u>\$ 514,503</u>	<u>\$ 486,608</u>	<u>\$ 454,610</u>	<u>\$ 433,439</u>	<u>\$ 384,277</u>	<u>\$ 361,238</u>	<u>\$ 342,302</u>
Safety plan fiduciary net position							
Contributions - employer	\$ 17,174	\$ 15,151	\$ 14,551	\$ 14,046	\$ 12,596	\$ 12,024	\$ 12,029
Contributions - employee	4,974	4,761	4,764	4,434	4,164	4,144	4,465
Net investment income	18,240	22,622	26,991	32,203	1,614	6,379	41,634
Other miscellaneous income/(Expense)	-	1	(948)	-	-	-	-
Benefit payments, including refunds of employee contributions	(23,174)	(21,682)	(20,592)	(18,785)	(17,229)	(15,559)	(13,785)
Administrative expense	(515)	(246)	(499)	(426)	(175)	(324)	-
Net change in safety plan fiduciary net position	16,699	20,607	24,267	31,472	970	6,664	44,343
Safety plan fiduciary net position, beginning	365,112	344,505	320,238	288,766	287,796	281,132	236,789
Safety plan fiduciary net position, ending	<u>\$ 381,811</u>	<u>\$ 365,112</u>	<u>\$ 344,505</u>	<u>\$ 320,238</u>	<u>\$ 288,766</u>	<u>\$ 287,796</u>	<u>\$ 281,132</u>
County's net pension liability - ending	<u>\$ 132,692</u>	<u>\$ 121,496</u>	<u>\$ 110,105</u>	<u>\$ 113,201</u>	<u>\$ 95,511</u>	<u>\$ 73,442</u>	<u>\$ 61,170</u>
Safety plan fiduciary net position as a percentage of the total pension liability	74.21 %	75.03 %	75.78 %	73.88 %	75.15 %	79.67 %	82.13 %
Covered payroll	\$ 50,508	\$ 49,197	\$ 47,042	\$ 45,815	\$ 45,596	\$ 45,029	\$ 45,785
County's net pension liability as a percentage of covered payroll	262.72 %	246.96 %	234.06 %	247.08 %	209.47 %	163.10 %	133.60 %

These schedules are intended to show information for ten years, information will be added as it becomes available.

COUNTY OF ALAMEDA, CALIFORNIA

REQUIRED SUPPLEMENTARY INFORMATION
(amounts expressed in thousands)
JUNE 30, 2021

Schedule of County Contributions - Pension Plans

ACERA

Fiscal Year*	Contractually Required Contribution	Contributions in relation to Contractually Required Contribution	Contribution Deficiency (Excess)	Covered Payroll	Contributions as a percentage of Covered Payroll
2021	\$ 242,029	\$ 1,042,029	\$ (800,000)	\$ 790,006	131.90 %
2020	231,127	231,127	-	763,495	30.27
2019	220,067	220,067	-	737,129	29.85
2018	189,776	189,776	-	704,619	26.93
2016	182,764	182,764	-	660,415	27.67
2015	169,323	169,323	-	658,750	25.70
2014	159,661	159,661	-	614,704	25.97

*Starting FY 2018, county contributions are reported by fiscal year instead of calendar year.

CalPERS Miscellaneous Plan

Fiscal Year	Contractually Required Contribution	Contributions in relation to Contractually Required Contribution	Contribution Deficiency (Excess)	Covered Payroll	Contributions as a percentage of Covered Payroll
2021	\$ 950	\$ 950	\$ -	\$ 7,908	12.01 %
2020	808	808	-	7,294	11.08
2019	729	729	-	7,206	10.12
2018	632	632	-	6,737	9.38
2017	515	515	-	6,311	8.16
2016	491	491	-	6,134	8.00
2015	652	652	-	5,951	10.96
2014	564	564	-	5,244	10.76

CalPERS Safety Plan

Fiscal Year	Actuarially Determined Contribution	Contributions in relation to Actuarially Determined Contribution	Contribution Deficiency (Excess)	Covered Payroll	Contributions as a percentage of Covered Payroll
2021	\$ 18,933	\$ 18,933	\$ -	\$ 53,678	35.27 %
2020	17,174	17,174	-	51,677	33.23
2019	15,178	15,178	-	49,197	30.85
2018	10,067	10,067	-	47,042	21.40
2017	14,046	14,046	-	45,815	30.66
2016	12,596	12,596	-	45,596	27.63
2015	12,024	12,024	-	45,029	26.70
2014	12,029	12,029	-	45,785	26.27

These schedules are intended to show information for ten years, information will be added as it becomes available.

COUNTY OF ALAMEDA, CALIFORNIA

REQUIRED SUPPLEMENTARY INFORMATION

(amounts expressed in thousands)

JUNE 30, 2021

Notes to the CalPERS Safety Plan Schedule - Pension

The actuarial methods and assumptions used to set the actuarially determined contributions for June 30, 2020 measurement date were from the June 30, 2017 public agency valuations:

Actuarial cost method	Entry age normal
Asset valuation method	Fair value of Assets
Inflation	2.63%
Salary increases	Varies by entry age and service
Payroll growth	2.88%
Investment rate of return	7.25% net of pension plan investment and administrative expenses, including inflation.
Retirement age	The probabilities of retirement are based on the 2017 CalPERS Experience Study for the period from 1997 to 2015.
Mortality	The probabilities of mortality are based on the 2017 CalPERS Experience Study for the period from 1997 to 2015. Pre-retirement and post-retirement mortality rates include 15 years of projected mortality improvement using Scale BB published by the Society of Actuaries.

COUNTY OF ALAMEDA, CALIFORNIA

REQUIRED SUPPLEMENTARY INFORMATION
(amounts expressed in thousands)
JUNE 30, 2021

Schedule of Proportionate Share of the Net OPEB Liability and Related Ratios

ACERA

Fiscal Year	Proportion of Net OPEB Liability (NOL)	Proportionate Share of NOL (a)	Covered Payroll (b)	NOL Proportion as percentage of Covered Payroll (a/b)	Plan Fiduciary Net Position as a percentage of Total OPEB Liability
2021	76.26 %	\$ 5,101	\$ 776,102	0.66 %	99.44 %
2020	76.04	85,874	751,655	11.43	89.57
2019	75.36	175,522	719,298	24.40	77.91
2018	75.20	20,664	686,402	3.01	97.33

Schedule of Changes in the Net OPEB Liability and Related Ratios

CalPERS

	Fiscal Year 2021	Fiscal Year 2020	Fiscal Year 2019	Fiscal Year 2018
Service cost	\$ 4,077	\$ 5,269	\$ 5,379	\$ 5,905
Interest	7,903	7,539	7,047	6,490
Changes of assumptions	-	(17,094)	(3,878)	(9,592)
Differences between expected and actual experience	(2,050)	(4,449)	-	-
Benefit payments, including refunds of employee contributions	(5,103)	(4,922)	(4,626)	(4,915)
Net change in total OPEB liability	4,827	(13,657)	3,922	(2,112)
Total OPEB liability, beginning	115,564	129,221	125,299	127,411
Total OPEB liability, ending	<u>\$ 120,391</u>	<u>\$ 115,564</u>	<u>\$ 129,221</u>	<u>\$ 125,299</u>

CalPERS fiduciary net position

Contributions - employer	\$ 6,809	\$ 6,929	\$ 6,668	\$ 7,086
Contributions - employee	2,484	2,030	1,630	1,241
Net investment income	1,062	1,519	1,424	1,468
Benefit payments, including refunds of employee contributions	(5,103)	(4,922)	(4,626)	(4,915)
Administrative expense	(27)	(15)	(33)	(8)
Net change in safety plan fiduciary net position	5,225	5,541	5,063	4,872
Safety plan fiduciary net position, beginning	28,025	22,484	17,421	12,549
Safety plan fiduciary net position, ending	<u>\$ 33,250</u>	<u>\$ 28,025</u>	<u>\$ 22,484</u>	<u>\$ 17,421</u>

County's net OPEB liability - ending

<u>\$ 87,141</u>	<u>\$ 87,539</u>	<u>\$ 106,737</u>	<u>\$ 107,878</u>
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CalPERS plan fiduciary net position as a percentage of the total OPEB liability

27.62 %	24.25 %	17.40 %	13.90 %
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Covered payroll

\$ 70,253	\$ 73,445	\$ 70,029	\$ 72,109
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County's net OPEB liability as a percentage of covered payroll

124.04 %	119.19 %	152.42 %	149.60 %
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These schedules are intended to show information for ten years, information will be added as it becomes available.

COUNTY OF ALAMEDA, CALIFORNIA

REQUIRED SUPPLEMENTARY INFORMATION
(amounts expressed in thousands)
JUNE 30, 2021

Schedule of County Contributions - OPEB Plans

ACERA

Fiscal Year*	Contractually Required Contribution	Contributions in relation to Contractually Required Contribution	Contribution Deficiency (Excess)	Covered Payroll	Contributions as a percentage of Covered Payroll
2021	\$ -	\$ -	\$ -	\$ 790,086	- %
2020	-	-	-	767,051	-
2019	-	-	-	737,129	-
2018	-	-	-	704,619	-

CalPERS

Fiscal Year	Contractually Required Contribution	Contributions in relation to Contractually Required Contribution	Contribution (Excess)	Covered Payroll	Contributions as a percentage of Covered Payroll
2021	\$ 8,270	\$ 7,145	\$ 1,125	\$ 77,331	9.20 %
2020	10,322	6,809	3,513	70,253	9.70
2019	10,021	6,929	3,092	73,445	9.40
2018	11,220	6,668	4,552	75,330	8.90

These schedules are intended to show information for ten years, information will be added as it becomes available

COUNTY OF ALAMEDA, CALIFORNIA

**REQUIRED SUPPLEMENTARY INFORMATION
BUDGETARY COMPARISON SCHEDULE
GENERAL FUND
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Budgetary Basis	Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 603,397	\$ 678,668	\$ 673,319	\$ (5,349)
Licenses and permits	10,177	10,182	10,988	806
Fines, forfeitures, and penalties	13,322	13,483	43,993	30,510
Use of money and property	18,029	18,797	18,602	(195)
State aid	1,255,986	1,311,781	1,335,870	24,089
Federal aid	515,583	586,781	512,196	(74,585)
Other aid	69,078	79,497	82,806	3,309
Charges for services	397,056	413,088	403,135	(9,953)
Other revenue	152,688	194,834	118,133	(76,701)
Total revenues	3,035,316	3,307,111	3,199,042	(108,069)
Expenditures:				
Current				
General government				
Salaries and benefits	116,956	120,826	111,491	9,335
Services and supplies	63,824	69,357	49,257	20,100
Other charges	27,492	24,994	25,323	(329)
Capital assets	11,465	34,552	1,073	33,479
Public protection				
Salaries and benefits	612,999	1,444,141	1,405,024	39,117
Services and supplies	294,760	320,192	277,053	43,139
Other charges	7,109	7,092	6,337	755
Capital assets	1,246	2,832	2,699	133
Public assistance				
Salaries and benefits	299,614	300,561	274,680	25,881
Services and supplies	326,276	352,590	281,920	70,670
Other charges	361,275	361,375	321,822	39,553
Capital assets	150	34,639	34,442	197
Health and sanitation				
Salaries and benefits	239,372	242,883	205,041	37,842
Services and supplies	792,543	879,659	731,710	147,949
Other charges	123,682	186,566	173,640	12,926
Capital assets	-	102	37	65
Public ways and facilities				
Salaries and benefits	550	550	496	54
Services and supplies	3,343	3,343	3,225	118
Recreation and cultural services				
Salaries and benefits	9	10	10	-
Services and supplies	909	908	760	148
Education				
Services and supplies	367	368	368	-
Capital outlay	2,156	2,819	2,750	69
Total expenditures	3,286,097	4,390,359	3,909,158	481,201
Excess (deficiency) of revenues over expenditures	(250,781)	(1,083,248)	(710,116)	373,132
Other financing sources (uses):				
Transfers in	-	34,212	31,117	(3,095)
Transfers out	-	(126,113)	(105,660)	20,453
Budgetary reserves and designations	-	(77,705)	-	77,705
Total other financing sources (uses)	-	(169,606)	(74,543)	95,063
Net change in fund balance	(250,781)	(1,252,854)	(784,659)	468,195
Add outstanding encumbrances for current budget year	-	-	320,867	320,867
Fund balance - beginning of period, as reported	2,067,280	2,067,280	2,067,280	-
Cumulative effect of restatements	2,499	2,499	2,499	-
Fund balance - beginning of period, as restated	2,069,779	2,069,779	2,069,779	-
Fund balance - end of period	\$ 1,818,998	\$ 816,925	\$ 1,605,987	\$ 789,062

COUNTY OF ALAMEDA, CALIFORNIA

**REQUIRED SUPPLEMENTARY INFORMATION
BUDGETARY COMPARISON SCHEDULE
DISASTER RESPONSE
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Use of money and property	\$ -	\$ -	\$ (1,539)	\$ (1,539)
State aid	-	-	38,450	38,450
Federal aid	-	64,772	253,467	188,695
Other aid	-	-	1,887	1,887
Other revenue	-	-	1,006	1,006
Total revenues	<u>-</u>	<u>64,772</u>	<u>293,271</u>	<u>228,499</u>
Expenditures:				
Current				
General government				
Services and supplies	-	-	8,215	(8,215)
Other charges	-	-	9,688	(9,688)
Capital assets	-	-	447	(447)
Public protection				
Services and supplies	-	-	396	(396)
Public assistance				
Services and supplies	-	26,947	136,803	(109,856)
Other charges	-	-	3,450	(3,450)
Health and sanitation				
Services and supplies	-	35,325	144,519	(109,194)
Other charges	-	2,500	1,329	1,171
Capital assets	-	-	322	(322)
Total expenditures	<u>-</u>	<u>64,772</u>	<u>305,169</u>	<u>(240,397)</u>
Deficiency of revenues over expenditures	<u>-</u>	<u>-</u>	<u>(11,898)</u>	<u>(11,898)</u>
Net change in fund balance	-	-	(38,516)	(38,516)
Add outstanding encumbrances for current budget year	-	-	21,272	21,272
Fund balance - beginning of period	<u>(3,694)</u>	<u>(3,694)</u>	<u>(3,694)</u>	<u>-</u>
Fund balance - end of period	<u><u>\$ (3,694)</u></u>	<u><u>\$ (3,694)</u></u>	<u><u>\$ (20,938)</u></u>	<u><u>\$ (17,244)</u></u>

COUNTY OF ALAMEDA, CALIFORNIA

**REQUIRED SUPPLEMENTARY INFORMATION
BUDGETARY COMPARISON SCHEDULE
PROPERTY DEVELOPMENT SPECIAL REVENUE FUND
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive Negative
	Original	Final		
Revenues:				
Use of money and property	\$ 237	\$ 237	\$ 24,697	\$ 24,460
Other revenue	3,000	3,000	2,454	(546)
Total revenues	<u>3,237</u>	<u>3,237</u>	<u>27,151</u>	<u>23,914</u>
Expenditures:				
Current				
General government				
Salaries and benefits	540	540	291	249
Services and supplies	1,459	1,459	489	970
Capital assets	125	125	-	125
Public assistance				
Salaries and benefits	-	158,985	136,259	22,726
Total expenditures	<u>2,124</u>	<u>161,109</u>	<u>137,039</u>	<u>24,070</u>
Excess of revenues over expenditures	<u>1,113</u>	<u>(157,872)</u>	<u>(109,888)</u>	<u>47,984</u>
Other financing sources (uses):				
Proceeds from sale of land	25,400	25,400	-	(25,400)
Transfers out	(26,620)	(29,273)	(14,772)	14,501
Total other financing sources (uses)	<u>(1,220)</u>	<u>(3,873)</u>	<u>(14,772)</u>	<u>(10,899)</u>
Net change in fund balance	(107)	(161,745)	(124,660)	37,085
Add outstanding encumbrances for current budget year	-	-	54,099	54,099
Fund balance - beginning of period	<u>544,418</u>	<u>544,418</u>	<u>544,418</u>	<u>-</u>
Fund balance - end of period	<u>\$ 544,311</u>	<u>\$ 382,673</u>	<u>\$ 473,857</u>	<u>\$ 91,184</u>

COUNTY OF ALAMEDA, CALIFORNIA

**REQUIRED SUPPLEMENTARY INFORMATION
BUDGETARY COMPARISON SCHEDULE
FLOOD CONTROL SPECIAL REVENUE FUND
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 47,113	\$ 54,780	\$ 54,728	\$ (52)
Licenses and permits	5	5	122	117
Use of money and property	2,836	2,836	976	(1,860)
State aid	5,212	5,212	300	(4,912)
Federal aid	451	451	3,127	2,676
Other aid	2,993	2,993	6,468	3,475
Charges for services	11,689	11,689	12,942	1,253
Other revenue	75	75	106	31
Total revenues	70,374	78,041	78,769	728
Expenditures:				
Current				
Public protection				
Salaries and benefits	71,604	71,718	49,598	22,120
Services and supplies	104,017	149,849	43,198	106,651
Other charges	3,548	3,738	1,011	2,727
Capital assets	5,484	5,883	1,468	4,415
Total expenditures	184,653	231,188	95,275	135,913
Excess (deficiency) of revenues over expenditures	(114,279)	(153,147)	(16,506)	136,641
Other financing uses:				
Transfers-in	-	-	1	1
Transfers out	(100)	(248)	(149)	99
Total other financing uses	(100)	(248)	(148)	100
Net change in fund balance	(114,379)	(153,395)	(16,654)	136,741
Add outstanding encumbrances for current budget year	-	-	29,456	29,456
Fund balance - beginning of period	256,505	256,505	256,505	-
Fund balance - end of period	\$ 142,126	\$ 103,110	\$ 269,307	\$ 166,197

COUNTY OF ALAMEDA, CALIFORNIA

NOTES TO REQUIRED SUPPLEMENTARY INFORMATION
JUNE 30, 2021

1. Budget and Budgetary Accounting

General Budget Policies

In accordance with the provisions of Sections 29000 through 29143, inclusive, of the California Government Code and other statutory provisions, commonly known as the County Budget Act, the County prepares a budget on or before August 30, for each fiscal year. The expenditure side of the budget is enacted into law through the passage of an appropriation ordinance. This ordinance constitutes the maximum authorizations for spending during the fiscal year, and cannot be exceeded except by subsequent amendment of the budget by the Board of Supervisors. A balanced operating budget is adopted each fiscal year for the general fund, the special revenue funds, with the exception of the capital projects fund. No formal budget is adopted for disaster response, inmate welfare and housing successor asset special revenue funds. Public hearings are conducted on the proposed budget prior to adoption to review all appropriations and sources of financing. The prior year fund balance is used as part of the balancing formula. Because the final budget must be balanced, any shortfall in revenue requires an equal reduction in appropriations.

Any amendments or transfers of appropriations between object levels within the same department or between departments must be approved by the County Board of Supervisors. Supplemental appropriations normally financed by unanticipated revenues during the year must also be approved by the Board. Additionally, the Auditor-Controller is authorized to make certain transfers of surplus appropriations within a department. Such adjustments are reflected in the final budgetary data.

Expenditures are controlled at the object level for all budgets within the County except for capital assets, which are controlled at the sub-object level. The object level is the level at which expenditures may not legally exceed appropriations. Appropriations lapse at the close of the fiscal year to the extent that they have not been expended or encumbered.

General fund budgetary comparisons are not presented at the detail object level in this financial report due to their excessive length. A separate publication presenting this information is available from the Alameda County Auditor-Controller's Office, 1221 Oak Street, Oakland, CA 94612.

Budgetary Basis of Accounting

The County prepares its budget on a basis of accounting that differs from generally accepted accounting principles (GAAP). The actual results of operations are presented in the Budgetary Comparison Schedule – General Fund and Major Special Revenue Funds on the budgetary basis to provide a meaningful comparison of actual results with the budget. Budgeted amounts represent the original budget and the original budget as modified by adjustments authorized during the year. The difference between the budgetary basis of accounting and GAAP is that encumbrances are recorded as expenditures under the budgetary basis. The amounts reported as expenditures also include amounts charged each department for payment of the debt service on the pension obligation bonds because the budget includes these amounts as expenditures. The pension bond debt service transfer is a reporting adjustment on the Budgetary Comparison Schedule to agree with the financial statements where such expenditures are reported as transfers in accordance with generally accepted accounting principles.

2. Reconciliation of Budget vs. GAAP Basis Expenditures

The differences between budgetary expenditures and GAAP expenditures are presented in the following table:

Reconciliation of Budget vs. GAAP Basis Expenditures

	General Fund	Disaster Response Fund	Property Development Fund	Flood Control Fund
Budget basis expenditures	\$ 3,909,157	\$ 305,169	\$ 137,039	\$ 95,275
Encumbrances for current budget year	(320,867)	(21,272)	(54,099)	(29,456)
GAAP basis expenditures	<u>\$ 3,588,290</u>	<u>\$ 283,897</u>	<u>\$ 82,940</u>	<u>\$ 65,819</u>

COUNTY OF ALAMEDA, CALIFORNIA

**NOTES TO REQUIRED SUPPLEMENTARY INFORMATION
JUNE 30, 2021**

3. Excess of Budgetary Expenditures Over Appropriations

Funding received from the Coronavirus Aid, Relief and Economic Security Act (CARES) is included in the Disaster Response Fund. When the County Board of Supervisors approved acceptance of the CARES funds, they delegated administrative authority for how to spend the funds to the County Administrator's Office. Since there was no board direction on how to budget the funds, the County did not apply budgetary controls in the accounting system. Line items in the budgetary comparison schedule with an excess of budgetary expenditures over appropriations are due to CARES funded expenditures. The County Administrator's Office approved CARES expenditures on a case-by-case basis to ensure compliance with CARES funding rules. All other funding sources in the Disaster Response Fund are subject to board authorization for appropriations and utilize the budgetary controls in the accounting system.



**COMBINING FINANCIAL
STATEMENTS AND OTHER
SUPPLEMENTARY INFORMATION**

**COUNTY OF ALAMEDA, CALIFORNIA
COMBINING FINANCIAL STATEMENTS AND
OTHER SUPPLEMENTARY INFORMATION**

Capital Projects Fund

The capital projects fund is used to account for the acquisition and construction of major capital facilities other than those financed by proprietary funds and trust funds.

COUNTY OF ALAMEDA, CALIFORNIA

**CAPITAL PROJECTS FUND
BUDGETARY COMPARISON SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary	Variance Positive
	Original	Final	Basis	(Negative)
Revenues:				
Fines, forfeitures, and penalties	\$ 10,200	\$ 10,200	\$ -	\$ (10,200)
Use of money and property	-	-	145	145
State aid	-	-	64	64
Other revenue	-	-	965	965
Total revenues	<u>10,200</u>	<u>10,200</u>	<u>1,174</u>	<u>(9,026)</u>
Expenditures:				
Capital outlay	<u>101,913</u>	<u>112,437</u>	<u>70,727</u>	<u>41,710</u>
Total expenditures	<u>101,913</u>	<u>112,437</u>	<u>70,727</u>	<u>41,710</u>
Excess (deficiency) of revenues				
Deficiency of revenues over expenditures	<u>(91,713)</u>	<u>(102,237)</u>	<u>(69,553)</u>	<u>32,684</u>
Other financing sources (uses):				
Transfers in	16,404	32,671	56,592	23,921
Transfers out	<u>(944)</u>	<u>(14,582)</u>	<u>(706)</u>	<u>13,876</u>
Total other financing sources (uses)	<u>15,460</u>	<u>18,089</u>	<u>55,886</u>	<u>37,797</u>
Net change in fund balance	<u>(76,253)</u>	<u>(84,148)</u>	<u>(13,667)</u>	<u>70,481</u>
Add outstanding encumbrances for current budget year	-	-	28,684	28,684
Fund balance - beginning	<u>58,322</u>	<u>58,322</u>	<u>58,322</u>	<u>-</u>
Fund balance - ending	<u><u>\$ (17,931)</u></u>	<u><u>\$ (25,826)</u></u>	<u><u>\$ 73,339</u></u>	<u><u>\$ 99,165</u></u>

**COUNTY OF ALAMEDA, CALIFORNIA
COMBINING FINANCIAL STATEMENTS AND
OTHER SUPPLEMENTARY INFORMATION**

Non-major Governmental Funds

SPECIAL REVENUE FUNDS

Special revenue funds are used to account for the proceeds of specific revenue sources (other than major capital projects) that are legally restricted to expenditures for specified purposes.

Fish and Game Fund - This fund is used to account for fines and forfeitures received under Section 13003 of the Fish and Game Code and their expenditure for the propagation and conservation of fish and wildlife.

Road Fund - This fund is used to account for state and local tax apportionments and other authorized revenues, the expenditure of which is restricted to street, road, highway, and bridge purposes.

County Library Fund - This fund is used to account for taxes and other revenues collected in specific areas of the County, which are restricted to fund the operation of county libraries within those areas.

Library Special Taxing Zone Fund - This fund is used to account for taxes and other revenues collected in the cities of Dublin, Newark, and Union City, and in specific unincorporated areas for the maintenance and operation of certain library buildings.

Health Services Fund - This fund is used to account for assessments and other revenues collected in specific areas of the County, which are restricted for the provision of emergency medical services, vector control services and lead abatement services.

Fire Fund - This fund is used to account for revenues and expenditures of funds restricted for fire protection services in the unincorporated areas of the County.

Recovery Grants Fund - This fund is used to account for federal grants received under the American Recovery & Reinvestment Act of 2009.

Lighting Fund - This fund is used to account for revenues and expenditures restricted for street lighting in the unincorporated areas of Castro Valley, Ashland, Cherryland, San Lorenzo, and the unincorporated areas of Hayward and San Leandro.

Public Ways and Facilities Fund - This fund is used to account for revenues and expenditures restricted for the provision of road maintenance, bridge maintenance and sanitary sewer, domestic water, and drainage facilities in the unincorporated service areas of Castlewood, Castle Homes, Morva Drive, Morva Court, Five Canyons and the Estuary Bridges.

Dublin Library Fund - This fund is used to account for revenues and expenditures for the maintenance of the Dublin library in the city of Dublin.

Police Protection Fund - This fund is used to account for revenues and expenditures restricted for the provision of police protection in the unincorporated areas of the County.

Housing Successor Assets Fund – This fund is used to account for the low and moderate income housing assets of the former Alameda County Redevelopment Agency. A formal budget is not adopted for this fund.

Inmate Welfare Fund – This fund is used to account for all revenues and expenditures of maintaining and operating a store in connection with the County adult and juvenile detention facilities. The funds shall be expended for the benefit, education, and welfare of the inmates. A formal budget is not adopted for this fund.

DEBT SERVICE FUND

Tobacco Securitization Authority Fund – This fund is used to account for all revenues and expenditures relating to the activities of the tobacco master settlement agreement with the U.S. tobacco companies.

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING BALANCE SHEET
NON-MAJOR GOVERNMENTAL FUNDS
JUNE 30, 2021
(amounts expressed in thousands)**

	Special Revenue					
	Fish and Game	Road	County Library	Library Special Taxing Zone	Health Services	Fire
Assets:						
Cash and investments with County Treasurer	\$ 217	\$ 129,247	\$ 21,363	\$ 909	\$ 20,610	\$ 94,005
Cash and investments with fiscal agents	-	-	2	-	-	2
Restricted assets - cash and investments with fiscal agents	-	-	-	-	-	-
Deposits with others	-	-	-	-	-	13,879
Other receivables	1	5,974	1,873	31	48	11,993
Due from component unit	-	3	-	-	-	-
Inventory of supplies	-	151	-	-	-	-
Prepaid items	-	-	-	-	-	42
Loans receivable	-	-	-	-	173	-
Total assets	<u>\$ 218</u>	<u>\$ 135,375</u>	<u>\$ 23,238</u>	<u>\$ 940</u>	<u>\$ 20,831</u>	<u>\$ 119,921</u>
Liabilities, deferred inflows of resources, and fund balances						
Liabilities:						
Accounts payable and accrued expenditures	\$ -	\$ 5,935	\$ 1,350	\$ -	\$ 4,442	\$ 6,172
Due to other funds	-	-	-	-	-	-
Unearned revenue	-	-	-	-	96	1,200
Total liabilities	<u>-</u>	<u>5,935</u>	<u>1,350</u>	<u>-</u>	<u>4,538</u>	<u>7,372</u>
Deferred inflows of resources						
Unavailable revenue	-	-	80	-	173	130
Fund balances:						
Nonspendable	-	151	-	-	-	42
Restricted	218	129,289	21,808	940	16,120	96,743
Assigned	-	-	-	-	-	15,634
Total fund balances	<u>218</u>	<u>129,440</u>	<u>21,808</u>	<u>940</u>	<u>16,120</u>	<u>112,419</u>
Total liabilities, deferred inflows of resources, and fund balances	<u>\$ 218</u>	<u>\$ 135,375</u>	<u>\$ 23,238</u>	<u>\$ 940</u>	<u>\$ 20,831</u>	<u>\$ 119,921</u>

(continued)

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING BALANCE SHEET
NON-MAJOR GOVERNMENTAL FUNDS
JUNE 30, 2021
(amounts expressed in thousands)**

	Special Revenue				
	Recovery Grants	Lighting	Public Ways and Facilities	Dublin Library	Police Protection
Assets:					
Cash and investments with County Treasurer	\$ 420	\$ 3,601	\$ 7,029	\$ 6	\$ -
Cash and investments with fiscal agents	-	-	-	-	-
Restricted assets - cash and investments with fiscal agents	-	-	-	-	-
Deposits with others	-	-	-	-	-
Other receivables	-	8	216	-	1,093
Due from component unit	-	-	-	-	-
Inventory of supplies	-	-	-	-	-
Prepaid items	-	-	-	-	-
Loans receivable	-	-	-	-	-
Total assets	<u>\$ 420</u>	<u>\$ 3,609</u>	<u>\$ 7,245</u>	<u>\$ 6</u>	<u>\$ 1,093</u>
Liabilities, deferred inflows of resources, and fund balances					
Liabilities:					
Accounts payable and accrued expenditures	\$ -	\$ 31	\$ 346	\$ -	\$ -
Due to other funds	-	-	-	-	805
Unearned revenue	-	-	-	-	-
Total liabilities	<u>-</u>	<u>31</u>	<u>346</u>	<u>-</u>	<u>805</u>
Deferred inflows of resources					
Unavailable revenue	-	-	-	-	-
Fund balances:					
Nonspendable	-	-	-	-	-
Restricted	420	3,578	6,899	6	288
Assigned	-	-	-	-	-
Total fund balances	<u>420</u>	<u>3,578</u>	<u>6,899</u>	<u>6</u>	<u>288</u>
Total liabilities, deferred inflows of resources, and fund balances	<u>\$ 420</u>	<u>\$ 3,609</u>	<u>\$ 7,245</u>	<u>\$ 6</u>	<u>\$ 1,093</u>

(continued)

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING BALANCE SHEET
NON-MAJOR GOVERNMENTAL FUNDS
JUNE 30, 2021
(amounts expressed in thousands)**

	<u>Special Revenue</u>			<u>Debt Service Tobacco Securitization Authority</u>	<u>Total Non-major Governmental Funds</u>
	<u>Housing Successor Assets</u>	<u>Inmate Welfare</u>	<u>Total</u>		
Assets:					
Cash and investments with County Treasurer	\$ -	\$ 11,859	\$ 289,266	\$ -	\$ 289,266
Cash and investments with fiscal agents	-	-	4	-	4
Restricted assets - cash and investments with fiscal agents	-	-	-	73,589	73,589
Deposits with others	-	-	13,879	-	13,879
Other receivables	-	441	21,678	8,380	30,058
Due from component unit	-	-	3	-	3
Inventory of supplies	-	-	151	-	151
Prepaid items	-	-	42	-	42
Loans receivable	34,103	-	34,276	-	34,276
Total assets	<u>\$ 34,103</u>	<u>\$ 12,300</u>	<u>\$ 359,299</u>	<u>\$ 81,969</u>	<u>\$ 441,268</u>
Liabilities, deferred inflows of resources, and fund balances					
Liabilities:					
Accounts payable and accrued expenditures	\$ -	\$ 1,336	\$ 19,612	\$ -	\$ 19,612
Due to other funds	-	-	805	16	821
Unearned revenue	-	-	1,296	-	1,296
Total liabilities	<u>-</u>	<u>1,336</u>	<u>21,713</u>	<u>16</u>	<u>21,729</u>
Deferred inflows of resources					
Unavailable revenue	34,103	-	34,486	8,380	42,866
Fund balances:					
Nonspendable	-	-	193	-	193
Restricted	-	10,804	287,113	73,573	360,686
Assigned	-	160	15,794	-	15,794
Total fund balances	<u>-</u>	<u>10,964</u>	<u>303,100</u>	<u>73,573</u>	<u>376,673</u>
Total liabilities, deferred inflows of resources, and fund balances	<u>\$ 34,103</u>	<u>\$ 12,300</u>	<u>\$ 359,299</u>	<u>\$ 81,969</u>	<u>\$ 441,268</u>

(concluded)

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
NON-MAJOR GOVERNMENTAL FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Special Revenue					
	Fish and Game	Road	County Library	Library Special Taxing Zone	Health Services	Fire
Revenues:						
Taxes	\$ -	\$ 12,017	\$ 31,963	\$ 590	\$ -	\$ 46,041
Licenses and permits	-	1,248	-	-	-	-
Fines, forfeitures, and penalties	106	2	-	-	-	-
Use of money and property	-	2,091	(26)	1	7	(17)
State aid	-	45,398	315	3	-	6,131
Federal aid	-	1,858	11	-	-	211
Other aid	-	594	1,462	46	-	3,922
Charges for services	-	1,701	1,484	-	31,420	98,463
Other revenue	-	215	288	-	2	181
Total revenues	106	65,124	35,497	640	31,429	154,932
Expenditures:						
General government	-	-	-	-	-	-
Public protection	101	-	-	-	-	141,789
Health and sanitation	-	-	-	-	28,607	-
Public ways and facilities	-	27,012	-	-	-	-
Education	-	-	36,109	373	-	-
Debt service						
Principal	-	-	-	-	-	-
Interest	-	-	-	-	-	-
Capital Outlay	-	34,123	-	-	-	-
Total expenditures	101	61,135	36,109	373	28,607	141,789
Excess (deficiency) of revenues over expenditures	5	3,989	(612)	267	2,822	13,143
Other financing sources (uses):						
Transfers in	-	-	-	-	-	-
Transfers out	-	(2,000)	-	-	-	(4,000)
Total other financing sources (uses)	-	(2,000)	-	-	-	(4,000)
Net change in fund balances	5	1,989	(612)	267	2,822	9,143
Fund balances - beginning of period	213	127,451	22,420	673	13,298	103,276
Fund balances - end of period	\$ 218	\$ 129,440	\$ 21,808	\$ 940	\$ 16,120	\$ 112,419

(continued)

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
NON-MAJOR GOVERNMENTAL FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Special Revenue				
	Recovery Grants	Lighting	Public Ways and Facilities	Dublin Library	Police Protection
Revenues:					
Taxes	\$ -	\$ 10	\$ 987	\$ -	\$ 22,161
Licenses and permits	-	-	-	-	-
Fines, forfeitures, and penalties	-	-	-	-	-
Use of money and property	-	10	(5)	-	42
State aid	-	-	-	-	114
Federal aid	-	-	-	-	-
Other aid	-	2	125	-	-
Charges for services	-	913	2,242	-	-
Other revenue	-	-	-	-	-
Total revenues	-	935	3,349	-	22,317
Expenditures:					
General government	-	-	-	-	-
Public protection	-	-	-	-	22,064
Health and sanitation	-	-	-	-	-
Public ways and facilities	-	789	5,404	-	-
Education	-	-	-	-	-
Debt service					
Principal	-	-	-	-	-
Interest	-	-	-	-	-
Capital Outlay	-	-	-	-	-
Total expenditures	-	789	5,404	-	22,064
Excess (deficiency) of revenues over expenditures	-	146	(2,055)	-	253
Other financing sources (uses):					
Transfers in	-	-	2,000	-	-
Transfers out	-	-	-	-	(250)
Total other financing sources (uses)	-	-	2,000	-	(250)
Net change in fund balances	-	146	(55)	-	3
Fund balances - beginning of period	420	3,432	6,954	6	285
Fund balances - end of period	\$ 420	\$ 3,578	\$ 6,899	\$ 6	\$ 288

(continued)

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
NON-MAJOR GOVERNMENTAL FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	<u>Special Revenue</u>			<u>Debt Service Tobacco Securitization Authority</u>	<u>Total Non-major Governmental Funds</u>
	<u>Housing Successor Assets</u>	<u>Inmate Welfare</u>	<u>Total</u>		
Revenues:					
Taxes	\$ -	\$ -	\$ 113,769	\$ -	\$ 113,769
Licenses and permits	-	-	1,248	-	1,248
Fines, forfeitures, and penalties	-	-	108	-	108
Use of money and property	-	56	2,159	807	2,966
State aid	-	-	51,961	-	51,961
Federal aid	-	-	2,080	-	2,080
Other aid	-	-	6,151	-	6,151
Charges for services	-	504	136,727	-	136,727
Other revenue	-	10,660	11,346	16,767	28,113
Total revenues	<u>-</u>	<u>11,220</u>	<u>325,549</u>	<u>17,574</u>	<u>343,123</u>
Expenditures:					
General government	-	-	-	8	8
Public protection	-	7,458	171,412	-	171,412
Health and sanitation	-	-	28,607	-	28,607
Public ways and facilities	-	-	33,205	-	33,205
Education	-	-	36,482	-	36,482
Debt service					
Principal	-	-	-	9,905	9,905
Interest	-	-	-	7,176	7,176
Capital Outlay	-	-	34,123	-	34,123
Total expenditures	<u>-</u>	<u>7,458</u>	<u>303,829</u>	<u>17,089</u>	<u>320,918</u>
Excess (deficiency) of revenues over expenditures	<u>-</u>	<u>3,762</u>	<u>21,720</u>	<u>485</u>	<u>22,205</u>
Other financing sources (uses):					
Transfers in	-	-	2,000	-	2,000
Transfers out	-	-	(6,250)	(8,026)	(14,276)
Total other financing sources (uses)	<u>-</u>	<u>-</u>	<u>(4,250)</u>	<u>(8,026)</u>	<u>(12,276)</u>
Net change in fund balances	<u>-</u>	<u>3,762</u>	<u>17,470</u>	<u>(7,541)</u>	<u>9,929</u>
Fund balances - beginning of period	-	7,202	285,630	81,114	366,744
Fund balances - end of period	<u>\$ -</u>	<u>\$ 10,964</u>	<u>\$ 303,100</u>	<u>\$ 73,573</u>	<u>\$ 376,673</u>

(concluded)

COUNTY OF ALAMEDA, CALIFORNIA

FISH AND GAME - SPECIAL REVENUE FUND
 SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
 BUDGET AND ACTUAL
 FOR THE YEAR ENDED JUNE 30, 2021
 (amounts expressed in thousands)

	Budgeted Amounts		Actual	Variance
	Original	Final	Budgetary	Positive
			Basis	(Negative)
Revenues:				
Fines, forfeitures, and penalties	\$ 60	\$ 60	\$ 106	\$ 46
Total revenues	60	60	106	46
Expenditures:				
Current				
Public protection				
Services and supplies	60	269	101	168
Total expenditures	60	269	101	168
Excess (deficiency) of revenues over expenditures	-	(209)	5	214
Net change in fund balance	-	(209)	5	214
Fund balance - beginning of period	213	213	213	-
Fund balance - end of period	\$ 213	\$ 4	\$ 218	\$ 214

COUNTY OF ALAMEDA, CALIFORNIA

**ROAD - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 16,382	\$ 16,382	\$ 12,017	\$ (4,365)
Licenses and permits	1,247	1,247	1,248	1
Fines, forfeitures, and penalties	25	25	2	(23)
Use of money and property	3,725	3,725	2,091	(1,634)
State aid	50,048	50,048	45,398	(4,650)
Federal aid	3,422	3,422	1,858	(1,564)
Other aid	1,964	1,964	594	(1,370)
Charges for services	997	997	1,701	704
Other revenue	39	39	215	176
Total revenues	77,849	77,849	65,124	(12,725)
Expenditures:				
Current				
Public ways and facilities				
Salaries and benefits	16,116	16,116	15,756	360
Services and supplies	135,392	167,755	79,566	88,189
Other charges	1,553	1,546	42	1,504
Capital assets	3,852	4,102	2,883	1,219
Total expenditures	156,913	189,519	98,247	91,272
Excess (deficiency) of revenues over expenditures	(79,064)	(111,670)	(33,123)	78,547
Other financing uses:				
Transfers-in	-	6,500	-	(6,500)
Transfers out	(2,600)	(2,600)	(2,000)	600
Total other financing uses	(2,600)	3,900	(2,000)	(5,900)
Net change in fund balance	(81,664)	(107,770)	(35,123)	72,647
Add outstanding encumbrances for current budget year	-	-	37,112	37,112
Fund balance - beginning of period	127,451	127,451	127,451	-
Fund balance - end of period	\$ 45,787	\$ 19,681	\$ 129,440	\$ 109,759

COUNTY OF ALAMEDA, CALIFORNIA

**COUNTY LIBRARY - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 27,953	\$ 32,409	\$ 31,963	\$ (446)
Use of money and property	100	100	(26)	(126)
State aid	240	240	315	75
Federal aid	-	-	11	11
Other aid	975	975	1,462	487
Charges for services	3,009	3,009	1,484	(1,525)
Other revenue	210	210	288	78
Total revenues	32,487	36,943	35,497	(1,446)
Expenditures:				
Current				
Education				
Salaries and benefits	25,007	25,007	22,056	2,951
Services and supplies	15,778	30,323	14,482	15,841
Other charges	932	1,032	999	33
Capital assets	854	953	928	25
Total expenditures	42,571	57,315	38,465	18,850
Excess (deficiency) of revenues over expenditures	(10,084)	(20,372)	(2,968)	17,404
Net change in fund balance	(10,084)	(20,372)	(2,968)	17,404
Add outstanding encumbrances for current budget year	-	-	2,356	2,356
Fund balance - beginning of period	22,420	22,420	22,420	-
Fund balance - end of period	\$ 12,336	\$ 2,048	\$ 21,808	\$ 19,760

COUNTY OF ALAMEDA, CALIFORNIA

LIBRARY SPECIAL TAXING ZONE - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)

	Budgeted Amounts		Actual	Variance
	Original	Final	Budgetary	Positive
			Basis	(Negative)
Revenues:				
Taxes	\$ 493	\$ 590	\$ 590	\$ -
Use of money and property	5	5	1	(4)
State aid	3	3	3	-
Other aid	-	-	46	46
Total revenues	<u>501</u>	<u>598</u>	<u>640</u>	<u>42</u>
Expenditures:				
Current				
Education				
Services and supplies	706	1,383	493	890
Other charges	10	10	7	3
Total expenditures	<u>716</u>	<u>1,393</u>	<u>500</u>	<u>893</u>
Excess (deficiency) of revenues over expenditures	<u>(215)</u>	<u>(795)</u>	<u>140</u>	<u>935</u>
Net change in fund balance	<u>(215)</u>	<u>(795)</u>	<u>140</u>	<u>935</u>
Add outstanding encumbrances for current budget year	-	-	127	127
Fund balance - beginning of period	<u>673</u>	<u>673</u>	<u>673</u>	<u>-</u>
Fund balance - end of period	<u>\$ 458</u>	<u>\$ (122)</u>	<u>\$ 940</u>	<u>\$ 1,062</u>

COUNTY OF ALAMEDA, CALIFORNIA

**HEALTH SERVICES - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Use of money and property	\$ 50	\$ 50	\$ 7	\$ (43)
Charges for services	29,489	29,489	31,420	1,931
Other revenue	1	1	2	1
Total revenues	<u>29,540</u>	<u>29,540</u>	<u>31,429</u>	<u>1,889</u>
Expenditures:				
Current				
Health and sanitation				
Salaries and benefits	10,545	10,797	9,981	816
Services and supplies	25,171	35,422	19,733	15,689
Other charges	145	138	132	6
Total expenditures	<u>35,861</u>	<u>46,357</u>	<u>29,846</u>	<u>16,511</u>
Excess (deficiency) of revenues over expenditures	<u>(6,321)</u>	<u>(16,817)</u>	<u>1,583</u>	<u>18,400</u>
Other financing uses:				
Budgetary reserves and designations	(133)	(133)	-	133
Total other financing uses	<u>(133)</u>	<u>(133)</u>	<u>-</u>	<u>133</u>
Net change in fund balance	<u>(6,454)</u>	<u>(16,950)</u>	<u>1,583</u>	<u>18,533</u>
Add outstanding encumbrances for current budget year	-	-	1,239	1,239
Fund balance - beginning of period	<u>13,298</u>	<u>13,298</u>	<u>13,298</u>	<u>-</u>
Fund balance - end of period	<u>\$ 6,844</u>	<u>\$ (3,652)</u>	<u>\$ 16,120</u>	<u>\$ 19,772</u>

COUNTY OF ALAMEDA, CALIFORNIA

**FIRE - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 41,954	\$ 46,291	\$ 46,041	\$ (250)
Use of money and property	1,452	1,452	(17)	(1,469)
State aid	3,088	3,088	6,131	3,043
Federal aid	454	688	211	(477)
Other aid	3,075	3,075	3,922	847
Charges for services	100,336	100,336	98,463	(1,873)
Other revenue	70	70	181	111
Total revenues	150,429	155,000	154,932	(68)
Expenditures:				
Current				
Public protection				
Salaries and benefits	124,128	124,322	122,761	1,561
Services and supplies	27,842	114,488	24,455	90,033
Other charges	943	1,158	1,158	-
Capital assets	5,682	10,555	1,314	9,241
Total expenditures	158,595	250,523	149,688	100,835
Excess (deficiency) of revenues over expenditures	(8,166)	(95,523)	5,244	100,767
Other financing sources (uses):				
Transfers in	3,720	3,720	-	(3,720)
Transfers out	(3,720)	(7,777)	(4,000)	3,777
Total other financing sources (uses)	-	(4,057)	(4,000)	57
Net change in fund balance	(8,166)	(99,580)	1,244	100,824
Add outstanding encumbrances for current budget year	-	-	7,899	7,899
Fund balance - beginning of period	103,276	103,276	103,276	-
Fund balance - end of period	\$ 95,110	\$ 3,696	\$ 112,419	\$ 108,723

COUNTY OF ALAMEDA, CALIFORNIA

RECOVERY GRANTS - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)

	Budgeted Amounts		Actual	Variance
	Original	Final	Budgetary	Positive
			Basis	(Negative)
Revenues:				
Other revenue	\$ 500	\$ 500	\$ -	\$ (500)
Total revenues	500	500	-	(500)
Expenditures:				
Current				
Public assistance				
Services and supplies	500	496	-	496
Total expenditures	500	496	-	496
Excess (deficiency) of revenues over expenditures	-	4	-	(4)
Net change in fund balance	-	4	-	(4)
Fund balance - beginning of period	420	420	420	-
Fund balance - end of period	\$ 420	\$ 424	\$ 420	\$ (4)

COUNTY OF ALAMEDA, CALIFORNIA

LIGHTING - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)

	Budgeted Amounts		Actual	Variance
	Original	Final	Budgetary	Positive
			Basis	(Negative)
Revenues:				
Taxes	\$ 5	\$ 10	\$ 10	\$ -
Use of money and property	70	70	10	(60)
Other aid	-	-	2	2
Charges for services	875	875	913	38
Total revenues	<u>950</u>	<u>955</u>	<u>935</u>	<u>(20)</u>
Expenditures:				
Current				
Public ways and facilities				
Salaries and benefits	90	144	124	20
Services and supplies	920	1,002	485	517
Other charges	180	180	180	-
Total expenditures	<u>1,190</u>	<u>1,326</u>	<u>789</u>	<u>537</u>
Excess (deficiency) of revenues over expenditures	<u>(240)</u>	<u>(371)</u>	<u>146</u>	<u>517</u>
Net change in fund balance	(240)	(371)	146	517
Fund balance - beginning of period	<u>3,432</u>	<u>3,432</u>	<u>3,432</u>	<u>-</u>
Fund balance - end of period	<u>\$ 3,192</u>	<u>\$ 3,061</u>	<u>\$ 3,578</u>	<u>\$ 517</u>

COUNTY OF ALAMEDA, CALIFORNIA

**PUBLIC WAYS AND FACILITIES - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 972	\$ 978	\$ 987	\$ 9
Use of money and property	100	100	(5)	(105)
Other aid	100	100	125	25
Charges for services	2,199	2,199	2,242	43
Total revenues	3,371	3,377	3,349	(28)
Expenditures:				
Current				
Public ways and facilities				
Salaries and benefits	2,916	3,329	3,328	1
Services and supplies	8,758	9,487	3,979	5,508
Other charges	305	305	73	232
Total expenditures	11,979	13,121	7,380	5,741
Excess (deficiency) of revenues over expenditures	(8,608)	(9,744)	(4,031)	5,713
Other financing sources:				
Issuance of loans	3,000	3,000	-	(3,000)
Transfers in	2,600	2,600	2,000	(600)
Total other financing sources	5,600	5,600	2,000	(3,600)
Net change in fund balance	(3,008)	(4,144)	(2,031)	2,113
Add outstanding encumbrances for current budget year	-	-	1,976	1,976
Fund balance - beginning of period	6,954	6,954	6,954	-
Fund balance - end of period	\$ 3,946	\$ 2,810	\$ 6,899	\$ 4,089

COUNTY OF ALAMEDA, CALIFORNIA

DUBLIN LIBRARY - SPECIAL REVENUE FUND
 SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
 BUDGET AND ACTUAL
 FOR THE YEAR ENDED JUNE 30, 2021
 (amounts expressed in thousands)

	Budgeted Amounts		Actual	Variance
	Original	Final	Budgetary	Positive
			Basis	(Negative)
Expenditures:				
Current				
Education				
Services and supplies	\$ -	\$ 6	\$ -	\$ 6
Total expenditures	-	6	-	6
Deficiency of revenues over expenditures	-	(6)	-	6
Net change in fund balance	-	(6)	-	6
Fund balance - beginning of period	6	6	6	-
Fund balance - end of period	<u>\$ 6</u>	<u>\$ -</u>	<u>\$ 6</u>	<u>\$ 6</u>

COUNTY OF ALAMEDA, CALIFORNIA

**POLICE PROTECTION - SPECIAL REVENUE FUND
SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Budgeted Amounts		Actual Budgetary Basis	Variance Positive (Negative)
	Original	Final		
Revenues:				
Taxes	\$ 20,945	\$ 22,333	\$ 22,161	\$ (172)
Use of money and property	20	20	42	22
State aid	124	124	114	(10)
Total revenues	<u>21,089</u>	<u>22,477</u>	<u>22,317</u>	<u>(160)</u>
Expenditures:				
Current				
Public protection				
Salaries and benefits	20,896	21,816	21,816	-
Services and supplies	128	511	135	376
Other charges	65	113	113	-
Total expenditures	<u>21,089</u>	<u>22,440</u>	<u>22,064</u>	<u>376</u>
Excess of revenues over expenditures	<u>-</u>	<u>37</u>	<u>253</u>	<u>216</u>
Net change in fund balance	-	(213)	3	216
Fund balance - beginning of period	<u>285</u>	<u>285</u>	<u>285</u>	<u>-</u>
Fund balance - end of period	<u>\$ 285</u>	<u>\$ 72</u>	<u>\$ 288</u>	<u>\$ 216</u>

**COUNTY OF ALAMEDA, CALIFORNIA
COMBINING FINANCIAL STATEMENTS AND
OTHER SUPPLEMENTARY INFORMATION**

Internal Service Funds

Internal service funds are used to account for the financing of goods and services provided by one department or agency to other departments or agencies on a cost reimbursement basis.

Motor Pool - This fund was established to account for the cost of maintaining all County-owned automobiles, trucks and heavy equipment for County departments and other funds. Revenues are derived from fees charged for services provided.

Building Maintenance - This fund was established to account for the cost of providing custodial, groundskeeping, maintenance, and operating services for County occupied buildings. Revenues are generated by charges to users based on square footage of space occupied.

Information Technology - This fund was established to account for the costs of providing information services, system design, computer programming, and computer processing for all County departments. Effective July 1, 2013, this fund will also provide communication services such as telephone service, radio and microwave maintenance, and electronic maintenance and repair services to County departments, cities, and special districts. Revenues are based on fees charged for services provided.

Risk Management - This fund was established to account for costs to administer the County's risk management program, which includes: general risk management administration, employee wellness, alcohol and drug programs, pre-employment physicals, public and professional liability, dental insurance, property insurance programs and workers' compensation. Costs of claims against the County under the self-insurance programs for general and medical malpractice liabilities and deductibles for damage to County property are also recorded in this fund. The primary source of revenue for the fund is premiums paid by other funds and interest on investments.

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF NET POSITION
INTERNAL SERVICE FUNDS
JUNE 30, 2021
(amounts expressed in thousands)**

	Motor Pool	Building Maintenance	Information Technology	Risk Management	Total
Assets					
Current assets:					
Cash and investments with County Treasurer	\$ 2,239	\$ 19,540	\$ 29,741	\$ 190,401	\$ 241,921
Cash and investments with fiscal agents	-	-	-	250	250
Deposits with others	-	5	-	-	5
Other receivables	381	471	1,977	3,307	6,136
Due from component unit	12	29	-	-	41
Inventory of supplies	-	-	4	-	4
Prepaid items	-	-	1,784	307	2,091
Total current assets	<u>2,632</u>	<u>20,045</u>	<u>33,506</u>	<u>194,265</u>	<u>250,448</u>
Noncurrent assets:					
Capital assets:					
Machinery and equipment, net of depreciation	20,651	604	4,740	4	25,999
Total capital assets	<u>20,651</u>	<u>604</u>	<u>4,740</u>	<u>4</u>	<u>25,999</u>
Total noncurrent assets	<u>20,651</u>	<u>604</u>	<u>4,740</u>	<u>4</u>	<u>25,999</u>
Total assets	<u>23,283</u>	<u>20,649</u>	<u>38,246</u>	<u>194,269</u>	<u>276,447</u>
Deferred outflows of resources					
Related to pensions	661	9,234	10,702	445	21,042
Related to OPEB	90	1,270	1,409	59	2,828
Total deferred outflows of resources	<u>751</u>	<u>10,504</u>	<u>12,111</u>	<u>504</u>	<u>23,870</u>
Liabilities					
Current liabilities:					
Accounts payable and accrued expenses	474	8,922	4,082	3,069	16,547
Compensated employee absences payable	55	651	872	26	1,604
Estimated liability for claims and contingencies	-	-	-	38,336	38,336
Due to other funds	-	-	1,103	-	1,103
Total current liabilities	<u>529</u>	<u>9,573</u>	<u>6,057</u>	<u>41,431</u>	<u>57,590</u>
Noncurrent liabilities:					
Net pension liability	2,282	31,206	34,875	1,161	69,524
Net OPEB liability	7	102	114	4	227
Compensated employee absences payable	116	1,385	1,854	56	3,411
Estimated liability for claims and contingencies	-	-	-	139,063	139,063
Advances from other funds	-	-	4,414	-	4,414
Total noncurrent liabilities	<u>2,405</u>	<u>32,693</u>	<u>41,257</u>	<u>140,284</u>	<u>216,639</u>
Total liabilities	<u>2,934</u>	<u>42,266</u>	<u>47,314</u>	<u>181,715</u>	<u>274,229</u>
Deferred inflows of resources					
Related to pensions	902	12,207	14,745	931	28,785
Related to OPEB	323	4,402	5,047	200	9,972
Total deferred inflows of resources	<u>1,225</u>	<u>16,609</u>	<u>19,792</u>	<u>1,131</u>	<u>38,757</u>
Net position					
Investment in capital assets	20,651	604	4,740	4	25,999
Unrestricted (deficit)	(776)	(28,326)	(21,489)	11,923	(38,668)
Total net position	<u>\$ 19,875</u>	<u>\$ (27,722)</u>	<u>\$ (16,749)</u>	<u>\$ 11,927</u>	<u>\$ (12,669)</u>

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN FUND NET POSITION
INTERNAL SERVICE FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Motor Pool	Building Maintenance	Information Technology	Risk Management	Total
Operating revenues:					
Charges for services	\$ 14,724	\$ 118,389	\$ 80,357	\$ 75,896	\$ 289,366
Operating expenses:					
Salaries and benefits	1,635	37,653	35,627	971	75,886
Contractual services	364	1,779	14,507	3,843	20,493
Utilities	8	15,194	302	-	15,504
Repairs and maintenance	247	19,979	598	-	20,824
Other supplies and expenses	5,638	47,368	16,719	19,028	88,753
Insurance claims and expenses	-	-	-	44,887	44,887
Depreciation	4,282	133	2,242	-	6,657
Amortization	-	-	32	-	32
Telephone	-	-	2,085	-	2,085
County indirect costs	1,041	6,083	1,162	1,085	9,371
Dental claims	-	-	-	9,772	9,772
Other	-	-	-	1,408	1,408
Total operating expenses	13,215	128,189	73,274	80,994	295,672
Operating income (loss)	1,509	(9,800)	7,083	(5,098)	(6,306)
Non-operating revenues (expenses):					
Investment income	8	(74)	68	(187)	(185)
Loss on sale of capital assets	162	(2)	-	-	160
Total non-operating revenues (expenses)	170	(76)	68	(187)	(25)
Income (loss) before capital contributions and transfers	1,679	(9,876)	7,151	(5,285)	(6,331)
Capital contributions	(36)	-	-	-	(36)
Transfers in	10	2,995	-	-	3,005
Transfers out	-	(1,552)	-	(3,844)	(5,396)
Change in net position	1,653	(8,433)	7,151	(9,129)	(8,758)
Total net position - beginning of period	18,222	(19,289)	(23,900)	21,056	(3,911)
Cumulative effect of change in accounting principles	-	-	-	-	-
Total net position - beginning of period, as restated	18,222	(19,289)	(23,900)	21,056	(3,911)
Total net position - end of period	\$ 19,875	\$ (27,722)	\$ (16,749)	\$ 11,927	\$ (12,669)

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF CASH FLOWS
INTERNAL SERVICE FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Motor Pool	Building Maintenance	Information Technology	Risk Management	Total
Cash flows from operating activities					
Internal activity - receipts from other funds	\$ 14,788	\$ 118,443	\$ 80,032	\$ 73,971	\$ 287,234
Payments to suppliers	(6,165)	(79,231)	(34,948)	(22,760)	(143,104)
Payments to employees	(1,781)	(39,524)	(37,609)	(1,175)	(80,089)
Internal activity - payments to other funds	(1,041)	(6,083)	(1,162)	(1,085)	(9,371)
Claims paid	-	-	-	(42,947)	(42,947)
Other payments	-	-	-	(1,408)	(1,408)
Net cash provided by (used in) operating activities	5,801	(6,395)	6,313	4,596	10,315
Cash flows from non-capital financing activities					
Transfers in	10	2,995	-	-	3,005
Transfers out	-	(1,552)	-	(3,844)	(5,396)
Net cash provided by (used in) non-capital financing activities	10	1,443	-	(3,844)	(2,391)
Cash flows from capital and related financing activities					
Acquisition of capital assets	(5,434)	(125)	(2,721)	-	(8,280)
Proceeds from sale of capital assets	342	-	-	-	342
Net cash used in capital and related financing activities	(5,092)	(125)	(2,721)	-	(7,938)
Cash flows from investing activities					
Interest received (paid) on pooled cash and investments	8	(74)	68	(187)	(185)
Net increase (decrease) in cash and cash equivalents	727	(5,151)	3,660	565	(199)
Cash and cash equivalents - beginning of period	1,512	24,691	26,081	190,086	242,370
Cash and cash equivalents - end of period	\$ 2,239	\$ 19,540	\$ 29,741	\$ 190,651	\$ 242,171
Reconciliation of operating income (loss) to net cash provided by (used in) operating activities:					
Operating income (loss)	\$ 1,509	\$ (9,800)	\$ 7,083	\$ (5,098)	\$ (6,306)
Adjustments for non-cash activities					
Depreciation	4,282	133	2,242	-	6,657
Amortization	-	-	32	-	32
Amortization - pension	(140)	(1,987)	(2,336)	(200)	(4,663)
Amortization - OPEB	(25)	(314)	(377)	(21)	(737)
Changes in assets and liabilities					
Other receivables	64	54	(325)	(1,925)	(2,132)
Prepaid items	-	55	302	(105)	252
Accounts payable and accrued expenses	92	5,034	64	216	5,406
Compensated employee absences payable	19	430	731	17	1,197
Estimated liability for claims and contingencies	-	-	-	11,712	11,712
Due to/advances from other funds	-	-	(1,103)	-	(1,103)
Total adjustments	4,292	3,405	(770)	9,694	16,621
Net cash provided by (used in) operating activities	\$ 5,801	\$ (6,395)	\$ 6,313	\$ 4,596	\$ 10,315

**COUNTY OF ALAMEDA, CALIFORNIA
COMBINING FINANCIAL STATEMENTS AND
OTHER SUPPLEMENTARY INFORMATION**

Fiduciary Funds

Fiduciary funds include all trust and custodial funds, which account for assets held by the County as a trustee or as an agent for individuals or other governmental units.

TRUST FUNDS

Pension and Postemployment Benefits Trust Funds – These funds are under the control of the ACERA Board of Retirement and are governed by the rules and regulations of the Retirement Act of 1937. The pension fund accumulates contributions from the County, contributions from employees, and earnings from the fund's investments. Disbursements are made from the funds for retirements, postemployment benefits, disability and death benefits, refund, and administrative costs. These funds include all assets of the retirement system.

Other Employee Benefits Trust Fund – This fund accounts for pre-tax deductions from county employees' gross pay. The funds are for reimbursement of allowable health care and dependent care costs.

CUSTODIAL FUNDS

Custodial Funds – These funds account for all fiduciary activities not required to be reported in pension, OPEB, and other employee benefit trust funds, investment trust funds, or private-purpose trust fund. The external portion of the Treasurer's investment pool which is not held in trust is reported in a separate column under the custodial funds classification.

COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF FIDUCIARY NET POSITION
PENSION, OPEB, AND OTHER EMPLOYEE BENEFITS TRUST FUNDS
JUNE 30, 2021**

(amounts expressed in thousands)

	Pension and Other Postemployment Benefits Trust Funds ¹			Other Employee Benefits Trust Fund	
	Pension	Postemployment Medical Benefits (OPEB)	Total		Total
Assets:					
Cash and investments with County Treasurer	\$ -	\$ -	\$ -	\$ 17	\$ 17
Cash and investments with fiscal agents	3,236	-	3,236	-	3,236
Investments, at fair value:					
Short-term investments	182,037	-	182,037	-	182,037
Domestic equities	562,387	-	562,387	-	562,387
Domestic equity commingled funds	2,159,591	-	2,159,591	-	2,159,591
International equities	1,296,336	-	1,296,336	-	1,296,336
International equity commingled funds	1,460,569	-	1,460,569	-	1,460,569
Domestic fixed income	1,093,183	-	1,093,183	-	1,093,183
International fixed income	190,474	-	190,474	-	190,474
International fixed income commingled funds	159,176	-	159,176	-	159,176
Real estate - separate properties	72,474	-	72,474	-	72,474
Real estate - commingled funds	528,671	-	528,671	-	528,671
Real Assets	467,886	-	467,886	-	467,886
Absolute Return	645,134	-	645,134	-	645,134
Private Equity	726,180	-	726,180	-	726,180
Private Credit	57,747	-	57,747	-	57,747
Total investments	9,601,845	-	9,601,845	-	9,601,845
Investment of securities lending collateral	117,171	-	117,171	-	117,171
Deposits with others	755	-	755	-	755
Other receivable	132,879	-	132,879	-	132,879
Interest receivable	8,742	-	8,742	-	8,742
Non-OPEB assets	41,677	-	41,677	-	41,677
Due from (to) pension plan	(940,806)	899,129	(41,677)	-	(41,677)
Capital assets, net of accumulated depreciation	4,319	-	4,319	-	4,319
Total assets	8,969,818	899,129	9,868,947	17	9,868,964
Liabilities:					
Accounts payable and accrued expenses	122,009	-	122,009	9	122,018
Securities lending obligation	117,171	-	117,171	-	117,171
Total liabilities	239,180	-	239,180	9	239,189
Net Position					
Investment in capital assets	4,319	-	4,319	-	4,319
Restricted	8,726,319	899,129	9,625,448	8	9,625,456
	\$ 8,730,638	\$ 899,129	\$ 9,629,767	\$ 8	\$ 9,629,775

¹ Pension and OPEB balances reported as of December 31, 2020.

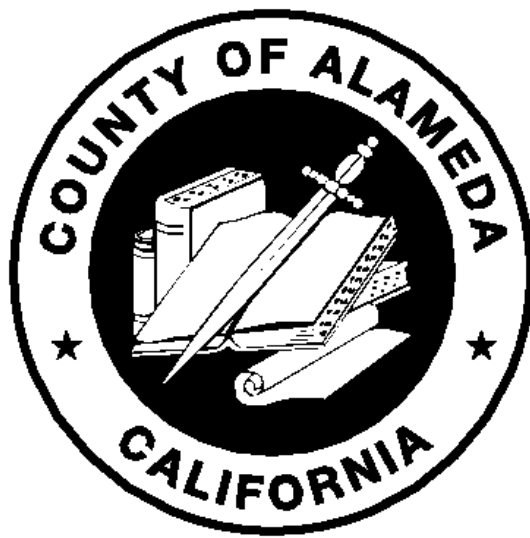
COUNTY OF ALAMEDA, CALIFORNIA

**COMBINING STATEMENT OF CHANGES IN FIDUCIARY NET POSITION
PENSION, OPEB, AND OTHER EMPLOYEE BENEFITS TRUST FUNDS
FOR THE YEAR ENDED JUNE 30, 2021
(amounts expressed in thousands)**

	Pension and Other Postemployment Benefits Trust Funds ¹			Other Employee Benefits Trust Fund	
	Pension	Postemployment Medical Benefits (OPEB)	Total		Total
Additions:					
Contributions:					
Employees	\$ 106,104	\$ -	\$ 106,104	\$ -	\$ 106,104
Employer	264,297	45,456	309,753	-	309,753
Total contributions	370,401	45,456	415,857	-	415,857
Investment income:					
Interest	41,182	-	41,182	1	41,183
Dividends	32,450	-	32,450	-	32,450
Net increase (decrease) in fair value of investments	989,949	-	989,949	-	989,949
Real estate	21,871	-	21,871	-	21,871
Securities lending income	1,182	-	1,182	-	1,182
Private equity and alternatives	(18,497)	-	(18,497)	-	(18,497)
Brokers' Commissions	28	-	28	-	28
Earnings allocated to non-OPEB	2,594	-	2,594	-	2,594
Earnings allocated to OPEB reserves	(59,495)	56,901	(2,594)	-	(2,594)
Total investment income (loss)	1,011,264	56,901	1,068,165	1	1,068,166
Less investment expenses:					
Investment expenses	43,888	-	43,888	-	43,888
Securities lending borrower rebates and management fees	584	-	584	-	584
Real estate	6,358	-	6,358	-	6,358
Total investment expenses	50,830	-	50,830	-	50,830
Net investment income (loss)	960,434	56,901	1,017,335	1	1,017,336
Miscellaneous income	318	-	318	-	318
Transfer to Pension from SRBR for Employer					
Contribution to 401(h)	45,456	(45,456)	-	-	-
Transfer to Pension from SRBR for Implicit Subsidy	6,447	(6,447)	-	-	-
Administrative expense	(1,416)	1,416	-	-	-
Total additions, net	1,381,640	51,870	1,433,510	1	1,433,511
Deductions:					
Benefit payments	521,579	46,021	567,600	-	567,600
Refunds of contributions	9,184	-	9,184	-	9,184
Administration expenses	14,810	1,416	16,226	-	16,226
Total deductions	545,573	47,437	593,010	-	593,010
Change in net position	836,067	4,433	840,500	1	840,501
Cumulative effect of accounting change	(12)		(12)	(2,498)	(2,510)
Net position - beginning of year	7,894,583	894,696	8,789,279	2,505	8,791,784
Net position - end of year	<u>\$ 8,730,638</u>	<u>\$ 899,129</u>	<u>\$ 9,629,767</u>	<u>\$ 8</u>	<u>\$ 9,629,775</u>

¹ Pension and OPEB balances reported as of December 31, 2020.

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**CAPITAL ASSETS USED
IN THE OPERATION OF
GOVERNMENTAL FUNDS**

COUNTY OF ALAMEDA, CALIFORNIA

Capital Assets Used in the Operation of Governmental Funds
Schedule by Source¹
June 30, 2021
(amounts in tables expressed in thousands)

Governmental funds capital assets:

Land	\$ 87,306
Structures & Improvements	1,832,712
Infrastructure	1,085,492
Equipment	135,376
Software	33,814
Construction in Progress	<u>211,098</u>
Total Governmental funds capital assets	<u>\$ 3,385,798</u> ²

Investments in governmental funds capital assets acquired prior to July 1, 2001	\$ 1,234,231
Investments in governmental funds capital assets acquired from July 1, 2001 by source:	
General fund	344,041
Capital projects fund	1,144,254
Other governmental funds	649,023
Donations	<u>14,249</u>
Total governmental funds capital assets	<u>\$ 3,385,798</u>

¹ This schedule presents only the capital asset balances related to governmental funds. Accordingly, the capital assets reported in internal service funds of \$99,642 are excluded from the above amounts. Generally, the capital assets of internal service funds are included as governmental activities in the statement of net position.

² This amount does not include a collection item of \$50 which is considered an historical artifact and is not used in the operation of governmental funds.

COUNTY OF ALAMEDA, CALIFORNIA

**Capital Assets Used in the Operation of Governmental Funds
Schedule by Function and Type¹
June 30, 2021
(amounts in tables expressed in thousands)**

	Land	Structures and Improvements	Infrastructure	Equipment	Software	Construction in Progress	Total
General	\$ 14,631	\$ 166,725	\$ -	\$ 16,768	\$ 33,815	\$ 10,959	\$ 242,899
Public protection	40,430	705,259	285,431	78,391	-	46,005	1,155,517
Public assistance	23,960	94,650	6,109	8,406	-	20,595	153,720
Health and sanitation	6,201	810,585	-	6,097	-	96,720	919,604
Public ways and facilities	378	13,420	791,515	14,281	-	36,818	856,412
Recreation and cultural services	-	11,267	2,438	7,354	-	-	21,058
Education	1,706	30,802	-	4,078	-	-	36,587
Total governmental funds capital assets	<u>\$ 87,306</u>	<u>\$ 1,832,710</u>	<u>\$ 1,085,493</u>	<u>\$ 135,376</u>	<u>\$ 33,815</u>	<u>\$ 211,098</u>	<u>\$3,385,798</u> ²

¹ This schedule presents only the capital asset balances related to governmental funds. Accordingly, the capital assets reported in internal service funds of \$99,642 are excluded from the above amounts. Generally, the capital assets of internal service funds are included as governmental activities in the statement of net position.

² This amount does not include a collection item of \$50 which is considered an historical artifact and is not used in the operation of governmental funds.

COUNTY OF ALAMEDA, CALIFORNIA

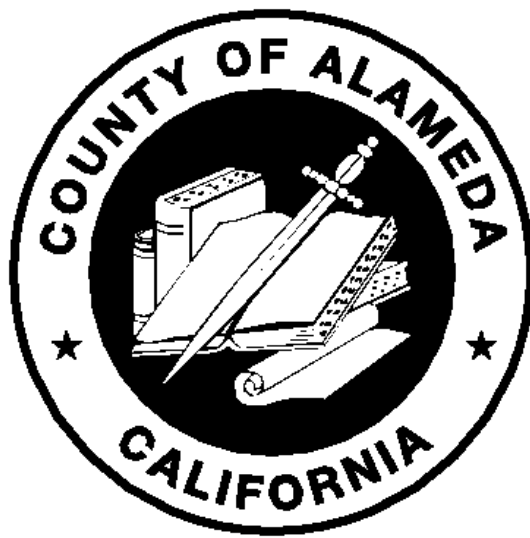
**Capital Assets Used in the Operation of Governmental Funds
Schedule by Changes by Function¹
June 30, 2021
(amounts in tables expressed in thousands)**

	Balance July 1, 2020	Additions	Deductions	Balance June 30, 2021
General	\$ 243,873	\$ 24,627	\$ 25,601	\$ 242,899
Public protection	1,131,402	25,799	1,684	1,155,517
Public assistance	114,506	39,226	12	153,720
Health and sanitation	918,091	1,877	364	919,604
Public ways and facilities	820,915	35,676	179	856,412
Recreation and cultural services	21,116	-	58	21,058
Education	35,861	726	-	36,587
Total governmental funds capital assets	<u>\$ 3,285,766</u>	<u>\$ 127,930</u>	<u>\$ 27,898</u>	<u>\$ 3,385,798</u> ²

¹ This schedule presents only the capital asset balances related to governmental funds. Accordingly, the capital assets reported in internal service funds of \$99,642 are excluded from the above amounts. Generally, the capital assets of internal service funds are included as governmental activities in the statement of net position.

² This amount does not include a collection item of \$50 which is considered an historical artifact and is not used in the operation of governmental funds.

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STATISTICAL SECTION

COUNTY OF ALAMEDA, CALIFORNIA
NET POSITION BY COMPONENT
LAST TEN FISCAL YEARS
(ACCRUAL BASIS OF ACCOUNTING)
(amounts expressed in thousands)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Governmental activities										
Net investment in capital assets	\$ 585,788	\$ 620,302	\$ 619,242	\$ 703,738	\$ 706,722	\$ 796,142	\$ 737,186	\$ 772,123	\$ 810,517	\$ 895,441
Restricted	627,179	655,381	630,253	763,777	779,105	801,958	814,964	926,986	883,195	918,462
Unrestricted (deficit)	512,095	578,463	685,877	(28,960)	56,405	115,106	163,925	261,646	485,135	825,034
Total governmental activities net position	<u>\$ 1,725,062</u>	<u>\$ 1,854,146</u>	<u>\$ 1,935,372</u>	<u>\$ 1,438,555</u>	<u>\$ 1,542,232</u>	<u>\$ 1,713,206</u>	<u>\$ 1,716,075</u>	<u>\$ 1,960,755</u>	<u>\$ 1,960,755</u>	<u>\$ 2,638,937</u>

COUNTY OF ALAMEDA, CALIFORNIA
CHANGES IN NET POSITION
LAST TEN FISCAL YEARS
(ACCRUAL BASIS OF ACCOUNTING)
(amounts expressed in thousands)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Expenses										
Governmental activities:										
General government	\$ 129,436	\$ 138,512	\$ 162,720	\$ 148,801	\$ 201,130	\$ 175,232	\$ 188,361	\$228,912	\$181,091	\$ 217,486
Public protection	766,855	780,729	816,218	884,370	995,579	991,438	1,025,266	1,119,430	1,108,558	1,093,840
Public assistance	682,936	664,085	672,473	671,151	672,846	732,600	746,760	798,356	816,847	889,769
Health and sanitation	649,431	697,402	700,454	680,779	638,290	812,264	831,984	825,153	986,332	1,120,262
Public ways and facilities	45,437	44,269	43,970	47,515	49,533	47,969	61,309	52,716	51,122	55,787
Recreation and cultural services	608	554	539	615	639	665	719	840	780	798
Education	24,356	27,125	27,202	27,442	29,617	21,110	30,695	34,449	36,636	37,668
Interest on long-term debt	90,003	82,957	88,808	87,591	82,458	73,694	73,871	72,623	70,595	68,049
Total governmental activities expenses	<u>2,389,062</u>	<u>2,435,633</u>	<u>2,512,384</u>	<u>2,548,264</u>	<u>2,670,092</u>	<u>2,854,972</u>	<u>2,958,965</u>	<u>3,132,479</u>	<u>3,251,961</u>	<u>3,483,659</u>
Program Revenues										
Governmental activities:										
Charges for services:										
General government	126,244	122,756	127,863	139,918	139,123	131,865	109,342	147,807	125,703	105,701
Public protection	200,720	206,366	209,420	230,247	236,577	240,242	241,418	241,648	260,141	269,944
Health and sanitation	171,185	176,875	211,742	239,465	186,944	208,147	208,283	235,786	249,083	265,240
Other activities	26,578	21,164	23,037	23,397	28,112	24,533	27,038	35,759	19,903	31,372
Operating grants and contributions	1,269,542	1,482,657	1,459,898	1,463,685	1,481,270	1,644,159	1,716,652	1,837,741	1,869,783	2,264,699
Capital grants and contributions	9,618	8,305	8,737	28,092	57,038	51,456	17,365	8,293	8,170	8,252
Total governmental activities program revenues	<u>1,803,887</u>	<u>2,018,123</u>	<u>2,040,697</u>	<u>2,124,804</u>	<u>2,129,064</u>	<u>2,300,402</u>	<u>2,320,098</u>	<u>2,507,034</u>	<u>2,532,783</u>	<u>2,945,208</u>
General Revenues and Other Changes in Net Position										
Governmental activities:										
Taxes										
Property taxes	411,821	444,147	431,923	466,093	500,987	530,322	580,500	647,889	698,345	729,572
Sales taxes - shared revenues	169,375	52,749	54,939	57,369	65,175	64,175	69,692	75,305	69,976	81,480
Other taxes	27,948	29,984	31,312	35,417	37,957	37,222	41,970	39,987	37,012	44,156
Interest and investment income	8,924	22	8,506	12,488	10,075	7,443	22,880	59,726	81,135	99,475
Other	50,577	40,318	26,233	48,133	30,511	28,675	37,945	47,218	50,802	41,359
Extraordinary item	(35,335)	-	-	-	-	-	-	-	-	-
Total governmental activities	<u>633,310</u>	<u>567,220</u>	<u>552,913</u>	<u>619,500</u>	<u>644,705</u>	<u>667,837</u>	<u>752,987</u>	<u>870,125</u>	<u>937,270</u>	<u>996,042</u>
Change in Net Position										
Governmental activities	<u>\$ 48,135</u>	<u>\$ 149,710</u>	<u>\$ 81,226</u>	<u>\$ 196,040</u>	<u>\$ 103,677</u>	<u>\$ 113,267</u>	<u>\$ 114,120</u>	<u>\$244,680</u>	<u>\$218,092</u>	<u>\$ 457,591</u>

COUNTY OF ALAMEDA, CALIFORNIA
FUND BALANCES OF GOVERNMENTAL FUNDS
LAST TEN FISCAL YEARS
(MODIFIED ACCRUAL BASIS OF ACCOUNTING)
(amounts expressed in thousands)

	<u>2012 ¹</u>	<u>2013 ¹</u>	<u>2014 ¹</u>	<u>2015 ¹</u>	<u>2016 ¹</u>	<u>2017 ¹</u>	<u>2018 ¹</u>	<u>2019 ¹</u>	<u>2020 ¹</u>	<u>2021 ¹</u>
General fund										
Nonspendable	\$ 4,408	\$ 3,785	\$ 11,487	\$ 10,547	\$ 5,760	\$ 3,962	\$ 3,963	\$ 3,899	\$ 3,962	\$ 55,179
Restricted	288,068	294,844	292,832	318,351	302,339	321,806	348,316	421,152	426,507	469,605
Committed	667,437	806,176	838,833	752,064	728,221	902,385	999,548	1,133,138	1,105,677	589,395
Assigned	99,646	128,177	144,224	170,789	207,381	191,248	195,744	243,603	327,303	337,553
Unassigned	23,305	17,719	7,960	114,717	194,490	107,246	134,850	95,662	203,831	154,255
Total general fund	<u>\$ 1,082,864</u>	<u>\$ 1,250,701</u>	<u>\$ 1,295,336</u>	<u>\$ 1,366,468</u>	<u>\$ 1,438,191</u>	<u>\$ 1,526,647</u>	<u>\$ 1,682,421</u>	<u>\$ 1,897,454</u>	<u>\$ 2,067,280</u>	<u>\$ 1,605,987</u>
All other governmental funds										
Nonspendable	\$ 335	\$ 472	\$ 566	\$ 863	\$ 190	\$ 1,718	\$ 2,582	\$ 929	\$ 846	\$ 196
Restricted	608,361	506,147	710,121	597,051	462,776	470,014	525,418	651,391	715,896	781,832
Committed	321,926	314,766	325,857	349,382	377,205	420,147	676,958	662,232	609,626	495,234
Assigned	4,567	5,293	5,708	5,390	5,984	7,645	9,348	11,511	13,801	15,794
Unassigned	(9,268)	(2,926)	(60,124)	(68,323)	(4,203)	-	-	-	(10,580)	(28,365)
Total all other governmental funds	<u>\$ 925,921</u>	<u>\$ 823,752</u>	<u>\$ 982,128</u>	<u>\$ 884,363</u>	<u>\$ 841,952</u>	<u>\$ 899,524</u>	<u>\$ 1,214,306</u>	<u>\$ 1,326,063</u>	<u>\$ 1,329,589</u>	<u>\$ 1,264,691</u>

COUNTY OF ALAMEDA, CALIFORNIA
CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS
LAST TEN FISCAL YEARS
(MODIFIED ACCRUAL BASIS OF ACCOUNTING)
(dollar amounts expressed in thousands)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Revenues										
Taxes	\$ 608,987	\$ 527,025	\$ 518,733	\$ 558,922	\$ 604,065	\$ 631,794	\$ 692,112	\$ 763,216	\$ 805,329	\$ 855,489
Licenses and permits	13,597	15,006	14,465	14,868	18,332	13,957	11,647	11,705	11,697	12,358
Fines, forfeitures, and penalties	36,076	38,745	36,727	44,763	47,101	36,698	38,920	31,356	32,133	44,101
Use of money and property	20,502	8,391	19,469	23,997	23,956	17,040	34,452	91,857	117,229	43,439
State aid	757,769	946,878	983,076	1,010,825	1,075,081	1,173,431	1,144,110	1,296,862	1,306,761	1,426,709
Federal aid	465,275	506,611	446,110	429,885	427,283	447,142	459,336	442,529	498,893	779,057
Other aid	61,752	44,730	39,520	51,067	35,945	75,038	130,573	74,778	77,390	97,312
Charges for services	365,541	430,141	411,647	491,488	441,795	492,618	481,301	531,098	498,202	552,804
Other revenue	73,549	104,976	110,089	88,901	81,276	83,682	93,688	89,672	115,400	150,777
Total revenues	2,403,048	2,622,503	2,579,836	2,714,716	2,754,834	2,971,400	3,086,139	3,333,073	3,463,034	3,962,046
Expenditures										
Current										
General government	126,190	129,394	127,304	134,691	142,050	140,147	144,664	162,871	177,159	197,334
Public protection	757,380	762,506	806,129	832,408	875,714	890,256	935,371	986,038	1,032,224	1,858,705
Public assistance	702,114	657,269	670,945	701,102	697,016	699,635	729,493	775,287	853,054	1,021,551
Health and sanitation	644,493	690,296	692,549	683,588	644,825	769,081	822,164	825,208	945,014	1,119,367
Public ways and facilities	49,819	52,828	44,769	43,950	50,158	30,280	42,330	32,945	32,624	36,575
Recreation and cultural services	671	610	580	615	659	654	714	801	770	740
Education	23,450	26,136	26,318	27,017	29,722	28,750	29,635	30,410	33,933	36,850
Debt service										
Principal	98,241	57,695	51,048	44,008	36,428	35,993	44,642	46,279	60,705	67,795
Interest	47,495	96,098	108,264	116,149	119,332	122,488	125,649	100,773	61,041	58,506
Payment to refunded bond escrow agent	82,031	-	-	-	-	10,167	-	-	-	-
Bond issuance costs	817	6	1,749	-	-	667	1,838	-	-	-
Capital outlay	111,523	100,560	188,821	193,226	174,437	124,757	74,143	91,851	86,594	95,704
Total expenditures	2,644,224	2,573,398	2,718,476	2,776,754	2,770,341	2,852,875	2,950,643	3,052,463	3,283,118	4,493,127
Excess (deficiency) of revenues over expenditures	(241,176)	49,105	(138,640)	(62,038)	(15,507)	118,525	135,496	280,610	179,916	(531,081)
Other financing sources (uses)										
Issuance of loans	785	2,779	18,600	-	-	3,000	10,000	30,000	-	-
Proceeds from sale of land	15,130	4,914	15,352	28,862	30,109	11,957	-	11,793	747	-
Issuance of debt	45,675	-	287,380	-	-	-	313,495	-	-	-
Refunding bonds issued	75,915	-	-	-	-	98,470	-	-	-	-
Premium on issuance of debt	10,300	-	13,106	-	-	17,080	3,424	-	-	-
Payment to refunded bond escrow agent	-	-	-	-	-	(110,791)	-	-	-	-
Transfers in	119,366	103,513	141,575	169,984	128,311	197,000	239,159	172,866	132,889	164,612
Transfers out	(110,463)	(94,643)	(134,362)	(163,441)	(113,601)	(189,213)	(231,018)	(168,479)	(140,200)	(162,221)
Total other financing sources (uses)	156,708	16,563	341,651	35,405	44,819	27,503	335,060	46,180	(6,564)	2,391
Extraordinary item	(71,362)	-	-	-	-	-	-	-	-	-
Net change in fund balances	\$ (155,830)	\$ 65,668	\$ 203,011	\$ (26,633)	\$ 29,312	\$ 146,028	\$ 470,556	\$ 326,790	\$ 173,352	\$ (528,690)
Debt service as a percentage of noncapital expenditures										
	5.76%	6.30%	6.34%	6.15%	5.92%	5.82%	5.92%	4.98%	3.82%	2.90%

* Extraordinary item is due to the dissolution of all redevelopment agencies in California.

COUNTY OF ALAMEDA, CALIFORNIA
ASSESSED VALUE OF TAXABLE PROPERTY
LAST TEN FISCAL YEARS
(amounts expressed in thousands)

Fiscal Year	Residential Property	Commercial Property	Industrial Property	Agricultural Property	Institutional Property	Utility, Unsecured and Escaped Assessment Property¹	Less: Tax-Exempt Property	Total Taxable Assessed Value	Total Direct Tax Rate
2012	\$ 138,442,842	\$ 27,114,991	\$ 18,540,107	\$ 1,412,736	\$ 2,506,623	\$ 14,447,692	\$ 6,560,413	\$ 195,904,578	1.00 %
2013	140,479,280	27,958,514	19,450,625	1,412,563	2,599,792	15,321,278	6,549,698	200,672,354	1.00
2014	149,092,989	29,348,915	20,120,895	1,456,520	2,689,140	15,633,013	7,566,667	210,774,805	1.00
2015	161,954,196	29,475,074	20,596,312	1,501,740	2,871,593	15,748,875	8,858,490	223,289,300	1.00
2016	174,707,996	30,784,933	21,604,658	1,573,372	3,008,754	16,840,363	7,931,121	240,588,955	1.00
2017	186,918,732	32,806,144	23,888,234	1,756,511	3,170,216	17,221,687	8,558,188	257,203,336	1.00
2018	200,674,894	34,676,697	25,376,448	1,894,968	3,298,031	17,548,323	9,106,096	274,363,265	1.00
2019	215,427,058	36,533,521	27,666,681	1,876,129	3,469,343	18,506,333	10,161,638	293,317,427	1.00
2020	231,131,813	39,990,023	28,200,728	1,972,429	3,539,951	19,969,802	11,017,076	313,787,670	1.00
2021	247,253,774	42,513,567	29,422,878	2,056,686	3,688,113	21,460,096	11,365,306	335,029,808	1.00

¹ The utility, unsecured and escaped assessment rolls are not available by property type.

Source: Auditor-Controller, County of Alameda

COUNTY OF ALAMEDA, CALIFORNIA
PROPERTY TAX RATES - DIRECT AND OVERLAPPING GOVERNMENTS
LAST TEN FISCAL YEARS

Fiscal Year	County General	County Special Districts	Local Special Districts	Agency Districts	Schools	Cities	Total¹
2012	1.0000	0.0063	0.0018	0.0176	0.1273	0.0584 %	1.2114 %
2013	1.0000	0.0048	0.0016	0.0159	0.1289	0.0560	1.2072
2014	1.0000	0.0054	0.0015	0.0240	0.1346	0.0529	1.2184
2015	1.0000	0.0054	0.0022	0.0183	0.1393	0.0546	1.2198
2016	1.0000	0.0074	0.0018	0.0177	0.1310	0.0469	1.2048
2017	1.0000	0.0071	0.0019	0.0198	0.1279	0.0513	1.2080
2018	1.0000	0.0077	0.0020	0.0244	0.1406	0.0526	1.2273
2019	1.0000	0.0071	0.0051	0.0251	0.1407	0.0501	1.2281
2020	1.0000	0.0067	0.0056	0.0293	0.1437	0.0504	1.2357
2021	1.0000	0.0066	0.0055	0.0259	0.1382	0.0537	1.2299

¹ Rates reflect voter approved Proposition 13 provisions limiting property tax levy to 1 percent of full cash value plus levies to pay for indebtedness approved by voters. The rates shown under special districts, schools, and cities represent the levies for indebtedness.

Source: Auditor-Controller, County of Alameda

**COUNTY OF ALAMEDA, CALIFORNIA
PRINCIPAL PROPERTY TAXPAYERS
CURRENT YEAR AND NINE YEARS AGO
(amounts expressed in thousands)**

Taxpayer	JUNE 30, 2021			JUNE 30, 2012		
	Secured Assessed Value	Rank	Percentage of Total Secured Assessed Value	Secured Assessed Value	Rank	Percentage of Total Secured Assessed Value
Tesla Motors Inc	\$ 2,541,821	1	0.80 %			
Pacific Gas & Electric Co.	2,410,164	2	0.76	\$ 1,505,810	1	0.82 %
Kaiser Foundation Hospitals	654,276	3	0.21	409,387	3	0.22
Kaiser Foundation Health Plan Inc	450,448	4	0.14	352,000	4	0.19
Russell City Energy Company, LLC	381,400	5	0.12			
Bayer Healthcare LLC	371,087	6	0.12	269,118	5	0.15
BMR Gateway Boulevard LLC	366,646	7	0.12			
BRE Properties Inc	355,599	8	0.11			
Sofxi WFO Center 21 Owner LLC	354,087	9	0.11			
5616 Bay Street Investors LLC	332,352	10	0.10			
Pacific Bell Telephone Company				478,460	2	0.26
SCI Limited Partnership I				261,128	6	0.14
Northern California Industrial Portfolio Inc				260,891	7	0.14
Pacific Commons Retail LLC				237,973	8	0.13
Stoneridge Properties				232,441	9	0.13
OCC Venture LLC				230,646	10	0.12
	<u>\$ 8,217,880</u>		<u>2.59 %</u>	<u>\$ 4,237,854</u>		<u>2.30 %</u>

Source: Auditor-Controller, County of Alameda

**COUNTY OF ALAMEDA, CALIFORNIA
PROPERTY TAX LEVIES AND COLLECTIONS
LAST TEN FISCAL YEARS
(amounts expressed in thousands)**

Fiscal Year	Taxes Levied for the Fiscal Year ¹	Collected within the Fiscal Year of the Levy		Collections in Subsequent Years	Total Collections to Date	
		Amount	Percentage of Levy		Amount	Percentage of Levy
2012	\$ 2,358,081	\$ 2,300,192	97.55	\$ 52,138	\$ 2,352,331	99.8 %
2013	2,402,703	2,359,713	98.21	40,012	2,399,725	99.9
2014	2,539,344	2,503,557	98.59	33,841	2,537,397	99.9
2015	2,711,822	2,675,977	98.68	30,243	2,706,219	99.8
2016	2,880,728	2,840,578	98.61	37,099	2,877,677	99.9
2017	3,082,262	3,040,805	98.65	39,039	3,079,844	99.9
2018	3,350,221	3,313,841	98.91	34,224	3,348,066	99.9
2019	3,618,407	3,581,759	98.99	36,891	3,618,650	100.0
2020	3,896,168	3,847,811	98.76	42,675	3,890,486	99.9
2021	4,118,683	4,069,198	98.80		4,069,198	98.8

¹ Taxes levied for the fiscal year are based on the original charge and are not adjusted for any value changes that may reduce or increase taxes levied and impact percentage of levy collections, including collections to be greater than one hundred percent.

Source: Auditor-Controller, County of Alameda

COUNTY OF ALAMEDA, CALIFORNIA
RATIOS OF OUTSTANDING DEBT BY TYPE
LAST TEN FISCAL YEARS
(dollar amounts expressed in thousands, except per capita in dollars)

Fiscal Year	Governmental Activities										Total Primary Government	Percentage of Total Personal Income ²	
	Certificates of Participation	Tobacco Settlement Asset-Backed Bonds	Pension Obligations Bonds	Lease Revenue Bonds	General Obligation Bonds	Tax Allocation Bonds ¹	Special Assessment Bonds	Capital Leases	Loans and Notes Payable	Per Capita ²			
2012	\$ 39,249	\$ 277,774	\$ 410,116	\$ 575,655	\$ -	\$ -	\$ -	\$ 4,357	\$ 37,241	\$ 1,344,392	1.58 %	\$ 879	
2013	36,552	270,239	367,753	564,254	-	-	-	4,150	38,520	1,281,468	1.50	827	
2014	32,617	273,662	318,892	840,363	-	-	-	3,971	51,606	1,521,111	1.68	967	
2015	28,451	277,030	262,846	822,644	-	-	-	3,784	17,987	1,412,742	-	883	
2016	24,033	281,022	198,891	812,019	-	-	-	3,590	6,484	1,326,039	-	815	
2017	19,351	285,265	126,252	799,658	-	-	-	3,351	8,273	1,242,150	1.23	758	
2018	14,557	286,873	45,755	856,008	243,424	-	-	2,915	16,646	1,466,178	1.24	882	
2019	9,143	289,005	-	827,622	243,267	-	-	2,320	45,299	1,416,656	-	850	
2020	6,203	291,326	-	798,166	221,096	-	-	1,466	24,202	1,342,459	0.99	803	
2021	3,119	293,337	-	767,530	194,225	-	-	595	3,306	1,262,112	-	750	

Note: Details regarding the County's outstanding debt can be found in the notes to the financial statements.

¹ Pursuant to ABx1 26, the responsibility for the payment of this debt was transferred to the Alameda County Successor Agency Private-Purpose Trust Fund.

² See Schedule of Demographic and Economic Statistics for total personal income and population data.

COUNTY OF ALAMEDA, CALIFORNIA
RATIOS OF GENERAL BONDED DEBT OUTSTANDING
LAST TEN FISCAL YEARS
(dollar amounts expressed in thousands, except per capita in dollars)

Fiscal Year	General Bonded Debt Outstanding				Percentage of Actual Value of Property ²	Per Capita ³
	General Obligation Bonds	Tax Allocation Bonds ¹	Special Assessment Bonds	Total		
2011	\$ -	\$ 31,890	\$ 220	\$ 32,110	0.02 %	\$ 21
2012	-	-	-	-	-	-
2013	-	-	-	-	-	-
2014	-	-	-	-	-	-
2015	-	-	-	-	-	-
2016	-	-	-	-	-	-
2017	-	-	-	-	-	-
2018	243,424	-	-	243,424	0.09	146
2019	243,267	-	-	243,267	0.08	146
2020	221,096	-	-	221,096	0.07	132
2021	194,225	-	-	194,225	0.06	115

Note:

¹ Pursuant to ABx1 26, the responsibility for the payment of this debt was transferred to the Alameda County Successor Agency Private-Purpose Trust Fund.

² See Schedule of Assessed Taxable Value for the taxable value of property.

³ See Schedule of Demographic and Economic Statistics for total population data.

COUNTY OF ALAMEDA, CALIFORNIA

ESTIMATED DIRECT AND OVERLAPPING BONDED DEBT

JUNE 30, 2021

(dollar amounts in tables expressed in thousands)

2020-21 Assessed Valuation: \$335,029,808 (includes unitary utility valuation)

Population: 1,682,353

<u>OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 6/30/21</u>
Alameda County	100.000%	\$ 191,300
Bay Area Rapid Transit District	38.698	724,384
Chabot-Las Positas Community College District	99.461	590,092
Ohlone Community College District	100.000	423,445
Peralta Community College District	100.000	437,205
San Joaquin Delta Community College District	0.402	806
Alameda Unified School District	100.000	198,457
Berkeley Unified School District	100.000	338,375
Castro Valley Unified School District	100.000	149,865
Dublin Unified School District	100.000	541,658
Fremont Unified School District	100.000	543,330
Hayward Unified School District	100.000	706,696
Livermore Valley Joint Unified School District	99.658	198,424
New Haven Unified School District	100.000	242,539
Oakland Unified School District	100.000	981,100
Piedmont Unified School District	100.000	113,349
San Leandro Unified School District	100.000	316,757
San Lorenzo Unified School District	100.000	188,970
Other Unified School Districts	1.744-100.000	409,947
City of Alameda	100.000	6,435
City of Albany	100.000	12,370
City of Albany Parcel Tax	100.000	191
City of Berkeley	100.000	181,995
City of Fremont	100.000	32,915
City of Oakland	100.000	450,075
Washington Township Healthcare District	100.000	326,370
Hayward Area Recreation and Park District	100.000	102,480
East Bay Regional Park District	57.730	76,879
Community Facilities Districts	100.000	234,752
1915 Act Bonds (Estimated)	100.000	21,741
TOTAL OVERLAPPING TAX AND ASSESSMENT DEBT		<u>\$8,742,902</u>

COUNTY OF ALAMEDA, CALIFORNIA

ESTIMATED DIRECT AND OVERLAPPING BONDED DEBT (Continued)

JUNE 30, 2021

(dollar amounts in tables expressed in thousands)

<u>DIRECT AND OVERLAPPING DEBT:</u>	<u>% Applicable</u>	<u>Debt 6/30/21</u>
Alameda County Certificates of Participation	100.000%	3,119
Alameda County Tobacco Securitization Bonds	100.000	293,337
Alameda County Lease Revenue Bonds	100.000	767,530
Alameda County Capital Leases	100.000	595
Alameda County Loans and Notes Payable	100.000	3,306
Alameda County General Obligation Bonds	100.000	194,225
Alameda-Contra Costa Transit District Certificates of Participation	90.128	10,504
Peralta Community College District Pension Obligation Bonds	100.000	133,284
Fremont Unified School District Certificates of Participation	100.000	60,385
Hayward Unified School District Certificates of Participation	100.000	13,677
Oakland Unified School District Certificates of Participation	100.000	14,995
San Lorenzo Unified School District Certificates of Participation	100.000	9,060
Other Unified School District General Fund Obligations	6.355-100.00	11,792
City of Berkeley General Fund Obligations	100.000	21,860
City of Fremont General Fund Obligations	100.000	87,040
City of Hayward General Fund Obligations	100.000	73,213
City of Livermore General Fund Obligations	100.000	49,500
City of Oakland General Fund Obligations	100.000	86,438
City of Oakland Pension Obligation Bonds	100.000	198,563
City of San Leandro General Fund and Pension Obligations Bonds	100.000	55,196
Other City General Fund Obligations	100.000	91,034
Livermore Area Recreation and Park District Pension Obligation Bonds	100.000	<u>12,875</u>
TOTAL DIRECT AND OVERLAPPING DEBT		<u>\$2,191,528</u>
<u>OVERLAPPING TAX INCREMENT DEBT (Successor Agencies):</u>	100.000	<u>\$ 581,773</u>
TOTAL DIRECT DEBT		\$1,262,112 ¹
TOTAL OVERLAPPING DEBT		<u>\$10,062,793</u>
COMBINED TOTAL DEBT		<u>\$11,324,905 ²</u>
Ratios to 2020-21 Assessed Valuation:		<u>Per Capita</u> <u>(not in thousands)</u>
Total Overlapping Tax and Assessment Debt	2.61%	\$5,197
Total Direct Debt	.38%	755
Combined Total Debt	3.38%	6,732
Ratios to Redevelopment Successor Agencies Incremental Valuation (\$44,746,847):		
Total Overlapping Tax Increment Debt	1.30%	346

¹ Includes accreted value.

² Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue bonds and non-bonded capital lease obligations. Qualified Zone Academy Bonds are included based on principal due at maturity.

Source: California Municipal Statistics, Inc. All bonded debt obligations that are supported in whole or in part by a property tax or assessment or are supported by a pledge of the general fund or general taxing power of a governmental entity are included. Assessment bonds and other obligations secured by an underlying portion of the jurisdiction are excluded from direct debt but are included as overlapping debt.

COUNTY OF ALAMEDA, CALIFORNIA
LEGAL DEBT MARGIN INFORMATION
LAST TEN FISCAL YEARS
(dollar amounts expressed in thousands)

Legal debt margin calculation for fiscal year 2020

Net assessed value	\$333,311,739
Plus homeowners' exemption	1,718,069
Total assessed value	<u>\$335,029,808</u>
Debt limit (1.25% of total assessed value)	\$4,187,873
Amount of debt applicable to debt limit	191,300
Legal debt margin	<u>\$3,996,573</u>

<u>Fiscal year</u>	<u>Debt Limit</u>	<u>Total Net Debt Applicable to Limit</u>	<u>Legal Debt Margin</u>	<u>Legal Debt Margin / Debt Limit</u>
2012	\$2,448,807	\$ -	\$2,448,807	100 %
2013	2,508,404	-	2,508,404	100
2014	2,634,685	-	2,634,685	100
2015	2,791,116	-	2,791,116	100
2016	3,007,362	-	3,007,362	100
2017	3,215,042	-	3,215,042	100
2018	3,669,541	240,000	3,429,541	100
2019	3,666,468	240,000	3,426,468	93
2020	3,922,346	218,000	3,704,346	94
2021	4,187,873	191,300	3,996,573	95

Source: Auditor-Controller, County of Alameda

**COUNTY OF ALAMEDA, CALIFORNIA
PLEDGED-REVENUE COVERAGE
LAST TEN FISCAL YEARS
(dollar amounts expressed in thousands)**

Fiscal Year	Special Assessment Bonds ¹				Tax Allocation Bonds ²				Tobacco Securitization Bonds ³			
	Special Assessment Collections	Debt Service		Coverage	Tax Increment	Debt Service		Coverage	Tobacco Settlement Revenue	Debt Service		Coverage
		Principal	Interest			Principal	Interest			Principal	Interest	
2012	\$ 86	\$ 220	\$ 5	38 %	\$ 2,114	\$ 705	\$ 1,409	100 %	\$ 13,422	\$ 3,615	\$ 10,432	96 %
2013	-	-	-	-	2,111	730	1,381	100	20,229	10,505	10,278	97
2014	-	-	-	-	2,111	760	1,351	100	13,299	4,140	9,693	96
2015	-	-	-	-	2,110	790	1,320	100	13,165	4,700	9,455	93
2016	-	-	-	-	2,113	825	1,288	100	13,017	4,615	9,185	94
2017	-	-	-	-	2,109	855	1,254	100	13,388	4,940	8,920	97
2018	-	-	-	-	2,109	890	1,219	100	15,984	8,190	8,635	95
2019	-	-	-	-	2,108	925	1,183	100	15,494	8,330	8,165	94
2020	-	-	-	-	2,105	960	1,145	100	14,854	8,840	7,686	90
2021	-	-	-	-	2,105	1,000	1,105	100	16,767	9,905	7,176	98

¹ Special Assessment bonds were paid off on September 2, 2011.

² Tax Allocation bonds were issued on February 2, 2006. Pursuant to ABx1 26, the responsibility for the payment of this debt was transferred to the Alameda County Redevelopment Successor Agency Private-Purpose Trust Fund effective February 1, 2012.

³ Tobacco Securitization bonds were issued on October 30, 2002.

Source: Auditor-Controller, County of Alameda

**COUNTY OF ALAMEDA, CALIFORNIA
DEMOGRAPHIC AND ECONOMIC STATISTICS
LAST TEN FISCAL YEARS**

Fiscal Year	Population	Total Personal Income (amounts expressed in thousands)²	Per Capita Personal Income (dollars)²	Unemployment Rate ³
2012	1,530,176	\$ 85,017,099	\$ 54,683	9.5
2013	1,548,681	85,173,987	53,798	7.4
2014	1,573,254	90,631,392	56,261	5.8
2015	1,599,888	- ¹	- ¹	4.6
2016	1,627,865	- ¹	- ¹	4.7
2017	1,638,215	101,370,460	61,879	4.0
2018	1,663,190	118,554,685	71,282	3.3
2019	1,666,753	127,746,433	76,644	3.1
2020	1,671,329	135,663,560	81,171	12.2
2021	1,682,353	- ¹	- ¹	6.6

¹ Personal Income & Per Capita Income for the County is not available from 2015-2016 and 2021

² Dollar estimates are in current dollars (not adjusted for inflation); Per Capita Personal Income was computed using Census Bureau's midyear population estimates, which differ from the population column of this page.

³ Unemployment rates reflected as of June of each year

Source: State of California Department of Finance
U.S. Department of Commerce, Bureau of Economic Analysis
Employment Development Department Labor Market Information

**COUNTY OF ALAMEDA, CALIFORNIA
PRINCIPAL EMPLOYERS
CURRENT YEAR AND NINE YEARS AGO**

Employer	Type of Business	Number of Employees June 30, 2021 ¹		Percentage of Total County Employment ²	Number of Employees June 30, 2012 ¹		Percentage of Total County Employment ²
			Rank			Rank	
Kaiser Permanente Medical Group Inc. ³	Health Care	34,666	1	4.62 %	9,944	2	1.47 %
Tesla ³	Electric Vehicle Manufacturer	13,000	2	1.73	-	20+	-
Safeway Inc. ³	Supermarkets & Other Grocery	9,731	3	1.30	9,121	4	1.34
County of Alameda ⁴	Local Government	9,424	4	1.26	8,843	5	1.30
Sutter Health ³	Health Care	9,377	5	1.25	-	20+	-
John Muir Health ³	Health Care	6,300	6	0.84	-	20+	-
PG&E ³	Energy Production	5,100	7	0.68	-	20+	-
Workday ³	Enterprise Cloud Applications	5,098	8	0.68	-	20+	-
Chevron Corp. ³	Energy Production	4,700	9	0.63	-	20+	-
Wells Fargo & Co. ³	Financial Services	4,354	10	0.58	5,632	8	0.83
Total		<u>101,750</u>		<u>13.55 %</u>	<u>33,540</u>		<u>4.94 %</u>

Source: SFBT research for employment data. The County of Alameda number of employees as of June 30, 2012 is obtained from the County of Alameda Annual Comprehensive Financial Report for Fiscal Year ended June 30, 2012.

¹ The number of employees, except for County of Alameda include Alameda County and Contra Costa County employees.
Total employment within County of Alameda is unavailable.

² Percentage calculated based on Alameda County's Employment of 750,200 for June 2021 and 678,700 for June 2012 (Source: Employment Development Department)

³ Information from SFBT research from September 2021. Information as of June 30, 2021 is not available, except for County of Alameda employer.

⁴ Information from County of Alameda's database as of June 30, 2021.

**COUNTY OF ALAMEDA
FULL-TIME EQUIVALENT EMPLOYEES BY FUNCTION
LAST TEN FISCAL YEARS**

Function	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
General Government	1,242	1,241	1,259	1,333	1,291	1,294	1,307	1,342	1,332	1,294
Public Protection	3,319	3,330	3,385	3,155	3,249	3,039	2,994	3,092	2,939	3,015
Public Assistance	1,980	1,919	2,057	2,288	1,211	2,137	2,152	2,176	2,116	2,046
Health and Sanitation	1,130	1,158	1,190	1,159	2,276	1,595	1,641	1,676	1,677	1,712
Public Ways and Facilities	5	5	5	4	105	4	4	4	3	3
Recreation and Cultural Services	4	3	4	4	5	4	4	4	3	3
Education	<u>90</u>	<u>88</u>	<u>93</u>	<u>102</u>	<u>4</u>	<u>107</u>	<u>118</u>	<u>107</u>	<u>145</u>	<u>142</u>
Totals	<u><u>7,770</u></u>	<u><u>7,744</u></u>	<u><u>7,993</u></u>	<u><u>8,045</u></u>	<u><u>8,141</u></u>	<u><u>8,180</u></u>	<u><u>8,220</u></u>	<u><u>8,401</u></u>	<u><u>8,215</u></u>	<u><u>8,215</u></u>

Source: Auditor-Controller, County of Alameda

**COUNTY OF ALAMEDA
OPERATING INDICATORS BY FUNCTION
LAST TEN FISCAL YEARS ¹**

Function	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
General Government										
Property tax bills processed	556,359	570,121	571,625	568,444	565,466	568,056	584,861	572,794	583,126	568,569
Phone-assisted property tax calls	63,784	60,970	53,484	56,467	42,666	46,641	49,158	45,752	46,890	51,037
Recycled materials recovered (pounds) from county departments										
Metal	347,449	424,908	413,351	386,384	561,659	459,812	486,709	442,089	295,401	282,717
Paper	680,461	1,136,732	1,399,429	1,420,980	1,328,709	1,158,883	963,607	920,961	1,153,705	703,812
Toner cartridges	9,633	9,709	14,515	14,692	11,644	12,038	7,473	12,386	3,185	8,047
Public Protection										
Juvenile detention risks and needs assessment completed	4,092	3,017	2,740	2,524	1,852	1,621	1596	733	1,926	479
Youth serviced through community probation	640	641	576	436	397	384	565	650	510	388
Documents recorded/indexed	405,824	452,091	323,925	346,218	326,558	320,423	273,564	242,294	298,511	453,935
Child support active caseload	34,612	33,472	32,983	31,825	31,081	31,034	31,625	30,813	29,725	29,249
Emergency calls to fire district	33,071	34,483	36,621	38,797	40,814	40,921	41,683	42,173	42,363	40,886
Calls for police service	50,122	51,610	50,444	53,147	54,317	54,542	55,202	53,715	58,657	50,064
Total patrol arrests	5,856	5,220	6,437	6,430	6,672	5,854	5,670	5,485	4,630	4,417
Total investigation arrests	1,978	1,939	1,969	2,008	1,846	1,652	1,713	1,609	1,835	1,207
Crime investigation cases assigned	2,671	4,146	5,844	7,141	7,002	6,569	4,683	3,963	3,151	3,002
Crime investigation cases closed	8,644	6,822	8,308	6,542	7,099	7,380	6,712	6,264	6,680	7,118
Average daily inmate population	3,487	3,383	3,380	2,988	2,653	2,493	2,547	2,565	2,364	2,078
Public Assistance										
Seniors receiving services (annual amount)	49,685	54,599	57,740	64,464	63,011	72,261	75,755	70,395	51,390	65,500
Congregate nutrition meals served (annual amount)	199,427	200,428	196,768	185,477	180,046	194,848	188,288	179,046	191,104	183,291
Home-delivered nutrition meals served (annual amount)	518,453	488,203	496,397	529,690	480,814	540,995	659,416	570,190	595,662	549,873
CALWORKS job placements (annual amount)	2,788	2,620	2,614	2,626	2,372	1,847	1,596	1,511	1,055	599
CALWORKS eligible households aided (monthly average)	19,997	19,172	18,406	17,036	14,581	12,631	11,148	9,608	8,953	7,600
Medi-Cal eligible households aided (monthly average)	84,254	105,488	116,322	168,060	204,664	213,808	212,715	206,917	203,614	226,879
Food stamps eligible households aided (monthly average)	59,802	62,968	63,828	67,545	62,067	59,076	56,676	53,901	68,780	79,199
General Assistance eligible cases aided (monthly average)	7,455	8,184	8,089	8,241	8,250	8,794	9,084	9,035	9,022	6,009
Health and Sanitation										
Food inspections	13,894	15,652	16,165	17,911	15,647	15,227	10,822	13,749	11,371	10,385
Recreational inspections	2,398	1,432	2,418	2,054	2,505	2,315	1,645	2,302	1,823	663
Medical waste facility inspections	150	160	158	136	140	146	189	154	147	95
Landfill site inspections	252	258	221	295	306	241	382	350	451	358
Hazardous waste accepted from households (pounds)	2,851,155	2,887,424	3,100,100	3,390,777	4,066,855	4,570,668	4,722,366	4,978,582	2,841,671	4,300,524
Hazardous waste recycled (pounds)	2,200,192	2,343,774	2,450,000	1,982,822	2,889,840	3,426,088	3,430,603	3,657,846	1,932,714	3,086,221
Public Ways and Facilities										
Percent of roadway miles rehabilitated	9.84	9.45	9.45	6.75	8.40	1.1	3.74	3.5	2.45	2.2
Percent of potholes filled within 48 hours of request	75.00	80.00	80.00	80.00	80.00	80.00	72.00	34.56	35.31	51.85
Education										
Number of library visits	4,922,076	4,891,575	4,855,755	5,301,916	5,006,010	4,902,657	4,385,828	4,803,248	3,981,475	428,353
Number of registered library card holders	346,431	357,036	366,504	375,054	386,768	395,120	425,068	439,401	340,736	360,690

¹ Operating indicators are not available for the recreation and cultural services function.

Source: Various County of Alameda departments

**COUNTY OF ALAMEDA
CAPITAL ASSETS STATISTICS BY FUNCTION
LAST TEN FISCAL YEARS**

Function	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
General Government										
Administration buildings	3	5	5	6	6	6	7	7	7	7
Public Protection										
Administration buildings	11	11	11	11	11	11	12	12	12	12
Jail and detention facilities	5	5	5	5	5	6	6	6	6	6
Pump stations	13	13	13	13	13	13	13	13	13	13
Fuel cell center	1	1	1	1	1	1	1	1	1	1
Fire stations	4	4	4	4	4	4	5	5	5	5
Fire trucks	30	31	31	33	31	29	27	29	30	30
Aircraft	2	2	2	3	3	3	3	3	4	4
Patrol boats	5	5	5	5	7	7	9	10	10	9
Patrol cars	141	160	160	165	143	129	148	146	145	139
Rescue equipment	10	10	10	10	6	6	6	6	6	7
Heavy equipment	69	70	72	72	61	63	66	65	75	82
Public Assistance										
Administration buildings	4	4	4	4	4	4	4	4	4	5
Health and Sanitation										
Administration buildings	2	2	4	4	4	4	4	4	4	4
Hospitals	3	3	3	3	3	3	3	3	3	3
Health centers	5	5	5	5	6	6	6	6	6	6
Hazardous waste facilities	2	2	2	2	2	2	2	2	2	2
Public Ways and Facilities										
Administration building	1	1	1	1	1	1	1	1	1	1
Maintenance buildings	5	5	5	5	5	5	5	5	5	5
Bridges	7	7	7	7	7	7	7	7	7	7
Road (miles)	472	472	472	472	472	471	471	473	473	473
Street lights	7,531	7,592	7,603	7,613	8,076	8,084	8,084	8,090	8,107	8,168
Traffic signals	78	79	80	87	87	87	87	98	94	95
Heavy equipment	65	65	73	73	68	64	65	47	66	62
Recreation and Cultural Services										
Administration building	1	1	1	1	1	1	1	1	1	1
Exhibit halls	6	6	6	6	6	6	6	6	6	6
Amphitheater	1	1	1	1	1	1	1	1	1	1
Agricultural Center									1	1
Education										
Libraries	4	4	4	4	4	4	4	4	4	4

Source: Auditor-Controller, County of Alameda

Mission

To enrich the lives of Alameda County residents through visionary policies and accessible, responsive, and effective services.

Vision

Alameda County is recognized as one of the best counties in which to live, work and do business.

Values

Integrity, honesty and respect fostering mutual trust.

Transparency and accountability achieved through open communications and involvement of diverse community voices.

Fiscal stewardship reflecting the responsible management of resources.

Customer service built on commitment, accessibility and responsiveness.

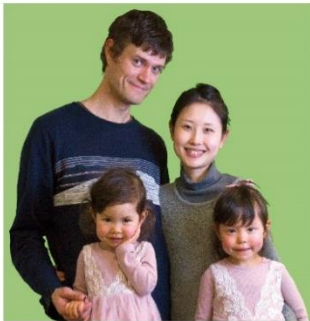
Excellence in performance based on strong leadership, teamwork and a willingness to take risks.

Diversity recognizing the unique qualities of every individual and his or her perspective.

Environmental stewardship to preserve, protect and restore our natural resources.

Social responsibility promoting self-sufficiency, economic independence and an interdependent system of care and support.

Compassion ensuring all people are treated with respect, dignity and fairness.



*Healthy
Environment*

*Safe & Livable
Communities*

*Prosperous &
Vibrant Economy*

*Thriving & Resilient
Population*



EXHIBIT C

1976

INDUSTRIAL WELFARE COMMISSION ORDER NO. 5-76,

REGULATING

**WAGES, HOURS, AND WORKING
CONDITIONS IN THE
PUBLIC HOUSEKEEPING INDUSTRY**

ORDER 5-76

*Title 8, Calif.
Administrative
Code 1:380*

*Replacing former
Orders 5-68 and 1-74
Effective October 18, 1976*



TO WHOM IT MAY CONCERN:

TAKE NOTICE: That pursuant to the Legislature's 1973 mandate to the Industrial Welfare Commission to review, update and promulgate regulations necessary to provide adequate and reasonable wages, hours, and working conditions appropriate for all employees, and by virtue of authority vested in the Commission by Sections 1171 through 1204 of the Labor Code of the State of California, and after investigation and findings pursuant to Section 1178 and after receiving recommendations from duly appointed wage boards, and after consideration of all written material and information submitted, and after public hearings duly held, notice of said hearings having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion has found and concluded that its Public Housekeeping Industry Order, Number 5-68, enacted on September 26, 1967 and its Minimum Wage Order 1-74 enacted on January 1, 1974, should be altered and amended.

NOW, THEREFORE, the Industrial Welfare Commission of the State of California does hereby alter and amend said Public Housekeeping Industry Order, Number 5-68, and its Minimum Wage Order 1-74.

1. APPLICABILITY OF ORDER

This Order shall apply to all persons employed in the public housekeeping industry, whether paid on a time, piece rate, commission, or other basis, except that:

(A) The provisions of this Order shall not apply to student nurses in a school accredited by the California Board of Nursing Education and Nurse Registration or by the Board of Vocational Nurse and Psychiatric Technician Examiners or exempted by the provisions of Sections 2789 or 2884 of the Business and Professions Code;

(B) Provisions of Sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. No person shall be considered to be employed in an administrative, executive or professional capacity unless one of the following conditions prevails:

(1) The employee is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than \$720.00 per month; or

(2) The employee is licensed or certified by the State of California and is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting.

(C) The provisions of this Order shall not apply to employees directly employed by the State or any county, incorporated city or town or other municipal corporation, or to outside salespersons.

(D) Provisions of this Order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

2. DEFINITIONS

(A) "Commission" means the Industrial Welfare Commission of the State of California.

(B) "Division" means the Division of Labor Standards Enforcement of the State of California.

(C) "Public Housekeeping Industry" means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

(1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;

(2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;

(3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;

(6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and

(7) Establishments providing veterinary or other animal care services.

(D) "Employ" means to engage, suffer, or permit to work.

(E) "Employee" means any person employed by an employer, and includes any lessee who is charged rent, or who pays rent for a chair, booth, or space and (1) who does not use his or her own funds to purchase requisite supplies, and (2) who does not maintain an appointment book separate and distinct from that of the establishment in which the space is located, and (3) who does not have a business license where applicable.

(F) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(G) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked.

(H) "Minor" means, for the purpose of this Order, any person under the age of eighteen (18) years.

(I) "Outside Salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(J) "Split shift" means a work schedule which is interrupted by nonpaid nonworking periods established by the employer, other than bona fide rest or meal periods.

(K) "Teaching" means, for the purpose of Section 1 of this Order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.

(L) "Wages" means all amounts paid for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.

(M) "Workday" means any consecutive 24 hours beginning at the same time each calendar day.

(N) "Workweek" means any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. HOURS AND DAYS OF WORK

(A) No employee eighteen (18) years of age or over shall be employed more than eight (8) hours in any one workday or more than forty (40) hours in any one workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over forty (40) hours in the workweek. Employment beyond eight (8) hours in any one workday or more than six (6) days in any one workweek is permissible provided the employee is compensated for such overtime at not less than:

(1) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any one workday, and for the first eight (8) hours worked on the seventh (7th) workday; and

(2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any one workday and for all hours worked in excess of eight (8) hours on the seventh (7th) workday in any one workweek.

(B) No employer shall be deemed to have violated the provisions of the above subsection (A) by instituting, pursuant to a written agreement voluntarily executed by the employer and at least two-thirds (⅔) of the affected employees before the performance of the work, a regularly scheduled week of work which includes not more than four (4) working days of not more than ten (10) hours each within five (5) consecutive workdays, provided that:

(1) The employer is not required to pay the premium wage rate prescribed in subsection (A) for the 9th and 10th hours worked during such workdays;

(2) If an employee on such a four-day schedule is required or permitted to work more than ten (10) hours in any workday, the premium wage rate provisions in subsection (A) above shall apply to such employee for those hours worked in excess of the 10th hour of that work day;

(3) Any employee on such a schedule who is required or permitted to work on more than four (4) workdays shall be compensated at the rate of not less than one and one-half (1½) times the employee's regular rate of pay for the first eight (8) hours on such additional workdays and double the employee's regular rate of pay for work in excess of eight (8) hours on those workdays.

(C) No employer engaged in the operation of a licensed acute care or extended care hospital shall be deemed to have violated any provision of this Section by adopting, pursuant to a written agreement or understanding voluntarily arrived at between the employer and the employee before performance of the work, a work period of fourteen (14) consecutive workdays in lieu of a workweek of seven (7) consecutive days for purposes of overtime computation; provided that the employee shall be compensated for hours worked in excess of eight (8) hours in any workday and in excess of eighty (80) hours in any such fourteen (14) day work period at the rate of not less than one and one-half (1½) times the employee's regular rate of pay.

(D) This section shall not apply to employees eighteen (18) years of age or over who have direct responsibility for children under eighteen (18) years of age receiving twenty-four (24) hour care, nor to organized camp counselors, nor to resident managers of homes for the aged having less than eight (8) beds; provided that persons employed in such occupations shall not be employed more than fifty-four (54) hours nor more than six (6) days in any one workweek, except under the following conditions:

In case of emergency, employees eighteen (18) years of age or over may be employed in excess of fifty-four (54) hours or six (6) days in any one workweek provided the employee is compensated for all hours in excess of fifty-four (54) hours and six (6) days in one workweek at not less than one and one-half (1½) times the employee's regular rate of pay.

(E) No minor shall be employed more than eight (8) hours in any one day or more than six (6) days in any one week. One and one-half (1½) times the minor's regular rate of pay shall be paid for all work over forty (40) hours in any one week. No minor shall be employed before 5 o'clock in the morning or after 10 o'clock in the evening, except that during any evening preceding a non-school day a minor may work the hours authorized by this section until 12:30 o'clock in the morning of such non-school day.

(F) Minors sixteen (16) years of age or older and under the age of eighteen (18) years enrolled in work experience education programs approved by the State Department of Education may work after 10 p.m. but not later than 12:30 a.m. providing such employment is not detrimental to the health, education or welfare of the minors and the approval of the parent and the work experience coordinator has been obtained. However, any such minor who works any time during the hours from 10 p.m. to 12:30 a.m. shall be paid for work during that time at a rate which is not less than the minimum wage required for adults.

(G) Minors sixteen (16) years of age or older and under the age of eighteen (18) years enrolled in work experience education programs approved by the State Department of Education may work after 10 p.m. but not later than 12:30 a.m. providing such employment is not detrimental to the health, education or welfare of the minors and the approval of the parent and the work experience coordinator has been obtained. However, any such minor who works any time during the hours from 10 p.m. to 12:30 a.m. shall be paid for work during that time at a rate which is not less than the minimum wage required for adults.

(H) Minors sixteen (16) years of age or older and under the age of eighteen (18) years enrolled in work experience education programs approved by the State Department of Education may work after 10 p.m. but not later than 12:30 a.m. providing such employment is not detrimental to the health, education or welfare of the minors and the approval of the parent and the work experience coordinator has been obtained. However, any such minor who works any time during the hours from 10 p.m. to 12:30 a.m. shall be paid for work during that time at a rate which is not less than the minimum wage required for adults.

VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$100 to \$5,000 as well as to criminal penalties provided herein. Refer to California Labor Code Sections 1281, 1281.1 and 1290 to 1298 for additional restrictions on the employment of minors.

(G) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed thirty (30) and the total hours of employment in any one workday thereof do not exceed six (6).

(H) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food or drink or for heating food or drink; and a suitable sheltered place shall be provided in which to consume such food or drink.

(I) The provisions of this section are not applicable to employees whose hours of service are regulated by the United States Department of Transportation Code of Federal Regulations, Title 49, sections 395.1 to 395.13, Hours of Service of Drivers.

(J) The daily overtime provisions of subsection (A) above shall not apply to ambulance drivers and attendants scheduled for twenty-four (24) hour shifts of duty who have agreed in writing to exclude from daily time worked not more than three (3) meal periods of not more than one hour each and a regularly scheduled uninterrupted sleeping period of not more than eight (8) hours. The employer shall provide adequate dormitory and kitchen facilities for employees on such a schedule.

4. MINIMUM WAGES (See Order MW-78)

(A) Every employer shall pay to each employee wages not less than two dollars and fifty cents (\$2.50) per hour for all hours worked, except:

(1) LEARNERS. Employees during their first one hundred and sixty (160) hours of employment in occupations in which they have no previous similar or related experience, for whom the rate of pay shall be not less than two dollars and fifteen cents (\$2.15) per hour.

(2) MINORS may be paid two dollars and fifteen cents (\$2.15) per hour; provided that the number of minors employed at said lesser rate shall not exceed twenty-five percent (25%) of the persons regularly employed in the establishment. An employer of less than ten (10) persons may employ three (3) minors at said lesser rate. The twenty-five percent (25%) limitation on the employment of minors shall not apply during school vacations.

(B) Every employer shall pay to each employee, on the established pay-day for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) On any workday in which an employee works a split shift two dollars and fifty cents (\$2.50) per workday shall be paid in addition to the minimum wage except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage herein provided.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage herein provided.

(C) The foregoing reporting time pay provisions are not applicable when:

- (1) Operations cannot commence or continue due to threats to employees or property, or when recommended by civil authorities; or
- (2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer systems; or
- (3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. PERMITS AND LICENSES FOR HANDICAPPED WORKERS

A permit may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage herein provided. Such permits shall be granted only upon joint application of employer and employee and employee's representative if any.

A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual permits of such employees.

All such permits and licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

See California Labor Code, Sections 1191 and 1191.3.

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birthdate, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semi-monthly or at the time of each payment of wages furnish each employee either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the

period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer; provided, all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8. CASH SHORTAGE AND BREAKAGE

Subject to the requirements of Sections 400-410 of the California Labor Code, no employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee. Notwithstanding the foregoing provision, where an employee has the exclusive and personal control of cash funds of the employer and is required by the employer to account, under reasonable accounting procedures, for said funds, the employer may upon prior written notice require reimbursement from such employee for cash shortages.

9. UNIFORMS AND EQUIPMENT

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. Notwithstanding any other provision of this section, employees in beauty salons, schools of beauty culture offering beauty care to the public for a fee, and barber shops may be required to furnish their own manicure implements, curling irons, rollers, clips, hair-cutting scissors, combs, air-combs, blowers, razors, and eyebrow tweezers.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

"Lodging" means living accommodations which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(B) When meals or lodging are furnished by the employer as part of the employee's compensation and when pursuant to a voluntary written agreement between the employer and the employee, such meals and lodging are to be credited towards the employer's minimum wage obligation, such meals and lodging may not be evaluated in excess of the following:

Room occupied alone	\$12.00 per week
Room shared	\$9.60 per week
Apartment—two-thirds (2/3) of the ordinary rental value, and in no event more than	\$140.00 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than	\$210.00 per month
Meals: Breakfast	\$.90
Lunch	\$1.25
Dinner	\$1.65

(C) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received nor lodging not used.

(D) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

(B) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. REST PERIODS

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

The Occupational Safety and Health Standards Board (Cal/OSHA) now regulates some matters formerly regulated by the Industrial Welfare Commission. For this reason, sections in previous Industrial Welfare Commission orders which referred to protective garments, drinking water and washing facilities, toilet rooms, first aid, floors, cleanliness and upkeep, lighting, ventilation, and exits do not appear in this Order.

Information on matters of occupational health and safety can be obtained from the Division of Industrial Safety, Department of Industrial Relations, State of California, at P.O. Box 603, San Francisco 94101, or from its district offices.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during nonworking hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided where employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean and sanitary.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. When the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more, either above or below ground level.

17. LIFTING

No employee shall be required to lift, push, or carry any object which is beyond the employee's reasonable physical capability at any given time, except that it shall not be a violation of this section to require an employee to lift, push, or carry any object when such activity constitutes part of the usual duties of the job for which the employee was hired, or when it is specified in a classification or description of the job for which the employee was hired.

18. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 11, Meal Periods; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

19. FILING REPORTS

Every employer shall furnish to the Commission and to the Division at reasonable times any and all reports for information which may be required to carry out the purpose of this Order, such reports and information to be verified if and when so requested.

20. INSPECTION

The Commission and duly authorized representatives of the Division shall be allowed free access to any office or establishment covered by this Order to investigate and gather data regarding wages, hours, working conditions, and employment practices, and shall be permitted to inspect and make excerpts from any and all relevant records and to question all employees for such purposes.

The investigations and data gathering shall be conducted in a reasonable manner calculated to provide the necessary surveillance of employment practices and the enforcement of the Commission's orders.

21. PENALTIES

Failure, refusal, or neglect to comply with any of the provisions of this Order is a violation of the Labor Code of the State of California and is punishable by fine or imprisonment or both.

See excerpts from Labor Code, Sections 1196 and 1199.

22. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

23. POSTING OF ORDER

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the work day. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.

Order 5-68, enacted September 26, 1967 and amended February 20, 1968, and Order 1-74, enacted December 4, 1973, are hereby rescinded as of the date when this Order becomes effective, October 18, 1976.

Dated at Sacramento, California, the twenty-seventh day of July, 1976.

INDUSTRIAL WELFARE COMMISSION
STATE OF CALIFORNIA

Howard Alan Carter, Chairperson

Joyce R. Valdez

Mike R. Elarduy

Jackie Walsh

Yvonne P. Aguilar

James L. Quillin, Chief

Division of Labor Standards Enforcement

Excerpts from Labor Code

SECTION 18. "Person" means any person, association, organization, partnership, business trust, or corporation.

SECTION 403. If cash is received as a bond it shall be deposited in a savings account in a bank authorized to do business in this State, and may be withdrawn only upon the joint signatures of the employer and the employee or applicant.

Cash put up as a bond shall be accompanied by an agreement in writing made by the employer and employee or applicant, setting forth the conditions under which the bond is given.

SECTION 1192.6. The department or division may, with the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission, and, in addition to such wages and compensation, shall be entitled to recover costs of suit. The consent of any employee to the bringing of any such action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless such action is dismissed without prejudice by the department or the division.

SECTION 1196. Any employer who discharges, threatens to discharge, or in any other manner discriminates against any employee because the employee has testified or is about to testify, or because the employer believes that the employee will testify in any investigation or proceedings relative to the enforcement of this chapter, is guilty of a misdemeanor.

SECTION 1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid an employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

(d) Pays or causes to be paid any employee a wage less than the rate paid to an employee of the opposite sex as required by Section 1197.5 of this code.

(e) Reduces the wages of any employee in order to comply with Section 1197.5.

EMPLOYMENT OF MINORS: Persons under 18 are required to obtain work permits, and employers of minors under 16 are required to obtain permits to employ. Permits are obtained from school districts. Refer to Labor Code Sections 1285 to 1311 and 1390 to 1390 for restrictions on the employment of minors.

STATEMENT AS TO THE BASIS FOR INDUSTRIAL WELFARE COMMISSION ORDER NO. 5-76 REGULATING WAGES, HOURS, AND WORKING CONDITIONS IN THE PUBLIC HOUSEKEEPING INDUSTRY

TO WHOM IT MAY CONCERN: The full statement as to the basis upon which this order is promulgated is set forth in the order.

TAKE NOTICE: That pursuant to the Legislature's 1973 mandate to the Industrial Welfare Commission to review, update and promulgate regulations necessary to provide adequate and reasonable wages, hours, and working conditions appropriate for all employees, and by virtue of authority vested in the Commission by Sections 1171 through 1204 of the Labor Code of the State of California, and after investigation and findings pursuant to Section 1178 and after receiving recommendations from duly appointed wage boards, and after consideration of all written material and information submitted, and after public hearings duly held, notice of said findings having been duly given in the manner provided by law, the Industrial Welfare Commission, upon its own motion has found and concluded that its Public Housekeeping Industry Order, Number 5-68 enacted on September 26, 1967 and its Minimum Wage Order 1-74 enacted January 1, 1974, should be altered and amended.

NOW, THEREFORE, the Industrial Welfare Commission of the State of California does hereby order and amend said Public Housekeeping Industry Order, Number 5-68, and its Minimum Wage Order 1-74.

In elaborating this basis for Order 5-76 the Industrial Welfare Commission offers the following statement as to the basis for the various sections incorporated in the order. This statement has been prepared in accordance with the California Superior Court opinion in *California Hotel and Motel Association v. Industrial Welfare Commission* (1979) Cal. 3d, 200. The commissioners who participated in the vote on this statement as to the basis for Order 5-76 have familiarized themselves with the administrative record for said order (that is of the voting commissioners were members of the Industrial Welfare Commission at the time of the adoption of Order 5-76), this statement as to the basis upon which Order 5-76 was promulgated has been adopted by a majority of the Industrial Welfare Commission.

1. APPLICABILITY

With regard to Section 1, Applicability:

In 1972 and 1973, the legislature extended the Industrial Welfare Commission's authority and responsibility to that, instead of applying its orders only to women and minors, it should apply them equally to all employees. The legal necessity of revising Section 1 of Order 5-68 so as to cover men as well as women and minors was recognized without question by employer and employee representatives throughout the process of amendment during the 1976 revision.

Controversy over the practical effects of this extension of the order arose largely in discussion of other sections, but the Commission did have to make a policy choice with regard to whether it generally would attempt to maintain protections in existing orders, some of which were in place for many years, or whether it would greatly dilute these standards because employers whose employees were mostly men objected to restrictions which were new to them in such circumstances. The statute speaks of "upholding" rules and policies to the extent found necessary "to provide adequate and reasonable wages, hours, and working conditions appropriate for all employees in the modern society." (I.C. 1170) The Commission accepts the view of the courts that protections for men and women must be equal and agrees with persons representing employees that generally it is not appropriate to the modern society to take away protections which have helped to make the society "modern". It chose to continue such standards as had proved to be workable, to make such changes as were persuasively indicated without unduly weakening existing standards, and to allow for limited exemptions. These include administrative exemptions from some provisions, as stated in the section on Exemptions, and some explicit exemptions of groups of employees from other sections, whose application of the order to men resulted in clearly unreasonable situations or where other available protections for employees allowed the Commission to mitigate an obvious impact on the industry. In this statement on this order, reference is made to such such exemption in the section to which such exemption applies.

The Commission recognized the possibility of overlooking other exemptions which would be proper under this policy, especially if the parties had not come forward in public hearing. It weighed this risk of continuing a few potentially burdensome requirements against the risk to the welfare of all employees in California which would result from a general dilution of standards.

In making this choice, the Commission made a distinction between clearly unreasonable situations and situations which some parties considered to be somewhat burdensome in that they would have to change schedules, begin paying overtime premiums, or make other adjustments. Some employer representatives asserted that such regulatory burdens would drive industry from California. This Commission examined its own history and found that similar arguments had been made whenever the Commission proposed to raise the minimum wage or to make other significant changes, but that the decades since the advent of the Industrial Welfare Commission have seen California emerge as one of the most populous and prosperous states in the nation.

Argument on the Applicability section itself focused on criteria for the exceptional employees in executive, administrative, and professional classifications. Employer representatives generally sought to increase the number of exempt employees by making the criteria less restrictive, with regard to duties, salary, and named professional exemptions. Employee representatives took the contrary position in choosing to substitute the word "primarily" for the previous "predominantly". The Commission acceded to the request of some employer representatives without, in its view, changing the substance of the provision.

Industry representatives asked that "primarily" be substituted for "predominantly" intellectual, etc. in subsection (1), because they were used to working with the exemption of supervisory employees in the federal Fair Labor Standards Act. The best objective standard of "primarily duty", an ILSA bulletin declares, is that over 50 percent of the employee's time be spent on supervisory duties, and is related to the frequency with which the

employee exercises discretionary powers and the relative extent to which the employee is free from supervision. This and the relationship of the wage of the supervisory employee to that of the non-supervisory employee were deemed adequate protection against abuse.

The Commission rejected the proposed use of "substantially", and the inclusion of para-military and para-police personnel with exempt professionals, as inappropriate in a section which had the purpose of distinguishing truly managerial, executive, or professional responsibilities and privileges from employees whose working conditions are appropriately protected by the Commission's order.

Requests by hospital management that health care facilities be separated out from Order 5, Public Housekeeping, were to be further considered by the Commission before it appoints wage boards for its next review of the order.

This wage board for this order proposed that the salary criteria for exempt personnel should be \$750.00 per month. Employer representatives on several boards argued that \$871.67 was the correct figure because it was consistent with that in the Federal Fair Labor Standards Act. Employee representatives on most boards proposed that the salary floor should be \$862.50 per month, and argued that this was more appropriate to executive duties and that the cost of living in California was higher than in the federal average. Both figures were somewhat related to the minimum wage proposed by the parties. The Commission considered all the proposals made in wage boards for the various industries, with the intent of following its regular practice of establishing uniform criteria for exempt executive, administrative and professional employees. It concluded that \$720 a month was reasonably related to the required duties and the cost of living and to the minimum wage ultimately adopted.

The Commission also added explanatory language to the list of exempt professions exempted in Section 1A (2), because the legislature had done so in amending a similar list in statute, in 1974 (I.C. 1252.1).

Subsection (B) reflects the Attorney General's advice that the IWC may not issue regulations covering employees of the state and its subdivisions without explicit legislative authorization, and also echoes the statutory exemption of outside telephonists (I.C. 1171).

Subsection (C) exempts employees who are members of the immediate family of the employer. A similar provision in Minimum Wage Order 1-74 exempted employees who employed family members, in language which had proved to be ambiguous and inequitable in the enforcement of enforcement officers. The wording was changed to clarify the Commission's intent.

2. DEFINITIONS

With regard to Section 2, Definitions:

Wage boards generally accepted most of the definitions in the previous order as workable.

An expanded definition of "employee" was used in Order 2, Personal Service; 5, Public Housekeeping; and 7, Mercantile, because of the problem of determining whether booth renters in beauty shops are covered by the Order. The wording was carefully developed and unanimously approved by members of Wage Board #2.

The definition of "hours worked" was expanded in Order 5, Public Housekeeping, to deal with the difficulty that resident managers of apartment houses and motels have in keeping track of hours actually worked. The language allows for recognition of agreements which would realistically reflect hours worked, without requiring detailed record-keeping. Any estimate of hours worked incorporated in such an agreement must bear a reasonable relationship to the duties required, the size of the establishment, and the amount of time on the premises that the employee is free to devote to his or her own use.

Employer representatives requested the addition of a definition of "workweek". The Commission considered the proposed wording along with similar proposals in other wage boards and arrived at a generally acceptable definition which facilitates payroll computations and is compatible with federal law.

The Commission also added a definition of "workday" to facilitate the scheduling and computation involved in the application of overtime premiums after a certain number of hours of work in a workday.

3. HOURS AND DAYS OF WORK

With regard to Section 3, Hours and Days of Work:

No section of the order generated more heated controversy than this one. As testimony indicated, the number of hours an employee may work and the rate at which an employee should be paid for overtime has a significant effect on the scheduling of bookkeeping required of employers and varying effects on labor costs and profits. It also affects the number of workers employed, their health and welfare and, to the extent that they receive overtime payments, their income.

The authority of the IWC is "to fix . . . the maximum hours of work consistent with health and welfare of employees engaged in any occupation, trade, or industry in this state". Another section (1178) says wage boards shall make recommendations on the number of hours per day in the occupation, trade, or industry in question, consistent with the health and welfare of employees.

The legislature had already declared that a woman could not work more than eight hours a day nor more than 6 days a week when the IWC promulgated its first order for this industry in 1919. But the Eight Hour Law (I.C. 1350 et seq.) applied only to women in certain named industries and occupations; it fell to the IWC to regulate for women and minors in other employment. The IWC thus was in a position of determining conditions under which some women might be allowed to work longer, and then conditions came to be "in emergencies" and "when practicable". In 1947 the IWC provided that if women were required to work in such circumstances, they must be paid time and one-half for hours over 8 and on the 7th day.

In 1937 the legislature declared in Labor Code section 510 that "Eight hours of labor constitutes a day's work".

Meanwhile, Congress enacted several laws providing for overtime premiums after 8 hours a day and five days a week (Walt-Healey Act and Contract Work Hours and Safety Standards Act) or after 40 hours a week (Fair Labor Standards Act).

These were in reaction to unemployment of the 1930's and were intended to encourage employers to hire more employees when they had need for labor in excess of 40 hours a week. (Source: Report to the Congress by the Comptroller General of the United States on Contractors' Use of Altered Work Schedules, an attachment to statement by Varillma Systems Corporation). In 1968, most IWC orders were amended to provide for overtime after the fifth day, or after 40 hours a week. Order 5 contained this basic standard "except as provided by statute" and referred to Labor Code 1350, which recognized a limited number of exceptions in the ILSA. In 1974, Congress reaffirmed the 40 hour week as a standard when it amended the ILSA to phase out the exception for hotel and restaurant workers: roads and custodians went to a 40 hour week in 1975; all other employees of hotels and restaurants were to go to a 44 hour week in 1978 and to a 40 hour week in January 1979. This was another indication of the general acceptance of the 40 hour week. On the basis of testimony and social experience to this time the Commission found that 40 hours a week was the maximum consistent with the health and welfare of employees.

That organized labor has come to consider any official extension of the 8-hour day a retreat and an attack on the welfare of employees was evident from statements made by the California AFL-CIO and employee representatives on wage boards and in public hearing. Some spoke of needing an even shorter work week, and one union testified that one-third of the union's contracts covering office workers provide for a 32-hour week with double time paid after 35 hours. Employer representatives appeared to accept the 40-hour week as a feature of modern society. They argued, however, for a longer day of work without overtime, either 12 hours or 10 hours, asserting that employees would be able to work fewer days in the week in order to save the time and expense of travel and also to have more leisure for weekend trips.

Employers also asked that conditions under which employees could work overtime be liberalized by (1) revising the definition of "emergency" to cover a broader range of circumstances, (2) allowing overtime work whenever a collective bargaining agreement provides for it and (3) eliminating the "12-hour span", i.e., the requirement in the 1968 orders that "the eight hours of employment shall be performed within a period of 12 hours, and 12 hours shall elapse between the end of one workday of an employee and the beginning of the next . . .".

The Commission deleted the "12 hour span" as an unnecessary and confusing holdover from previous orders. It chose to retain the basic standard of the eight-hour day and 40-hour week, (subsection A), but it dropped the word "emergency" in this connection and proposed an alternate method of computing overtime based on a regular schedule of four consecutive days of not more than 10 hours each within each week (subsection B). Both employers and employees in the industry asked for a schedule of four work days within five consecutive calendar days, and the Commission was persuaded by their testimony that such a variation would be in the interest of the welfare of some employees and not detrimental to others. The proposal was thus amended before the order was adopted. The Commission also dropped as impractical its original proposal that any individual be free to refuse to work such a schedule without penalty, and it substituted the requirement for agreement by two-thirds of the employees affected. Otherwise it retained restrictions intended to protect the employees against erosion of their day off. The Commission has come to rely entirely on premium pay to enforce maximum hours in most industries, and by 1963 it required double time premium pay after 12 hours a day, and after 8 hours on the seventh day of work in the workweek. The additional hours on the seventh day was in accord with Labor Code section 551: "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven". In allowing additional hours to be worked as occasionally required on condition that overtime be compensated at a premium rate, the Commission was persuaded early that the additional money would allow the employee to pay for services which she (since only women were covered at the time) would otherwise perform herself and that the cost thus gain time for rest. It was suggested in a 1943 wage board, for example, that "the time instead of walking, and send her laundry out instead of staying over a wash tub on Sunday". Dipping thus into the past reminds us of the changes that take place in the standards of health and welfare considered to be adequate and reasonable for all employees in the modern society. It is common knowledge that men, also, use additional wages for extra hours to pay for services they would otherwise perform themselves if they had more time.

The provision in (C) allowing employers engaged in the operation of hospitals to use a schedule of 80 hours in 14 days was included in the Order in 1976 to reflect the fact that in 1974 the legislature made a similar provision for such employees.

With regard to subsection (D), the Commission has included this 34-hour provision to provide greater opportunity for continuity of care of children in camps and child care homes and for adults in small homes for the aged.

Subsections (E) and (F) in this order, relating to hours of work of minors, are substantially the same as Labor Code Sections 1391 and 1391.1, except that (E) retains a requirement in the '68 order for premium pay for a minor working more than 40 hours a week.

Subsection (G) allows employees to work on a 7th day without overtime, if that total hours of work do not exceed 6 hours a day or 30 hours a week, which is consonant with Labor Code section 550. This provision has appeared in this order since 1957 and was accepted by most wage boards and the public without controversy. The Commission reaffirmed its conclusion that work on the seventh day is not prejudicial to the health and welfare of employees working such short hours under current conditions.

Subsection (H) is an extension so far as it goes, of similar language which has appeared in IWC orders since 1947. However, previous orders also have required that transportation be provided to women working or dismissed between 10 p.m. and 6 a.m. Employee representatives on wage boards generally pressed for retention of the provision in transportation, arguing that men as well as women needed protection from criminal attack in the late hours. The Commission concluded that the protection of persons on their way to and from work is a police function and that to require employers to provide transportation for all employees would impose a heavy burden without achieving the desired results. It decided against requiring employers to fur-

... prohibited the employer from making any
"or regulation related to the employee's..."

requirements with regard to lunch rooms as well. This pro-

for minor period away from work, varying over the years, 30 minutes to 45 minutes to one hour. They usually made arrangements with regard to lunch rooms as well. This pro-

requested by employee representatives on wage boards, the Commission concluded that such documentation for mutual consent would also serve to protect employers in case of complaint.

Subsection (B) was continued from Order 5-68 without controversy. The Commission found that many sorts of places may be deemed suitable places for eating on the premises and allowed room for the Division to make such a judgment when a question on the matter arises.

In addition, the Commission has provided for exemptions from this and subsequent sections.

12. REST PERIODS

With regard to Section 12, Rest Periods:

Although rest periods were required by the IWC in 1932 where workers were distant from the work place or where employees were required to stand, the general ten-minute rest period was introduced, in addition, in 1947. Authorization to dispense with such rest periods when work totals 3½ hours or less has been included since 1952. The Commission sent no reason to change its earlier findings that the general health and welfare of employees requires periods of rest during long stretches of physical and/or mental exertion. The provisions of this section have proved to be reasonable and minimal.

Some wage boards recommended changing the 10 minutes to 15 and even 20 minutes in consideration of the practice in many industries of going to a special area for coffee. Some employer representatives argued that a 15-minute break would tend to be longer than that. The Commission did not deem it necessary to extend the rest time, but it did allow a little leeway for going and coming in specifying "net" rest time. In response to arguments that in some situations workers are almost continuously resting while they monitor machines and cannot be spared from their places, the Commission provided for the possibility of exemptions in accord with the requirements of Section 18.

13. CHANGE ROOMS AND RESTING FACILITIES

With regard to Section 13, Change Rooms and Resting Facilities:

The requirement for lockers and change rooms in subsection (A) has been substantially the same in this industry since 1919. Although there was some discussion about the meaning of such terms as "reasonable privacy and comfort", there was little opposition to continuing this provision as it stood in 1968.

Wage boards had a harder time dealing with a requirement in previous orders that employers provide at least one couch if ten women were employed at some time, and additional couches for additional female employees, according to a specified formula. Other conditions related to couch rooms were also set out in detail. Many employer representatives urged that this provision be deleted altogether, and some declared it to be in the jurisdiction of the Occupational Safety and Health Standards Board (Cal/OSHA). However, in its consultation with the IWC, OSHA disclaimed any interest in regulating anything other than change rooms required for protective garments. Some wage boards proposed retaining some requirement for couches for some specific number of employees, and some proposed broader language similar to that offered for public hearing and adopted as subsection (B).

Much of the opposition in public hearings, the Commission found, was based on a fear that "resting facilities" was a continuation of the old couch room requirement. "Resting facilities" is, however, a much less explicit term, adaptable to most situations, and the Commission believes same such provision is necessary to the welfare of employees. It is not rare that a good worker may suffer a migraine headache or some other discomfort of brief duration which makes it difficult for the time to continue work but which can be overcome with a short rest. In such cases it may be to the advantage of the employer as well as a matter of humane treatment of the employee to provide a place where the employee can temporarily recline, whether on a couch, a reclining chair, or a padded table. Similarly, an employee who is too ill to return to work needs more place to rest while awaiting transportation home or to a medical facility. This is not a matter of occupational health but one of reasonable consideration for an employee who is temporarily unable for whatever reason.

14. SEATS

With regard to Section 14, Seats:

This represents a relaxation of the earliest Sanitary Regulations, which at first required seats for all women at work and later allowed extra breaks for women who had to stand.

The requirement in (A) for "suitable" seats "where the nature of the work permits" has long been a provision of IWC orders and has proved to be useful and workable as the Division has reasonably enforced it. Testimony in public hearing made it clear that some kinds of work places would be covered by the new orders that were not covered by previous orders, and the Commission has made its requirement more flexible and more subject to administrative judgment as to what is reasonable. It continues to find that humane consideration for the welfare of employees requires that they be allowed to sit at their work or between operations when it is feasible for them to do so, as provided in (B).

15. TEMPERATURE

With regard to Section 15, Temperature:

From 1919, IWC orders specified minimum and maximum temperatures, subject to the nature of the work and whether they required devices to reduce excessive heat insulating from the process and, beginning in 1932, also required warm-up rooms where the job required working in cold areas. The language in the 1968 order was similar. It required that the temperature in warm-up rooms and change rooms be maintained at 72° and spoke of wall room temperatures being maintained at "reasonable comfort consistent with accepted standards for the nature of the process and the work performed". Clearly the Commission was aware that some practices require extremes of temperatures, and in the 1976 order it accepted recognition in "industry-wide standards". It also reduced the previous standard of 72° to 68° in (B) and (C) in order to conform with contemporary Federal energy guidelines.

In the absence of any interest on OSHA's part in regulating this subject matter, the Commission concluded that management has a responsibility to make working conditions tolerable for employees and to take all feasible measures to ameliorate discomforting conditions caused by the process. Specified temperatures were stipulated to contemporary energy guidelines. The section's basic provisions have proved to be useful and workable.

16. ELEVATORS

With regard to Section 16, Elevators:

Since 1919, IWC orders have required elevator service for women employed on the fourth floor or above. Wage boards in 1976 proposed allowance for "escalator or similar service" and recognized the possibility of working four floors or more below ground. Some employer representatives wanted to delete this section and turn the matter over to OSHA, but the OSHA board disclaimed interest in anything but the safety of whatever elevators might be required.

The Commission continues to find that requiring employees regularly to climb and descend more than three flights of steps is detrimental to the general health and welfare and reasonable comfort of employees. It expends energy to add to their work and cannot climb the stairs. It deleted a reference in the proposal to operating and processing equipment as unnecessary and confusing. The Commission has never intended that this section should apply to tanks, towers, shafts, dams, and similar equipment which employees may sometimes have to climb to service the equipment or maintain properly, but it does not in-

land to exempt buildings in which workers are regularly employed four floors above or below ground level. However, provision is made in Section 18 for the possibility of administrative exemption.

17. LIFTING

With regard to Section 17, Lifting:

Since 1921 the weight that a woman was allowed to lift has been limited either by statute or by the Commission's orders. Beginning in 1947, IWC orders for this industry have stated, "No female shall be required or permitted to lift or carry an object weighing in excess of twenty-five (25) pounds, except upon permit from the Division". This provision in the 1968 order was held by the courts to be in conflict with Title VII of the Civil Rights Act (*Rosenfeld v. So. Pacific*, 1971).

In undertaking its review of the orders, the Commission considered whether lifting was an issue of occupational health and safety and asked Cal/OSHA about it. The Occupational Safety and Health Standards Board said it had no plans to regulate in this area. Unwilling to leave a vacuum in this area, the IWC decided to continue some kind of regulations.

The Commission was concerned about preventing unreasonable demands on employees not big enough not strong enough to perform lifts which were not regularly part of their jobs. Such demands are not only a frequent cause of various discomforts and sometimes of injury but also have been used as a means of discriminating against an employee who was not physically capable of performing the task. The Commission concluded "Unable to arrive at a quantitative standard, it offered this proposal for public hearing: 'No employee shall be required to lift, push, or carry any object which is beyond the individual employee's capability'."

The language in the proposal was attacked as vague. Some employer representatives proposed a 100 pound limit on lifts. A driver of bent trucks reported that 150 fellow employees had petitioned their union to negotiate limits on weights to be lifted, and he urged that the IWC intend the old 25 pound limit to mean. Concluding that it did not have adequate information on which to base an objective standard, the Commission raised the restriction for jobs in which heavy lifting is usual. At the same time it attempted to make the language more enforceable; instead of referring to "individual's capability", the section speaks of "physical capability". It also indicates that an employee should be informed upon hiring of the lifts usually to be required. Each situation is subject to administrative judgment.

18. EXEMPTIONS

With regard to Section 18, Exemptions:

Although the Commission has attempted to foresee as many circumstances as it could in drafting its regulations, unforeseen circumstances occasionally justify exemptions after careful investigation and in the exercise of the best judgment of the Division.

A similar provision has been part of this order ever since the specified sections relating to working conditions were included in this industry's order in 1947, and had been part of the IWC's Sanitary Regulations since 1917. The Commission identified applicable sections by title as well as by number in order to improve public understanding.

19. FILING REPORTS

With regard to Section 19, Filing Reports:

This is substantially the same as the statutory provision in I.C. 1174(a). There was little controversy over this or subsequent sections, but some employer representatives expressed a preference for the language in Minimum Wage Order 1-74, and some employee representatives preferred the wording in the 1968 orders. The Commission concluded that there was no difference in enforcement practice. It adopted its wording successfully to require employers who feared that Division representatives would be unreasonable in this matter.

It should be noted that the Commission does not regularly require employers to file reports but is authorized to gather information when and if it is needed to carry out the purpose of the order.

20. INSPECTIONS

With regard to Section 20, Inspections:

Section 1174(b) of the Labor Code states:

"Every person employing labor in this state shall (b) allow any member of the Division free access to the place of business or employment of such person to secure any information or make any investigation which they are authorized by this chapter to ascertain or make; the Commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of such person". Section 20 of this order is essentially a restatement of this statute.

The Commission finds that the California Constitution always has required that the inspections provided for be "reasonable" and that the Division has never inspected records other than those that were "relevant". However, much clarity on this matter was expressed in public hearing, and the Commission has made its language more explicit in order to clarify its intent.

21. PENALTIES

With regard to Section 21, Penalties:

This section refers on the face of the order to Labor Code sections which specify penalties for violation. Its wording has proved to be appropriate and workable over many years.

22. SEPARABILITY

With regard to Section 22, Separability:

There was no controversy over this statement intended to preserve the integrity of the orders insofar as possible in the face of any legal challenge. Its language is unchanged from that in previous orders.

23. POSTING OF ORDER

With regard to Section 23, Posting of Order:

The basic requirement for posting a copy of the order in the building in which employees are employed is stated in Labor Code section 1183. A provision for making a copy available to employees who work in areas where posting is not practical was added in 1974. This language generally was accepted without controversy.

THIS STATEMENT WAS ADOPTED BY THE INDUSTRIAL WELFARE COMMISSION of the State of California in public meeting on November 16, 1979 in San Francisco, in compliance with an order of the California State Supreme Court.

EXHIBIT D-1

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AMENDED IN SENATE MARCH 26, 2003

CALIFORNIA LEGISLATURE— 2003–2004 REGULAR SESSION

SENATE BILL**NO. 796****Introduced by Senator Dunn****February 21, 2003**

An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**SECTION 1.** The Legislature finds and declares all of the following:

(a) Adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices.

(b) Although innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases

the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code.

(c) Staffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future.

(d) It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act.

SEC. 2. Part 13 (commencing with Section 2698) is added to Division 2 of the Labor Code, to read:

PART 13. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

2698. This part shall be known and may be cited as the Labor Code Private Attorneys General Act of 2004.

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action.

(b) For all provisions of this code except those for which a civil penalty has already been established, there is established a civil penalty for a violation of these provisions, as follows:

~~(1) If no criminal penalty amount has been established for a violation of the provision, the civil penalty is one hundred dollars (\$100) per employee per pay period for the initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation. If the person does not employ one or more~~

(1) If the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

~~(2) If a criminal penalty has been established for a violation of the provision, the civil penalty is the amount of the criminal penalty, or~~

(2) If the person employs one or more employees, the civil penalty is one hundred dollars (\$100) per employee per pay period for the initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation, whichever is greater. If the person does not employ one or more employees, the civil penalty shall be the amount of the criminal penalty or five hundred dollars (\$500), whichever is greater.

(c) An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or others. Any employee who prevails, in whole or in part, in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

(d) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the code and initiates proceedings to collect applicable penalties.

(e) Civil penalties recovered by aggrieved employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the Labor and Workforce Development Agency for education of employers and employees about their rights and responsibilities under this code, available for expenditure upon appropriation by the Legislature, and 25 percent to the aggrieved employees.

EXHIBIT D-2

BILL ANALYSIS

Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

Date of Hearing: April 9, 2003	2003-2004 Regular Session
Consultant: Liberty Reiter Sanchez	Fiscal:Yes Urgency:No

Bill No: SB 796
Author: Dunn
Amended: March 26, 2003

Subject: Employment

Purpose:

To establish civil penalties for violations of the Labor Code and to enable aggrieved employees to maintain a civil action when the Labor and Workforce Development Agency (including its departments, divisions, commissions, boards, agencies or employees) (Agency) does not pursue such an action.

Analysis:

(1) Existing law, authorizes the Labor and Workforce Development Agency (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

The Attorney General is authorized to seek appropriate injunctive relief and file charges against employers for criminal violations of the Labor Code, where specified.

While many Labor Code sections provide for criminal penalties, many sections do not provide for corresponding civil penalties.

Business and Professions Code Section 17200, also known as the "Unfair Competition Act" (UCA) authorizes aggrieved individuals to act on their own behalf in the capacity of "private attorney general" (PAG) when

maintaining a claim against a business for violating the law or competing unfairly.

Individuals aggrieved by violations of the Labor Code are not expressly permitted to act in the capacity of PAG in the filing of civil actions against their employers.

(2) This Bill , entitled the "Labor Code Private Attorneys General Act of 2004", has four components:

- (a) Authorizes recovery through civil action of civil penalties provided for under the Labor Code by authorizing aggrieved employees to act as PAG on behalf of themselves or others where the Agency does not pursue such an action.
- (b) Establishes civil penalties where the Labor Code is silent in the amount of \$100 per employee per pay period for the initial violation and \$200 per employee per pay period for subsequent violations when the "person" employs one or more employees and \$500 per violation where the "person" does not employ one or more employees.
- (c) Provides for a distribution formula as follows for penalties collected by an aggrieved individual: 50% to the General Fund, 25% to the Agency and 25% to the aggrieved employee.
- (d) Provides for the award of attorneys' fees and costs to aggrieved employees who prevail, in whole or in part in these civil actions.

Comments:

(3) "Private Attorney General" (PAG):

When individuals have a right to act in the capacity of
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Consultant: Liberty Reiter Sanchez

PAG such individuals are authorized to maintain a claim on their own behalf or on behalf of others. To this end, the individuals may represent themselves or may retain counsel for such representation.

(4) Business and Professions Code Section 17200 "Unfair Competition Act" (UCA):

Existing law provides for the right to act in the capacity of PAG for "unfair competition" cases. The law has been interpreted by the courts to provide broad and expansive protections to California's consumers. The law was first enacted in the 1930's to stop businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

An action under this code section may not be brought by an individual in order to vindicate his own interests, instead, such action must be brought on behalf of the general public. To that end, even if the individual bringing the action was actually harmed by the unfair business practice, the individual may not recover damages, but instead remedy is limited to injunction and restitution.

Amongst other things, this law has successfully been used on behalf of employees in cases where a company was found to be ignoring California's overtime laws and where an employer's policy of calculating employees' wages included deduction of losses for unidentified returns.

(5) Distinction Between Right to Act as Private Attorney

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General Under SB 796 and
The UCA:

_____ This PAG rights afforded individuals under this bill are separate and distinct from those afforded individuals under the UCA. While PAG rights have been interpreted to have broad applicability under the UCA, the right to act as a PAG under this bill is available to further the purposes of protecting the rights of workers under the Labor Code. Additionally, unlike the UCA, this bill entitles an individual to act in the capacity of PAG to seek remedy of a labor law violation solely because they have been aggrieved by that violation. Finally, this bill provides for a percentage share of penalties to go directly to the aggrieved worker, unlike the UCA, which does not entitle an individual claimant to obtain damages.

_____ (6) Labor Law Enforcement in an Era of Limited Staff and Resources:

_____ At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so due to budgetary and staff constraints. Conventional wisdom asserts that more resources should be put in place and more staff hired if existing staff and resource allotments are insufficient to effectuate the mandated duties of the government. Additional resource dedication as a remedy is, an impossibility where a budgetary deficit exists.

The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that "[s]taffing levels for state labor law enforcement agencies, have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future" and that, accordingly, "[i]t is therefore in the public interest to

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provide that civil penalties for violation of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general."

Arguably, in a perfect world, there would be no need for the right to act as PAG, yet the fact remains that due to continuing budgetary and staffing constraints, full, appropriate and adequate Labor Code enforcement is unrealizable if done solely by the Agency.

(7) Staff Comments :

(a) The term "person" is defined for the general purposes of the Labor Code to mean any "person, association, organization, partnership, business trust, limited liability company or corporation." The term "person" has a different definition for application in the "Garment Manufacturing" Part of the Labor Code. That Part of the Labor Code is in the same Division of the Labor Code, entitled "Employment Regulation and Supervision," in which this bill, if enacted, would be located. The term "person" is used throughout the Labor Code, often interchangeably with the term "employer," but when the term "person" is used, it is interpreted to provide a more expansive and comprehensive applicability than the term "employer." Additionally, often when the term "person" is used it is used in conjunction with the phrase "or officer or agent thereof," to provide even broader applicability.

As the author is creating a new titled Part to the Labor Code, the author may wish to add a definition of "person" specifically applicable to that Part of the Labor Code.

(b) The bill specifies a formula for distribution of civil awards where an aggrieved employee has prevailed against a "person employing one or more employees," yet the bill provides no formula for instances where the Agency has prevailed against a person who does not employ one or more employees. The author may wish to

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specify whether such collected penalties should go to the General Fund, the Agency or elsewhere.

(c) The bill specifies that an action, may not be maintained by an aggrieved employee, if the Agency cites a person and initiates proceedings for a violation of the code on the same facts and theories. The author may wish to amend the bill to clarify that this prohibition would only be applicable if the Agency proceeded under the "same labor code section or sections under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others." Ostensibly, without this clarification an aggrieved employee might be inadvertently precluded from maintaining an action under a different Labor Code section violation which the Agency has declined to pursue, but where the basis of such action relies on the same facts and theories as the action which the Agency is pursuing.

(8) Dual Referral:

If passed by this committee, this measure will be re-referred to the Senate Committee on Judiciary.

1. Proponents , the California Labor Federation asserts that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

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The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation to these code sections.

2. Opponents , contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

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Support:

American Federation of State, County, and Municipal
Employees
California Applicants' Attorneys Association
California Conference Board of the Amalgamated Transit
Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Consumer Attorneys of California
Engineers and Scientist of California, IFPTE Local 20,
AFL-CIO
Hotel Employees & Restaurant Employees International Union
Professional and Technical Engineers, IFPTE Local 21,
AFL-CIO
Region 8 States Council of the United Food & Commercial
Workers
Western States Council of Sheet Metal Workers

Opposition:

Associated General Contractors of California and the AGC,
San Diego Chapter
California Employment Law Council
California Manufacturers and Technology Association
California Chamber of Commerce
Civil Justice Association of California

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Consultant: Liberty Reiter Sanchez

EXHIBIT D-3

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SB-796 Employment. (2003-2004)

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AMENDED IN SENATE MARCH 26, 2003

AMENDED IN SENATE APRIL 22, 2003

CALIFORNIA LEGISLATURE— 2003–2004 REGULAR SESSION

SENATE BILL

NO. 796**Introduced by Senator Dunn****February 21, 2003**

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LEGISLATIVE COUNSEL'S DIGEST

SB 796, as amended, Dunn. Employment.

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This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee, *except that if the person does not employ one or more persons, the penalties would be distributed 50% to the General Fund and 50% to the agency.* In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy and to ensure an effective disincentive for

employers to engage in unlawful and anticompetitive business practices.

(b) Although innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code.

(c) Staffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future.

(d) It is therefore in the public interest to provide that civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general, while also ensuring that state labor law enforcement agencies' enforcement actions have primacy over any private enforcement efforts undertaken pursuant to this act.

SEC. 2. Part 13 (commencing with Section 2698) is added to Division 2 of the Labor Code, to read:

PART 13. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

2698. This part shall be known and may be cited as the Labor Code Private Attorneys General Act of 2004.

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action.

(b) *For purposes of this part, "person" has the same meaning as defined in Section 18.*

(c) For all provisions of this code except those for which a civil penalty has already been established, there is established a civil penalty for a violation of these provisions, as follows:

(1) If the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If the person employs one or more employees, the civil penalty is one hundred dollars (\$100) per employee per pay period for the initial violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation .

~~(c)~~

(d) An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or others. Any employee who prevails, in whole or in part, in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

~~(d)~~

(e) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the ~~code~~ *same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others* and initiates proceedings to collect applicable penalties.

~~(e)~~Civil

(f) *Except as provided in subdivision (g), civil* penalties recovered by aggrieved employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the Labor and Workforce Development Agency for education of employers and employees about their rights and responsibilities under this code, available for expenditure upon appropriation by the Legislature, and 25 percent to the aggrieved employees.

(g) *Civil penalties recovered under paragraph (1) of subdivision (b) shall be distributed as follows: 50 percent to the General Fund and 50 percent to the Labor and Workforce Development Agency available for expenditure upon appropriation by the Legislature.*

EXHIBIT D-4

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2003-2004 Regular Session

SB 796	S
Senator Dunn	B
As Amended April 22, 2003	
Hearing Date: April 29, 2003	7
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SUBJECT

Employment

DESCRIPTION

This bill would allow employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. The bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

This analysis reflects author's amendments to be offered in Committee.

BACKGROUND

California's Labor Code is enforced by the state Labor and Workforce Development Agency (LWDA) and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Committee on Labor and Employment held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to

(more)

the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size California's "underground economy" - businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Ch. 662, Stats. of 2002), requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified below.

CHANGES TO EXISTING LAW

Existing law authorizes the LWDA (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. [Labor Code Secs. 201 et seq .]

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. [Labor Code

Sec. 215 et seq .]

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint. [Labor Code Sec. 98.7.]

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity. [Bus. & Profs. Code Sec. 17200 et seq .]

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent

to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

COMMENT

1. Stated need for legislation

The California Labor Federation, co-sponsor, states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators:

In the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. . . . The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing: For example, "company store" arrangements in which workers are required to cash their checks with their employer, for a fee, allegedly are widespread in the agricultural industry. The CRLA Foundation notes that the bill's proposed penalty

structure is "nominal" and is based on existing provisions of the Labor Code.

Protection & Advocacy, Inc., which supports the rights of people with disabilities, asserts that SB 796 will assist disabled employees "by providing some mechanism by which to get an employer to comply with the Labor Code."

2. SB 796 would attach civil penalties to existing provisions

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions.

Accordingly, this bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for continuing violations) to any Labor Code provision that does not already contain a financial penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of existing civil penalties attached to other Labor Code provisions, but should be significant enough to deter violations.

3. The bill would allow "aggrieved employees" to bring private actions to recover the civil penalties

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries.

Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to

labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range. [See , e.g. ., Unruh Civil Rights Act, Civ. Code Sec. 51 et seq. ., allowing statutory damages in a minimum amount of \$4,000 per violation to prevailing private litigants in actions alleging denial of equal access or other forms of discrimination.]

In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff, as would occur with a damage award. Recovery of civil penalties by private litigants does have some precedent in existing law: The Unruh Civil Rights Act allows either the victim of a hate crime or a public prosecutor to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civ. Code Secs. 51.7, 52.)

4. Opponents' concerns

The employer groups opposing the bill argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing any and all types of Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both attorneys' fees and a portion of the penalties. A representative letter states:

There is a major concern that this type of statute could be abused in a manner similar to the legal community's abuse of Business and Professions Code

Section 17200 when it sued thousands of small businesses for minor violations and demanded settlements in order to avoid costly litigation.

The California Chamber of Commerce argues that, since the bill would award attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already-overburdened courts because there would be no disincentive to pursue meritless claims.

The California Employment Law Council states that the the Labor Code contains "innumerable penalty provisions, many of which would be applicable to minor and inadvertent actions." Under current law, however, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796:

If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a "private attorney general" could sue for penalties that could reach staggering amounts if . . . the inadvertent deletion of information on a paycheck went on for some time.

5. Sponsors say bill has been drafted to avoid abuse of private actions

The sponsors are mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse. First, unlike the UCL, this bill would not open private actions up to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed. (Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors.)

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself or others" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL.

This would dispense with the issue of res judicata ("finality of the judgment") that is the subject of some criticism of private UCL actions. An action on behalf of other aggrieved employees would be final as to those plaintiffs, and an employer would not have to be concerned with future suits on the same issues by someone else "on behalf of the general public."

Third, the proposed civil penalties are relatively low, most of the penalty recovery would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. This distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts and under the same code provisions.

6. Author's amendments

In order to address concerns that the bill might invite frivolous suits or impose excessive penalties, and pursuant to discussions between the sponsors and Committee staff, the author has agreed to accept the following amendments to clarify the bill's intended scope of its private right of action and the assessment and distribution of its civil penalties:

- (a) To clarify who would qualify as an "aggrieved employee" entitled to bring a private action under this section, the author will define the term as follows (at page 2, line 38):

"For purposes of this part, an aggrieved employee means any person employed by the alleged violator within the period covered by the applicable statute of limitations against whom one or more of the violations alleged in the action was committed."

The bill would further be amended to reflect that any civil penalty recoverable by the LWDA under existing law may be recovered through a civil action "brought by an aggrieved employee on behalf of himself or herself or other current or former employees" (at page 2, lines 31-36).

- (b) To clarify that civil penalties would be assessed only with respect to the number of employees aggrieved by the violation, as opposed to the total number of an alleged violator's employees, the author will amend the bill to reflect that penalties will be determined "for each aggrieved employee" instead of "per employee" (at page 3, lines 7 and 8).

- (c) To allay opponents' concerns that res judicata issues may arise if all known potential plaintiffs are not included in the private action, the author will amend the bill as follows (at page 3, lines 11-13):

"An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or ~~others~~ other current or former employees for whom evidence of a violation was developed during the trial or at settlement of the action ."

- (d) To conform its attorney's fees provision with similar provisions in existing law, the author will amend the bill to delete the phrase "in whole or in part" from the provision allowing attorney's fees to be awarded to a prevailing plaintiff (at page 3, lines 13-14).

Support: American Federation of State, County and
Municipal Employees (AFSCME); California Conference

Board of the Amalgamated Transit Union; California Council of Machinists; California Independent Public Employees Legislative Council; California State Pipe Trades Council; California State Association of Electrical Workers; California Teamsters; Engineers and Scientists of California, Local 20; Hotel Employees, Restaurant Employees International Union; Professional and Technical Engineers, Local 21; Protection & Advocacy, Inc.; Region 8 States Council of the United Food & Commercial Workers; Western States Council of Sheet Metal Workers

Opposition: Associated General Contractors of California; California Apartment Association; California Chamber of Commerce; California Employment Law Council; California Landscape Contractors Association; California Manufacturers and Technology Association; Civil Justice Association of California (CJAC); Construction Employers' Association; Motion Picture Association of America; Orange County Business Council

HISTORY

Source: California Labor Federation AFL-CIO; CRLA Foundation

Related Pending Legislation: None Known

Prior Legislation: AB 2985 (Committee on Labor and Private Employment) (Ch. 662, Stats. of 2002) (requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003)

Prior Vote: Senate Labor & Industrial Relations Committee
5-3

EXHIBIT D-5

BILL ANALYSIS

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|SENATE RULES COMMITTEE           |                               SB 796|  
|Office of Senate Floor Analyses  |                               |  
|1020 N Street, Suite 524         |                               |  
|(916) 445-6614                   |                               |  
|327-4478                         |                               |  
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THIRD READING

Bill No: SB 796
Author: Dunn (D)
Amended: 5/12/03
Vote: 21

SENATE LABOR & IND. RELATIONS COMMITTEE : 5-3, 4/9/03
AYES: Alarcon, Dunn, Figueroa, Kuehl, Romero
NOES: Oller, Margett, McClintock

SENATE JUDICIARY COMMITTEE : 4-2, 4/29/03
AYES: Escutia, Cedillo, Kuehl, Sher
NOES: Morrow, Ackerman

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SUBJECT : Employment

SOURCE : California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation,
Inc.

DIGEST : This bill allows employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. This bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

ANALYSIS : Existing law authorizes the State Labor and Workforce Development Agency (LWDA) (comprised of the DIR,

CONTINUED

the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code.

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint.

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity.

This bill is entitled the "Labor Code Private Attorneys General Act of 2004."

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

Background

California's Labor Code is enforced by LWDA and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Labor and Employment Committee held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the State Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Senate Judiciary Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size California's "underground economy" -- businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Assembly Labor and Employment Committee), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified.

Prior legislation

AB 2985 (Assembly Labor and Employment Committee), Chapter 662, Statutes of 2002, requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 5/19/03)

California Labor Federation, AFL-CIO (co-source)
California Rural Legal Assistance Foundation,
Inc. (co-source)
American Federation of State, County and Municipal
Employees (AFSCME)
California Applicants Attorneys Association
California Conference Board of the Amalgamated Transit
Union
California Council of Machinists
California Independent Public Employees Legislative Council
California State Pipe Trades Council
California State Association of Electrical Workers
California Teamsters
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California
Professional and Technical Engineers, Local 21
Protection and Advocacy, Inc.
Region 8 States Council of the United Food and Commercial
Workers
Western States Council of Sheet Metal Workers

OPPOSITION : (Verified 5/19/03)

Associated Builders and Contractors of California
Associated General Contractors of California
California Apartment Association
California Chamber of Commerce
California Employment Law Council
California Landscape Contractors Association
California Manufacturers and Technology Association
Civil Justice Association of California (CJAC)
Construction Employers' Association
Motion Picture Association of America
Orange County Business Council

ARGUMENTS IN SUPPORT : Proponents, the California Labor Federation asserts that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code

violations as crimes, are similarly lacking.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation to these code sections.

ARGUMENTS IN OPPOSITION : Opponents contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the

employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

NC:sl 5/21/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

EXHIBIT D-6

BILL ANALYSIS

SB 796
Page 1

Date of Hearing: June 26, 2003

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 796 (Dunn) - As Amended: May 12, 2003

As Proposed to be Amended

SENATE VOTE : 21-14

SUBJECT : LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

KEY ISSUES :

- 1) SHOULD CIVIL PENALTIES BE ESTABLISHED, AS SPECIFIED, FOR THE VIOLATION OF LABOR CODE PROVISIONS FOR WHICH THERE IS NO CURRENT CIVIL PENALTY?
- 2) SHOULD AGGRIEVED EMPLOYEES BE EMPOWERED TO ENFORCE EXISTING LABOR CODE OBLIGATIONS BY PRIVATE ACTIONS FOR CIVIL PENALTIES TO BE DISTRIBUTED PRIMARILY TO THE STATE?

SYNOPSIS

This bill, co-sponsored by the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, is designed to improve enforcement of existing Labor Code obligations. The first part of the bill prescribes a civil penalty for those existing Labor Code sections for which a civil penalty has not otherwise been established. The second part of the bill provides that an aggrieved employee may bring a private action on behalf of himself or herself and other current or former employees to enforce civil penalties for employer violations of the Labor Code, if the Labor and Workforce Development Agency (LWDA) does not issue a citation for a violation of the same sections on the same facts and theories. Seventy-five percent of the civil penalties imposed by a court would be distributed to the General Fund and to the LWDA for education of employers and workers regarding labor law obligations; 25% would go to the aggrieved employee(s). Prevailing employees would be permitted to recover attorneys' fees in these cases. Opponents representing employers argue that the bill will foster frivolous litigation, and lawsuits for minor or technical violations of the law, and accordingly will drive up the cost of doing business.

SUMMARY : Enacts the Labor Code Private Attorneys General Act of 2004. Specifically, this bill :

- 1) Provides that any Labor Code violation for which specific civil penalties have not otherwise been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Provides that an aggrieved employee may sue to recover civil penalties under the Labor Code, as well as attorneys' fees and costs, in an action brought on behalf of himself or herself and other current or former employees. However, no private action may be maintained where the state labor agency (LWDA) issues a citation against the alleged violator on the same facts and under the same section or sections of the Labor Code.
- 3) Provides that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employee(s). In the case of penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, the funds would be divided evenly between the General Fund and the LWDA.

EXISTING LAW :

- 1) Authorizes the LWDA (composed of the Department of Industrial Relations (DIR), the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. (Labor Code section 201 et seq . All further statutory references are to this code unless otherwise noted.)
- 2) Authorizes the Attorney General (AG) and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. (Section 215 et seq .)
- 3) Authorizes an individual employee to file a claim with the

Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, other appropriate relief and attorneys' fees if the Commissioner declines to bring an action based on the employee's complaint. (Section 98.7.)

- 4) Provides that the AG, other prosecutors and any person acting for him or herself, members of a group or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and that a court may make any orders or judgments as may be necessary to prevent the use or employment by any entity of any practice which constitutes unfair competition, including issuing an injunction or appointing a receiver, and may order restitution of any money or property which may have been acquired by means of the unfair competition. (Business and Professions Code sections 17203 and 17535.)

FISCAL EFFECT : The bill as currently in print is keyed fiscal.

COMMENTS : In support of this measure, the author states: "This bill is critical to the enforcement of worker's rights. California has some important worker protections in statute - some of the strongest in the nation. However, these laws are meaningless if they are not enforced. Workers must be able to seek redress against employers who break the law."

Co-sponsor California Labor Federation states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators. The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing.

This Bill Provides Specified Civil Penalties for Violations of Existing Labor Code Provisions . The Labor Code is enforced by the LWDA, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the AG and other public prosecutors. As the author notes, however, some provisions of the Labor Code have criminal penalties but no civil penalties. The sponsors state that many Labor Code provisions are unenforced because they are punishable

only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, supporters argue, Labor Code violations rarely result in criminal investigations and prosecutions. As a result, supporters state, employers may violate the law with impunity.

This bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for subsequent violations) for any Labor Code provision that does not otherwise specify a civil penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of the range of existing civil penalties for violation of other Labor Code provisions, but should be significant enough to deter violations. Indeed, serious safety and health violations are punishable by civil penalties up to \$25,000. (Section 6428.) Civil penalties collected in any such action would be distributed as follows: 50 % to the General Fund, 25 % to the LWDA for education of employers and workers regarding labor law obligations, and 25 % to the aggrieved employee(s). If the defendant is not an employer (e.g., a labor contractor who violates licensing obligations), the entire civil penalty recovery would be distributed to the General Fund and the LWDA.

The Bill Would Allow Aggrieved Employees To Bring Private Actions To Recover Civil Penalties . The author states:

"Unfortunately, creating a civil penalty is not enough. As we face a budget crisis of epic proportions, the enforcement staff of state labor law enforcement agencies is being cut. A civil penalty is meaningless to an injured worker if there is no mechanism to collect the penalty. This bill allows the employee to seek redress directly where the state has not done so on the employee's behalf. Additionally, SB 796 helps generate revenues to the state at a time when we need them."

According to the California Labor Federation, in the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries. Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL permits private litigants to obtain only injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to some labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil penalties are recoverable only by prosecutors, not by private litigants, and the monies are paid directly to the government. However, recovery of civil penalties by private litigants does have precedent in the law. For example, the Unruh Civil Rights Act allows the victim of a hate crime to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civil Code sections 51.7, 52.) In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff.

Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors under this bill, not by private parties.

Current Law Allows Private Actions for Injunctive Relief For Violations of the Labor Code, As Well As Money Damages For Some Labor Code Violations . Under the UCL, employers may be sued by employees and other private parties for injunctive relief for violation of any provision of the Labor Code. In addition, some Labor Code provisions allow for private actions for money damages, including attorneys' fees. As noted above, employers are also subject to civil penalties and criminal prosecution for some Labor Code violations. Thus, the primary change effected by this bill would be to add the specified civil penalties to

private actions for violations of the Labor Code.

Only Persons Who Have Actually Been Harmed May Bring An Action to Enforce The Civil Penalties . Mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, the sponsors state that they have attempted to craft a private right of action that will not be subject to such abuse. Unlike the UCL, this bill would not permit private actions by persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an employee or former employee of the alleged violator against whom the alleged violation was committed. This action could also include fellow employees also harmed by the alleged violation. Because there is no provision in the bill allowing for private prosecution on behalf of the general public, there is no issue regarding the lack of finality of judgments against employers, as there has been with respect to private UCL actions. In addition, the bill precludes any private action when the LWDA issues a citation on the same facts and under the same code provisions. Thus, there is no prospect of public and private prosecution for the same violation.

The sponsors state that because the proposed civil penalties are relatively low and nearly all of the penalty recovery would be divided between the LWDA and the General Fund, the addition of civil penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

ARGUMENTS IN OPPOSITION : The employer groups opposing the bill do not contest the provision imposing new civil penalties. However, they argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing frivolous Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both attorneys' fees and a portion of the penalties. Opponents liken the danger of the bill to the recent abuse of the UCL by the Trevor Law Group.

The California Chamber of Commerce argues in particular against allowing recovery of attorneys' fees, contending that recovery for the aggrieved party would be minimal and secondary to attorneys' fees and cost. In addition the Chamber argues that since the bill would allow for an award of attorneys' fees to prevailing employees, but not to employers when they prevail, SB

796 would clog already overburdened courts because there would be no disincentive to pursue meritless claims. Moreover, the Chamber contends, since the bill does not contain any requirement for the employee to exhaust the administrative procedure or even file the claim with the Labor Commissioner before filing with the civil court, SB 796 is an open invitation for bounty hunting attorneys to aggressively pursue these cases.

The California Employment Law Council states that the Labor Code contains innumerable penalty provisions, many of which would be applicable to minor and inadvertent actions. Under current law, CELC argues, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796. If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a private attorney general could sue for penalties that could reach staggering amounts if the inadvertent deletion of information on a paycheck went on for some time, CELC argues.

The Civil Justice Association of California likewise opposes the measure, writing:

If enacted, SB 796 will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. It will drive up costs to businesses and taxpayers, and further California's reputation for having an unfair liability law system. ? The Legislature should find another solution to the staffing problems of state agencies rather than "deputizing" employees who would usually hire a private attorney to act as a private attorney general.

ARGUMENTS IN SUPPORT : In response to opposition arguments, supporters contend that this bill is consistent with other provisions of the Labor Code. With respect to attorneys' fees, supporters argue that the bill adopts the customary Labor Code approach that attorneys' fees are limited to a prevailing employee. Supporters also note that current law provides sanctions for any frivolous filings. On the issue of exhaustion of administrative procedures, supporters contend that there is no current requirement that employees file claims with the LWDA or exhaust administrative procedures prior to bringing an action for violation of their rights. As increasing the cost to

business, supporters contend that it is more accurate to state that the bill will increase the cost of violating established labor standards.

Author's Technical Amendments . In order to clarify the intent of the bill and correct drafting errors, the author properly proposes the following amendments:

On page 3, line 4, to correct a drafting error, the bill should read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself ~~or~~ and other current or former employees.

On page 3, lines 9-10, in order to avoid confusing the statute of limitations with the standing requirement, the bill should read:

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator ~~within the period of time covered by the applicable statute of limitations~~ and against whom one or more of the alleged violations was committed.

On page 3, starting on line 14, to clarify the author's intent, the bill should read:

(d) For all provisions of this code except those for which a civil penalty ~~has already been established~~ is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two

hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

On page 3, beginning on line 24, to correct a drafting error and otherwise more clearly state the author's intention, the bill should read:

(e) An aggrieved employee may recover the civil penalty described in subdivision (~~b~~ d) in a civil action filed on behalf of himself or herself and other current or former employees ~~for whom~~
~~evidence of a violation was developed during the trial or during settlement of the action~~ against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section.

On page 4, line 1, in order to clarify the author's intention and improve the operation of the statute, the bill should read:

(f) No action may be maintained under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of
himself or herself or others ~~and~~ or initiates a proceeding ~~to~~
~~collect applicable penalties~~ pursuant to section 98.3.

On page 4, line 4, in order to correct a drafting error, "subdivision (g)" should be changed to "subdivision (h)"

Prior Related Legislation . AB 2985 (Committee on Labor and Private Employment), Chap. 662, Stats. of 2002, required the Labor and Workforce Development Agency to contract with an independent research organization to study the most effective ways to enforce wage and hour laws and to identify all available state and federal resources available for enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

REGISTERED SUPPORT / OPPOSITION :

Support

California Labor Federation, AFL-CIO (co-sponsor)
California Rural Legal Assistance Foundation (co-sponsor)
American Federation of State, County and Municipal Employees
(AFSCME)
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union

Peace

Officers Research Association of California
Professional & Technical Engineers, Local 21
Protection and Advocacy Inc
Region 8 States Council of the United Food and Commercial
Workers
Sierra Club California
Western States Council of Sheet Metal Workers

Opposition

Associated Builders and Contractors of California
Associated General Contractors
Association of California Water Agencies
California Apartment Association
California Association of Sheet Metal and Air Conditioning
Contractors
California Chamber of Commerce
California Employment Law Council
California Landscape Contractors Association
California Manufacturers and Technology Association
California Motor Car Dealers Association
California Restaurant Association
Civil Justice Association of California
Construction Employers Association
Lumber Association of California and Nevada
Orange County Business Council

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334

EXHIBIT D-7

BILL ANALYSIS

SB 796
Page 1

Date of Hearing: July 9, 2003

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Paul Koretz, Chair
SB 796 (Dunn) - As Amended: July 2, 2003

SENATE VOTE : 21-14

SUBJECT : Employment.

SUMMARY : Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 3) Defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."
- 4) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund, 25% to the Labor and Workforce Development Agency (LWDA) for employer and employee education, and 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between General Fund and the LWDA.

- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action.

EXISTING LAW

- 1) Authorizes the LWDA (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.
- 2) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the law, and to sue the employer directly for damages, reinstatement, and other appropriate relief.
- 3) Authorizes the Attorney General and other public prosecutors to seek appropriate injunctive relief and file criminal charges against employers for criminal violations of the Labor Code, where specified.
- 4) Further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and other appropriate remedies.

FISCAL EFFECT : This measure was approved by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS : Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

The Labor Code is enforced by the LWDA and its various subordinate entities, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

The State of Labor Law Enforcement in California

At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so adequately due to budgetary and staff constraints. The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that [s]taffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future."

In 2001, the Assembly Committee on Labor and Employment conducted hearings regarding the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR). The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the Division of Labor Standards Enforcement (DLSE) within DIR for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size of California's "underground economy" - businesses operating outside the state's tax and licensing requirements - ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but that DIR was issuing fewer than 100 wage citations per year for all industries throughout the state.

Moreover, evidence demonstrates that the resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California. California's enforcement agencies are responsible for protecting the legal rights of over 17 million California workers and regulating almost 800,000 private establishments, in addition to all the public sector workplaces in the state (U.S. Census Bureau 1999). However, according to

a recent study, the resources available to the labor enforcement divisions remain below the levels of the mid-1980s. (Bar-Cohen, Limor and Deana Milam Carillo. "Labor Law Enforcement in California, 1970-2000." The State of California Labor . (2002), p. 135). According to the same study, between 1980 and 2000 California's workforce grew 48 percent, while DLSE's budgetary resources increased only 27 percent and Cal/OSHA's actually decreased 14 percent. Similarly, DLSE and Cal/OSHA staffing levels have decreased 7.6 percent and 10.8 percent, respectively, over the last two decades.

As a result of the legislative hearings discussed above, the Legislature enacted AB 2985 (Assembly Committee on Labor and Employment), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

Arguments in Support :

The co-sponsors of the measure, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance (CRLA) Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. The CRLA Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs, for example, when the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. The CRLA Foundation notes that the bill's proposed penalty structure

is "nominal" and is based on existing provisions of the Labor Code.

Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact the LWDA and its enforcement activities.

Arguments in Opposition :

Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken the danger of the bill to recent alleged abuse of Business and Professions Code Section 17200. Representative of this sentiment is the California Landscape Contractors Association, who notes:

[This bill] will create an entirely new litigation arena that will encourage
employees, particularly employees who were terminated or
subject to a
disciplinary action, to file retaliatory claims against

their employer. As we
have seen with similar causes of action under Section
17200?, innocent
businesses will be pressured to settle these claims because
of the high cost
of defense and the relatively small amounts involved.

Opponents also contend that California already has a formal
administrative procedure to handle these type of claims under
the Labor Code that is both economical and efficient.

Relationship Between SB 796 and the "Unfair Competition Law"
(UCL) :

As discussed above, some opponents have expressed concern about
the relationship between this bill and the "Unfair Competition
Law" (UCL), Section 17200, et seq., of the Business and
Professions Code. As reported in press accounts and further
illuminated by a joint legislative hearing conducted earlier
this year by the Senate and Assembly Committees on Judiciary,
there have been allegations of abuse of the UCL by certain law
firms and individual attorneys. In light of the recent
attention focused on the UCL, a brief discussion of that law's
relationship to this bill, and the arguments thereto on both
sides, is warranted here.

California law has contained a statute prohibiting "unfair"
practices in competition since the first Civil Code was enacted
in 1872. Numerous amendments to the UCL and case law
interpreting its provisions have provided broad and expansive
protections to California consumers to prevent businesses from
using unfair practices to gain advantage over competitors.
Based on the underlying premise that such anti-competitive
behavior creates an unfair playing field to the detriment of
consumers, the law has since been used to protect consumers from
instances of unfair, unlawful or fraudulent behavior.

Although the UCL permits private actions to enjoin unlawful
business acts, the sponsors assert that it is an inadequate tool
for correcting Labor Code violations. First, the UCL only
permits private litigants to obtain injunctive relief and
restitution, which the sponsor claim is not a sufficient
deterrent to labor law violations. Second, since the UCL does
not award attorney's fees to a prevailing plaintiff, few
aggrieved employees can afford to bring an action to enjoin the

violations. Finally, sponsors assert that since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Opponents, on the other hand, argue that this measure, if enacted, will result in abuse similar to that alleged involving the UCL. For example, the Civil Justice Association of California (CJAC) argues that this bill will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. CJAC argues that similar private attorney general actions have resulted in an excessive amount of meritless, fee-motivated lawsuits. Allowing such "bounty hunter" provisions will increase costs to businesses of all sizes, and add thousands of new cases to California's already over-burdened civil court system.

Similarly, the California Motor Car Dealers Association, writing in opposition to the bill, states, "a private enforcement statute in the hands of unscrupulous lawyers is a recipe for disaster."

The sponsors are mindful of the recent, well-publicized allegations of private plaintiffs abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse, pointing to amendments taken in the Senate to clarify the bill's intended scope. First, unlike the UCL, this bill would not open up private actions to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could only be brought by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed.

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself and other current or former employees" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL.

Third, the proposed civil penalties are relatively low. Most of the penalty recover would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees

aggrieved by the violation, instead of being retained by a single plaintiff. The sponsors contend that this distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts or theories under the same code provisions.

Related Legislation :

AB 276 (Koretz) of 2003 increases various civil penalties under the Labor Code, many of which have not been increased for decades. AB 276 is currently pending before the Senate Committee on Labor and Industrial Relations.

REGISTERED SUPPORT / OPPOSITION :

Support

California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Pipe Trades Council
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California Teamsters Public Affairs Council
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California (PORAC)
Professional and Technical Engineers, Local 21
Region 8 States Council of United Food & Commercial Workers
Sierra Club California
Western States Council of Sheet Metal Workers

Opposition

Alliance of American Insurers
Associated Builders and Contractors of California
Association of California Water Agencies
California Apartment Association
California Chamber of Commerce

California Landscaper Contractors Association
California Manufacturers & Technology Association
California Motor Car Dealers Association
California Restaurant Association
Civil Justice Association of California
Motion Picture Association of America, California Group
Wine Institute

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

EXHIBIT D-8

BILL ANALYSIS

SB 796
Page 1

Date of Hearing: August 20, 2003

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Darrell Steinberg, Chair

SB 796 (Dunn) - As Amended: July 16, 2003

Policy Committee:	JudiciaryVote:9-4
Labor	5-2

Urgency: No	State Mandated Local Program:
No Reimbursable:	

SUMMARY

This bill authorizes civil penalties for Labor Code violations and authorizes aggrieved employees to bring private actions and collect civil penalties for such violations. Specifically, this bill:

- 1) Provides that any Labor Code violation for which specific civil penalties have not otherwise been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Provides that an aggrieved employee may sue to recover civil penalties under the Labor Code, as well as attorneys' fees and costs, in an action brought on behalf of himself or herself and other current or former employees. However, no private action may be maintained where the state labor agency (LWDA) issues a citation against the alleged violator on the same facts and under the same section or sections of the Labor Code.
- 3) Provides that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent to the aggrieved employee(s). In the case of penalties recovered against a violator who is not an employer, the revenues would be divided evenly between the General Fund and the LWDA.

FISCAL EFFECT

Potential increased penalty revenue to the General Fund and to the LWDA.

COMMENTS

1)Purpose . This bill is sponsored by the California Labor Federation and the California Rural Assistance Legal Foundation. The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, supporters argue, Labor Code violations rarely result in criminal investigations and prosecutions. As a result, supporters state, employers may violate the law with impunity. The sponsors also state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries. The bill would authorize civil penalties for any Labor Code violation currently lacking a specific penalty provision and authorizes aggrieved employees to bring private civil actions against employers.

2)Opposition . Opponents include several employer groups, the California Employment Law Council, and the Civil Justice Association of California. Opponents are concerned that, in particular, the provision for recovery of attorneys' fees will encourage private attorneys to "act as vigilantes" to file frivolous Labor Code-related lawsuits.

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081

EXHIBIT D-9

BILL ANALYSIS

SB 796
Page 1

SENATE THIRD READING
SB 796 (Dunn)
As Amended July 16, 2003
Majority vote

SENATE VOTE :21-14

<u>JUDICIARY</u>	9-4	<u>LABOR AND</u>
<u>EMPLOYMENT</u>	5-2	

Ayes: Corbett, Dutra, Hancock,	Ayes: Koretz, Mullin, Chu,	
Jackson, Lieber,	Hancock, Laird	
Longville, Montanez,		
Steinberg, Berg		
-----+-----+-----+-----		
Nays: Harman, La Malfa,	Nays: Shirley Horton, Houston	
Pacheco, Spitzer		

APPROPRIATIONS 16-7

Ayes: Steinberg, Berg,			
Calderon, Corbett,			
Correa, Diaz, Goldberg,			
Leno, Nation, Negrete			
McLeod, Nunez, Pavley,			
Ridley-Thomas, Simitian,			
Wiggins, Yee			
-----+-----+-----+-----			
Nays: Bates, Daucher, Haynes,			
Maldonado, Pacheco,			
Runner, Samuelian			

SUMMARY : Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1) Establishes a civil penalty where one is not specifically

provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty would be \$500 per violation for a violator who is not an employer.

- 2) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 3) Defines an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.
- 4) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund (GF), 25% to LWDA for employer and employee education; and, 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between GF and LWDA.
- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to affect the exclusive remedy provided by workers' compensation provisions of existing law.

FISCAL EFFECT : According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

COMMENTS : Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

Arguments in Support: The co-sponsors of this bill, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions, which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact LWDA and its enforcement activities.

Arguments in Opposition: Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers.

Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken

the danger of this bill to recent alleged abuse of Business and Professions Code Section 17200.

Opponents also contend that California already has a formal administrative procedure to handle these types of claims under the Labor Code that is both economical and efficient.

AB 276 (Koretz), pending in the Assembly, increases various civil penalties under the Labor Code, many of which have not been increased for decades.

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

FN: 0002873

EXHIBIT D-10

BILL ANALYSIS

SB 796
Page 1

SENATE THIRD READING
SB 796 (Dunn)
As Amended September 2, 2003
Majority vote

SENATE VOTE : 21-14

<u>JUDICIARY</u>	9-4	<u>LABOR AND</u>
<u>EMPLOYMENT</u>	5-2	

Ayes: Corbett, Dutra, Hancock,	Ayes: Koretz, Mullin, Chu,	
Jackson, Lieber,	Hancock, Laird	
Longville, Montanez,		
Steinberg, Berg		
+-----+-----+-----+		
Nays: Harman, La Malfa,	Nays: Shirley Horton, Houston	
Pacheco, Spitzer		

APPROPRIATIONS 16-7

Ayes: Steinberg, Berg,		
Calderon, Corbett,		
Correa, Diaz, Goldberg,		
Leno, Nation, Negrete		
McLeod, Nunez, Pavley,		
Ridley-Thomas, Simitian,		
Wiggins, Yee		
+-----+-----+-----+		
Nays: Bates, Daucher, Haynes,		
Maldonado, Pacheco,		
Runner, Samuelian		

SUMMARY : Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1) Establishes a civil penalty where one is not specifically

provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty would be \$500 per violation for a violator who is not an employer.

- 2) Specifies that where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions has discretion to assess civil penalties, a court may exercise the same discretion with respect to the civil penalties established by this bill. Moreover, the civil penalties do not apply if the alleged violation is a failure to act by the LWDA or any of its subdivisions.
- 3) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the LWDA or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 4) Defines an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.
- 5) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund (GF), 25% to LWDA for employer and employee education; and, 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between GF and LWDA.
- 6) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to affect the exclusive remedy provided by workers' compensation provisions of existing law.

FISCAL EFFECT : According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

COMMENTS : Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

Arguments in Support: The co-sponsors of this bill, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions, which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact LWDA and its enforcement activities.

Arguments in Opposition: Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers.

Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not

provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken the danger of this bill to recent alleged abuse of Business and Professions Code Section 17200.

Opponents also contend that California already has a formal administrative procedure to handle these types of claims under the Labor Code that is both economical and efficient.

AB 276 (Koretz), pending in the Assembly, increases various civil penalties under the Labor Code, many of which have not been increased for decades.

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

FN: 0003169

EXHIBIT D-11

BILL ANALYSIS

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|SENATE RULES COMMITTEE           |                               SB 796|  
|Office of Senate Floor Analyses  |                               |  
|1020 N Street, Suite 524         |                               |  
|(916) 445-6614                   |Fax: (916) |  
|327-4478                         |                               |  
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UNFINISHED BUSINESS

Bill No: SB 796
Author: Dunn (D)
Amended: 9/2/03
Vote: 21

SENATE LABOR & IND. RELATIONS COMMITTEE : 5-3, 4/9/03
AYES: Alarcon, Dunn, Figueroa, Kuehl, Romero
NOES: Oller, Margett, McClintock

SENATE JUDICIARY COMMITTEE : 4-2, 4/29/03
AYES: Escutia, Cedillo, Kuehl, Sher
NOES: Morrow, Ackerman
NO VOTE RECORDED: Ducheny

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 21-14, 5/29/03
AYES: Alarcon, Alpert, Bowen, Burton, Cedillo, Chesbro,
Ducheny, Dunn, Escutia, Figueroa, Karnette, Kuehl,
Murray, Ortiz, Perata, Romero, Sher, Soto, Speier,
Torlakson, Vincent
NOES: Aanestad, Ackerman, Ashburn, Battin, Brulte, Denham,
Hollingsworth, Johnson, Knight, Margett, McClintock,
McPherson, Oller, Poochigian
NO VOTE RECORDED: Florez, Machado, Morrow, Scott,
Vasconcellos

SUBJECT : Employment

SOURCE : California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation,
Inc.

CONTINUED

DIGEST : This bill allows employees to sue their employers for civil penalties for employment law violations. This bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

Assembly Amendments (1) provide that the bill will not affect the exclusive remedy provided by workers' compensation provisions of current law, (2) clarify that no penalty is established for any failure to act by the Labor and Workplace Development Agency, as specified, and (3) make clarifying changes.

ANALYSIS : Existing law authorizes the State Labor and Workforce Development Agency (LWDA) (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code.

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint.

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity.

This bill is entitled the "Labor Code Private Attorneys General Act of 2004", and establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for

employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1.Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty will be \$500 per violation for a violator who is not an employer.
- 2.Specifies that where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions has discretion to assess civil penalties, a court may exercise the same discretion with respect to the civil penalties established by this bill. Moreover, the civil penalties do not apply if the alleged violation is a failure to act by the LWDA or any of its subdivisions.
- 3.Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the LWDA or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 4.Defines an "aggrieved employee" as any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.
- 5.Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50 percent to the General Fund (GF), 25 percent to LWDA for employer and employee education; and, 25 percent to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between GF and LWDA.
- 6.Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action. Provides that this bill is not intended to

affect the exclusive remedy provided by workers' compensation provisions of existing law.

Background

California's Labor Code is enforced by LWDA and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Labor and Employment Committee held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the State Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Senate Judiciary Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size California's "underground economy" -- businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Assembly Labor and Employment Committee), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance

enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified.

Prior legislation

AB 2985 (Assembly Labor and Employment Committee), Chapter 662, Statutes of 2002, requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

According to the Assembly Appropriations Committee, potential increased penalty revenue to the GF and to LWDA.

SUPPORT : (Verified 9/4/03)

California Labor Federation, AFL-CIO (co-source)
California Rural Legal Assistance Foundation,
Inc. (co-source)
American Federation of State, County and Municipal
Employees (AFSCME)
California Applicants Attorneys Association
California Conference Board of the Amalgamated Transit
Union
California Council of Machinists
California Independent Public Employees Legislative Council
California State Pipe Trades Council
California State Association of Electrical Workers
California Teamsters
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California
Professional and Technical Engineers, Local 21

Protection and Advocacy, Inc.
Region 8 States Council of the United Food and Commercial
Workers
Western States Council of Sheet Metal Workers

OPPOSITION : (Verified 9/4/03)

Associated Builders and Contractors of California
Associated General Contractors of California
California Apartment Association
California Chamber of Commerce
California Employment Law Council
California Landscape Contractors Association
California Manufacturers and Technology Association
Civil Justice Association of California (CJAC)
Construction Employers' Association
Motion Picture Association of America
Orange County Business Council

ARGUMENTS IN SUPPORT : Proponents, the California Labor Federation asserts that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation

to these code sections.

ARGUMENTS IN OPPOSITION : Opponents contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

NC:sl 9/10/03 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

EXHIBIT E

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Meeting

November 8, 1999
State Capitol, Room 112
Sacramento, California

P A R T I C I P A N T S

--o0o--

Industrial Welfare Commission

CHUCK CENTER, Chair

BARRY BROAD

LESLEE COLEMAN

BILL DOMBROWSKI

Staff

ANDREW R. BARON, Executive Officer

MARGUERITE C. STRICKLIN, Legal Counsel

MICHAEL MORENO, Principal Analyst

DONNA SCOTTI, Administrative Assistant

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1 P R O C E E D I N G S

2 --o0o--

3 COMMISSIONER CENTER: Good morning, everyone. As
4 noticed, this is an informational fact-finding hearing on
5 Senate Bill 60, implementation of the 8-hour day.

6 With that, I'd like to call the roll of the other
7 commissioners so we can open up the meeting.

8 Leslee Coleman?

9 COMMISSIONER COLEMAN: Leslee Coleman.

10 COMMISSIONER DOMBROWSKI: Bill Dombrowski

11 COMMISSIONER BROAD: Barry Broad.

12 COMMISSIONER CENTER: And Chuck Center. Seeing we
13 have a quorum, we'll commence our meeting.

14 What I'd like to do is just have individuals come
15 forward and testify and make comment. If you have written
16 comment, we would ask you to have seven copies to provide
17 for the Commission.

18 And what we're going to do today and next week is
19 try to gather as much information on the impacts of AB 60
20 and try to provide as much guidance as we can, as early as
21 we can in January, as to the effects of the changes in the
22 overtime law.

23 With that, some -- oh, we have to also approve the
24 minutes of the last meeting.

25 Has everyone read the minutes of the last meeting?

1 Do I have a motion to approve the minutes?

2 COMMISSIONER COLEMAN: So moved.

3 COMMISSIONER CENTER: Second?

4 COMMISSIONER BROAD: Second.

5 COMMISSIONER CENTER: All in favor, say "aye."

6 (Chorus of "ayes")

7 COMMISSIONER CENTER: Opposed?

8 (No response)

9 COMMISSIONER CENTER: The minutes are adopted.

10 With that, we had some individuals that called
11 ahead of time that would like to come up and testify first.
12 They called this morning.

13 The first one with that request to testify is
14 Willie Washington, with the California Manufacturers
15 Association.

16 MR. WASHINGTON: Good morning, Mr. Chairman,
17 members. Willie Washington, with the California
18 Manufacturers Association. Thank you for the opportunity to
19 speak, not necessarily first, but I did want to comment
20 earlier because a lot of the testimony that you're going to
21 hear today will have a great deal to do with what the
22 manufacturers are going to be doing a little later on.

23 I did prepare a very short comment letter for you
24 that is being distributed, and I'll kind of limit myself to
25 that this morning because we're still in the information-

1 gathering stage.

2 First of all, I wanted to bring to the attention
3 of the Commission that the number of changes AB 60 makes are
4 really, really quite overwhelming. And this is one of the
5 primary concerns that we have, is that there's so much for
6 the Commission to do before January 1, when this bill goes
7 into effect.

8 Of primary concern to the California
9 manufacturers, and the point that I'm going to be delving on
10 or speaking to at almost every opportunity, will be the
11 prohibition on the 12-hour shifts that will impact the
12 manufacturers more directly. Our concern here is that,
13 under the current law, under AB 60, an employer is going to
14 be -- it's going to prohibit the use of a 12-hour shift
15 without the payment of overtime before 40 hours of work in a
16 workweek.

17 Now, this has a real big problem because, for many
18 of our members, that is the mainstay of their working. In
19 other words, when we have employers who are working 24 hours
20 a day, seven days a week, 365 days a year, the 12-hour shift
21 is a mainstay. And to put them at a disadvantage of
22 requiring that they pay overtime on a daily basis will have
23 a negative impact on their competitiveness.

24 I have manufacturers who will be coming forward
25 who are in those particular situations, and many of them

1 will also be bringing their employees along with them to
2 give you some idea of the impact that that's going to have
3 on them, on them in terms of their competitiveness, and in
4 terms of the employees, how it's going to reshape their
5 lives. And I think you're going to be quite surprised, and
6 you're going to find a great deal of interest on the part of
7 those employees who have changed from the rotating 8-hour
8 days to the 12-hour shifts. And so, I'm looking forward to
9 their coming forward and testifying on that particular area.

10 In addition, we found it very, very difficult to
11 quantify this. I've been asked before the quantify this,
12 the impact that we continue to say it will have on
13 manufacturers. The Commission and others keep asking us to
14 quantify that, and it has been extremely challenging and
15 very difficult to do. We're still trying to do that, and
16 we're making one last effort, all-out attempt to do that.
17 And maybe by the 15th of December meeting in Los Angeles, we
18 hope to be able to quantify the impact that it will have on
19 these employers, and perhaps even on California's economy.
20 So, that's a target that we're shooting for, to try to
21 provide you some information as to the negative impact of
22 this prohibition on 12-hour shifts.

23 We're also concerned about the volume of the
24 changes and the complexities of all of the changes that we
25 have to go through. I've read the bill many times over, and

1 the bill is extremely, in many instances, ambiguous.
2 Certainly it's contradictory, because in some instances you
3 have the labor law which takes precedence over your
4 regulatory issues, and yet and still you have back-and-forth
5 exchanges as to who will be making the rules on what
6 particular issues. And we think this makes it extremely
7 difficult for the employers to understand and to be able to
8 work with something that is so difficult to understand with
9 any degree of certainty that what they're doing is right.

10 And we think this is particularly germane
11 considering that this bill also includes some new, fairly
12 harsh monetary penalties. And to hold an employer
13 accountable for something that they're not yet able to
14 understand and to put into place in the workplace and to
15 comply with the law, we think, is just not fair. So, that's
16 one of the things that we would like for you to consider as
17 a way of dealing with that, considering the fact that the
18 bill is going to go into law on January 1, regardless of
19 what we do here, what we get resolved, and so the employers
20 are going to need some form of safe harbor as far as these
21 penalties and things are concerned, if the Commission has
22 not resolved it by the 1st of January.

23 I had indicated before that I had more questions
24 than I did testimony, and that's still true. But this -- I
25 decided, after going over the bill, that it was much, much

1 too complicated, and too many of them, to bring forward at
2 this time. So, what I did is I took those that are the most
3 immediate, the ones that are the most urgent for the
4 employers, the ones that they need to have an answer on now,
5 and I did comment on those.

6 For example, the number of questions that I've
7 received regarding whether or not an employer who had read
8 AB 60, if they can take a vote now that would be recognized
9 in 2000. Could they comply with 2000 by vote and have those
10 things registered in 1999, and would they be applicable or
11 acceptable in 2000? That's one of the questions that is
12 raised again and again and again.

13 The bill had what we call a grandfathering portion
14 in there for some of the members -- some of those members
15 are CMA's members -- that attempted to allow those employers
16 who had voluntary plans, who had complied with the law and
17 were working up to 10-hour days, to continue those if they
18 were in effect on July 1 of 1999. The problem is that the
19 bill also required that all of those people volunteer again,
20 in writing. And again, the question becomes, if those
21 people volunteer again in writing in 1999 so that the
22 program is still legitimate in 2000, is that going to be
23 effective? Is that going to be legitimate? Would the
24 commissioner view that as having been done properly?

25 Other problems deal with -- some complications

1 created by the bill is that it reinstates, for example, the
2 old wage orders, the pre-1998 Wage Orders 1, 4, 5, 7, and 9.
3 And it reinstates those, and it implies that we go back and
4 we reimplement all of the things that we were doing prior to
5 the changes that were made in 1998. But because AB 60
6 specifically does away with many of the things that were in
7 the old wage orders, it creates a dilemma for us.

8 For example, if an employer is operating an
9 alternative workweek under one of these orders, for example,
10 would they be required to requalify the program under AB 60,
11 for example? Even though they are operating under one of
12 those old orders, come 2000, the criteria is different. And
13 will they be required to requalify those programs?

14 Will the various exemptions that are contained in
15 these orders, for example, be valid? For example, a parent,
16 spouse, children of the employer and so forth are currently
17 exempt. AB 60 specifically requires that they also be
18 subject to overtime payments. And yet this will be in the
19 old wage orders where they were exempt that we're going back
20 to. And the question becomes, what takes precedence, the AB
21 60 rule of the law or these regulations that we're
22 reimplementing come January 1 of 2000?

23 And then there's some language in the bill. One
24 of them in specific -- in specific that we're concerned
25 about is what is an employer's overtime obligation to an

1 employee who works on a seventh -- on any seventh day of a
2 workweek? And again, it might be just semantics or the way
3 that the bill is written that it really didn't mean what it
4 says. But without indicating in the bill that the days of
5 work have to be consecutive or something of that nature, it
6 implies that a person who works on the seventh day would be
7 due overtime pay, even if that was the only day of the week
8 that they worked, or even if it was the third day of the
9 week that they worked. Whatever your workweek happened to
10 be, according to this section, it would mean that overtime
11 would be due on any seventh day that you work. So, that's
12 another clarification that we need, and need that fairly
13 quickly.

14 Some of the other requirements of the bill are
15 very, very complicated, and that's why I decided that we
16 really need -- I needed to have more guidance from my folks.
17 For example, creating a menu of alternative work schedules,
18 without more definitive guidelines, is, you know, possibly a
19 problem for employers. For example, under AB 60, only the
20 employees get to choose what schedule that they would be
21 willing or able to work. Now, if you had several schedules
22 and employees chose to work the first one or the first two,
23 and the third or the fourth shifts, or whatever they
24 happened to be, did not have enough people left over to man
25 them, there's nothing in there that would require the

1 employer or allow the employer to dictate which one of those
2 employees would have to work on a shift that they did not
3 want. If you were using a menu of alternative shifts,
4 that's the type of problem that this would generate if we
5 don't have some more definitive guidelines coming out of the
6 Commission and others on how the employee can do that.

7 Developing a one-size-fits-all secret ballot
8 process or disclosure requirement also creates a problem,
9 and it's going to be somewhat difficult. I know that from
10 having talked with my members. I have some members where
11 one particular avenue would be acceptable, and is not
12 acceptable to another large segment of my employee
13 population. In fact, that's precisely why I'm not able to
14 provide you with some recommendations in that particular
15 area now. And I just want to make you aware of the fact
16 that until I have some greater input from my members, I will
17 not be able to do that.

18 However, we are scheduled -- the Manufacturers
19 Policy Committee that deals with this issue is scheduled to
20 meet on the 19th of this month. And at that time, we will
21 be discussing this. And hopefully, I'll get enough guidance
22 at that time to be able to come back to you with something
23 that we think would be something that the employers as a
24 whole in manufacturing could work with.

25 Fundamentally, this is such a complicated issue

1 that the Manufacturers Association understands that it is
2 the law. We just want to make sure that our employers know
3 and understand what the law is. In trying to interpret the
4 law and implement the law, the Manufacturers Association
5 fully intends to work with the Commission and others, and
6 with the Labor Commissioner, to ensure that as this bill is
7 being developed and implemented, that we have input and to
8 work with you to try to make it a workable proposition for
9 both the employers and the employees of California.

10 Thank you for the opportunity to testify. And if
11 you have any questions, I'll be happy to answer them at this
12 time.

13 COMMISSIONER DOMBROWSKI: Just a question, Willie,
14 on this. You talked about quantifying the economic impact
15 on your members. Are you going to be able to give us
16 anything on the economic impact on the employees?

17 MR. WASHINGTON: Actually, that's the easiest part
18 because all of the employers that are working these
19 schedules can give me that quite quickly. And the answer is
20 yes.

21 COMMISSIONER BROAD: Willie, on some of those
22 issues that you've raised, I've thought about them myself,
23 and I think some of them, we've really got to avoid the
24 "Chicken Little" scenario and make more out of this than the
25 bill actually did.

1 For example, the bill clearly says that the
2 Commission can retain or eliminate any exemption from
3 provisions regulating hours of work that was contained in
4 any valid wage order in 1997. So, if it restores wages
5 orders, you know, temporarily, you know, on January 1, the
6 bill says, they're restored, and they're restored with all
7 their exceptions in them. And I don't think there's
8 anything in the bill, for example, that intended to overturn
9 the exemption of, you know, family members, or the one that
10 deals with trucking or public employees or anything else. I
11 don't -- I believe that the bill was intended to restore
12 daily overtime to people who lost it and to give them the
13 choice of having alternative workweek arrangements. I don't
14 think it was intended to say that every exemption that were
15 in valid wage orders at that time is wiped out and we're
16 starting from zero with nothing.

17 So, I think, to some extent, we need to avoid, you
18 know, getting overwrought about this and to sort of --
19 because some of the issues you raised are very legitimate.
20 I also think that, to some extent, some of it's outside of
21 the purview of the IWC. That is to say, how the Division of
22 Labor Standards Enforcement intends to enforce these things
23 is part of the issue. Now, it seems to me that if an
24 employer complies with the provisions of the bill in terms
25 of holding an election, and wishes to try to do that by

1 January 1, 2000, that it's -- and follows those provisions,
2 I would think it would be quite unfair to then impose some
3 tremendous burden on them, from an enforcement point of
4 view, because they did it in advance of the IWC considering
5 the issues.

6 There is some, I think, small risk there that they
7 do it wrong, that we make some change to the way things were
8 done in 1997, or as we hear the issue, but it's just hard
9 for me to believe that with all, you know, the problems of
10 employees who aren't being paid the minimum wage at all in
11 certain industries, or whose rights are being violated, that
12 the Division of Labor Standards Enforcement has plenty to do
13 without going after employers who are trying scrupulously to
14 comply with this.

15 MR. WASHINGTON: I'm encouraged by your comments,
16 Commissioner Broad, because I'm hoping that that's the case,
17 and that where it's appropriate, that the Commission can
18 speak to that point, that that was not the intent, even
19 though that's what the bill says in many instances. That
20 would be very helpful if the Commission was to echo your
21 sentiments there that that was not the intent of the law and
22 do clarifications of that.

23 And I would also say that I'm totally in agreement
24 with you that the Labor Commissioner can play a very, very
25 critical role in this process, because, fundamentally, if

1 they are able to provide some safe harbor, so that when I
2 tell my employers, "Yes, you can do this," they don't have
3 to worry about subsequently being fined or found in
4 violation of the law. That would help a lot. So, your
5 comment, for me, is very encouraging, because if the
6 Commission are recommending this -- and I'll ask if the
7 Labor Commissioner would have a representative here so he
8 could kind of hear those discussions -- that would be very,
9 very encouraging for me. I'd be able to provide better
10 answers to my members as they call me on this. So, I'm very
11 encouraged by your comments on that.

12 COMMISSIONER CENTER: Thank you, Mr. Washington.
13 And we did invite the Labor Commissioner and their chief
14 counsel, and we thought they were going to be here today.
15 Let's hope they will be at the other hearings or come in
16 later to listen to the testimony of both sides affected by
17 the legislation. But the bill's sponsors are here today.
18 Maybe either at this meeting or the next meeting, they can
19 address some of your concerns.

20 And I think it's our -- everybody's feelings on
21 the Commission to make it as fair and easily enforced for
22 the employers out there as we possibly can. Now, because
23 this is a fact-finding, we have no official positions on
24 your questions, but we will take them into consideration.

25 Thank you.

1 MR. WASHINGTON: Thank you.

2 COMMISSIONER CENTER: The next speaker is Jon
3 Ross.

4 MR. ROSS: Good morning. Jon Ross, on behalf of
5 the Restaurant Association.

6 It took me by surprise. I thought I signed it at
7 the bottom, but I'm happy to -- happy to kick it off.

8 In the interests of time and the audience gathered
9 here today, we have a number of people within the
10 association, hundreds who would like to comment on various
11 parts of this issue. They're not pounding on the doors here
12 today. We intend to present testimony more fully next week
13 in San Francisco. Following up on what Mr. Washington said,
14 however, we would like to bring your attention to one issue
15 that we think is -- excuse me -- worthy of your early
16 review.

17 Our interest goes specifically to the various
18 provisions in the bill that ask the Commission to review the
19 manager exemption. One aspect of that is a requirement
20 under the new law that a manager receive two times minimum
21 wage. It's unclear to us, and it's unclear to a number of
22 lawyers that we've had look at that, when that particular
23 provision becomes effective. The language is couched in
24 terms of your ability to create new exemptions, and it's
25 unclear whether that requirement kicks in on July 1, 2000 --

1 or January 1, 2000. We would suggest that as you're
2 prioritizing your list of issues, considering what to do
3 over the next few months, it's critically important to those
4 employers who are trying to set payrolls and everything else
5 for January 1 to have some guidance, whether it comes from
6 this board or another, as to what the -- when that
7 requirement kicks in.

8 Our read is it -- you know, a very strong argument
9 can be made that that requirement takes effect the 1st of
10 July. Given that all the other exemptions and reviews and
11 studies are to take place by that date, for simplicity of
12 bringing employers into a new system, it might make some
13 sense to have all of that happen at once rather than have
14 this happen in stages over the course of the next few
15 months. That's -- that's one comment we'd like to add.

16 Second, we look forward as an association to
17 working with you as you conduct studies and reviews of the
18 manager issue generally. This has been an area of some
19 concern for restaurants. We're a service industry. The
20 standards that have been in place before on how you
21 determine activities that constitute management activities
22 have been problematic for some of our members. And as we
23 move forward in the next months, we would like to engage in
24 a dialogue on how that standard may be better expressed so
25 that it reflects the reality that our folks see today.

1 That concludes our comments today, and we will
2 present more testimony next week.

3 COMMISSIONER CENTER: Any questions from any
4 commissioners?

5 MR. ROSS: I thought I was out clean.

6 COMMISSIONER BROAD: Well, no. I just -- Mr.
7 Ross, my question goes to that issue of the January 1
8 implementation date versus July 1. Now, what the statute
9 says is, "The Commission shall conduct a review of the
10 duties which meet the test of the exemption." However, it
11 basically says that the Commission may establish exemptions
12 and "where the employee is primarily engaged in the duties
13 which meet the test of the exemption, the employee earns a
14 monthly salary equivalent to no less than two times the
15 state minimum wage for full-time employment." It doesn't --
16 I don't think that the Commission has any leeway in that --
17 that's a statutory directive, and it seems that it's
18 effective, in my view, on January 1, as is, you know, the
19 main provision of the bill, you know, 510, saying that, you
20 know, basically, people get time-and-a-half on January 1.

21 I think it would be wise of you to talk to the
22 Labor Commissioner about their view of it. It's my opinion
23 that we need to reinstate the wage orders that we are
24 ordered to reinstate as soon as we can do that after January
25 1, with whatever other interim directive we need to give in

1 addition to that. But that provision, it seems to me, looks
2 on its face to go into effect on January 1.

3 MR. ROSS: But the interim -- the wage orders that
4 had existed spoke to a different income test for manager.

5 COMMISSIONER BROAD: That's correct.

6 MR. ROSS: And the new statute speaks to creating
7 new exemptions. Presumably, these are acts that would be
8 taken by this board subsequent to the effective date of the
9 legislation. And so, the question, I think, is are you
10 implementing the old rule and the old standard pending some
11 action to create a new exemption, or does the statute by
12 itself create a new exemption with new terms as of that
13 date?

14 And at least the preface to that section speaks to
15 this Commission having the authority to create an exemption
16 that contains an element such as two times the minimum wage,
17 so that the -- we're not here to make a substantive or
18 policy argument on the merits of \$2,000. We're not -- or
19 two times minimum wage -- excuse me. But we do think
20 there's a legitimate issue as to when that new standard
21 takes effect. And you and I, as lawyers, can sit here and
22 have a debate, and a lot of other lawyers are too, and I
23 guess our point is we ought to be creative in ways that we
24 can, one way or the other, resolve this issue in a rather
25 public way so that a lot of employers don't have to go to,

1 you know, the expense of hiring me and you to go out and
2 tell them how this works.

3 COMMISSIONER BROAD: So, you want a definitive
4 answer as soon as possible.

5 MR. ROSS: Yeah. And we would suggest that -- you
6 know, that a good answer is to delay implementation of that
7 particular requirement --

8 (Laughter)

9 MR. ROSS: -- until July 1st.

10 COMMISSIONER CENTER: Thank you. We'll give you a
11 fair answer.

12 MR. ROSS: Thank you.

13 COMMISSIONER CENTER: The next speaker is Ann
14 Greenhill.

15 MS. GREENHILL: I work for an organization in Yolo
16 County called Summer House, and we provide a variety of
17 services to people who have developmental disabilities. I'm
18 also here as a representative of the California Respite
19 Services Association. We're an organization of 33 respite
20 agencies in California, which is approximately two thirds.

21 COMMISSIONER CENTER: Ma'am, could you bring the
22 mike a little bit closer? It's recording.

23 MS. GREENHILL: Okay. Should I start again?

24 COMMISSIONER CENTER: No. I just wanted you to
25 bring it closer.

1 MS. GREENHILL: Okay.

2 The California Respite Services Association
3 represents 33 agencies, which is approximately two thirds of
4 the respite agencies in California. And we represent about
5 3,000 families in the state. I coordinate the respite
6 program for Summer House to seventy families.

7 And the purpose of respite is to provide care,
8 childcare, so that families can receive occasional relief
9 from caring for their children with developmental
10 disabilities. We provide respite care to children and
11 adults with mental retardation, autism, cerebral palsy,
12 seizure disorders, and other disabling conditions. Our
13 respite workers qualify under the updated Wage Order 15-86
14 as personal attendants.

15 I'm here to advocate for continuing the Wage Order
16 15-86 personal attendant exemption from overtime. If the
17 exemption is not continued, there will be a serious negative
18 impact on our families and the respite workers who provide
19 the care.

20 By way of background, I want to tell you that all
21 respite agencies are funded by the Department of
22 Developmental Services, and we all receive an hourly rate of
23 reimbursement. This rate is based upon the respite worker's
24 salary of \$6.56 per hour, payroll costs, and also includes
25 an administrative reimbursement. For many respite agencies,

1 the various rates barely cover our costs; for some, the rate
2 does not cover our costs and we operate at a deficit, which
3 is managed by fundraising or other income the organization
4 has managed to generate.

5 Although we are constantly advocating for higher
6 rates of reimbursement, nonprofit respite agencies simply
7 cannot afford to pay overtime to our respite workers. For
8 example, my agency receives a reimbursement of \$11.80 per
9 hour, which includes the \$6.56 per hour respite worker wage
10 and approximately \$1.00 in associated payroll costs. An
11 overtime rate of one and a half times the \$6.56 salary and
12 the payroll taxes would cost us most of what we are
13 reimbursed. It will not take many overtime hours to deplete
14 our organization's ability to fund respite services. For
15 programs that are already losing money, this makes the
16 situation even worse.

17 I'd also like to explain respite care from the
18 family's point of view. Respite care is provided in the
19 family home and the hours are as varied as each family's
20 need. Respites longer than 8 hours are common, since many
21 families want to spend more than 8 hours away from home at
22 one time. Some families use their respite time to go away
23 for an overnight, which would always exceed the 8-hour
24 schedule. It is intrusive and disruptive for a family and
25 their children to have more than one person providing the

1 care. For respites longer than 8 hours, I know that many
2 families will have concerns about their children's care,
3 schedules, and routines with more than one person providing
4 the care. Children with developmental disabilities require
5 continuity of care and consistent interactions with the same
6 respite worker. Parents will lose the peace of mind that
7 comes from knowing that the person they leave their children
8 with will not be there when they get home. For respites
9 longer than 8 hours, they will not be able to give face-to-
10 face, specific instructions about their children to each
11 respite worker, and this is very disconcerting for a parent.
12 Parents do not want to rely on several care providers to get
13 the respite care they need.

14 Because most agencies will not be able to pay
15 overtime, and many families will not want more than one care
16 provider at a respite, we will not be able to meet their
17 needs. Without the overtime exemption, there will be a
18 hardship for parents of children with developmental
19 disabilities.

20 I also want to address this issue from the respite
21 worker's point of view. It's very important for you to know
22 that respite workers are not assigned respite work; they are
23 not required to take a respite job. This is an on-call
24 position, and workers are free to accept or decline the
25 respite job offer. It is not the employer who mandates the

1 work, and there is no pressure or threat of job loss if they
2 decline a respite job. Most of our respite workers are
3 usually doing something else as well. They're either
4 students or they have part-time or full-time jobs elsewhere.
5 They like the flexibility of respite work and the
6 opportunity to work as many hours as they want when they
7 want. They fit respite around other obligations. Longer
8 respites, that is, more than 8 hours, are attractive to many
9 workers because they can earn what they need or want at one
10 time. Their choice of working longer shifts is a benefit to
11 them because it fits their schedules and their financial
12 needs. Some like the ability to work more hours less often.
13 If overtime is implemented and respite agencies are unable
14 to pay overtime, then the respite workers will actually
15 suffer the economic consequences.

16 We already have comments in employees in other
17 programs where the 8-hour daily overtime will have to be
18 imposed, and many of them are disappointed that this will
19 eliminate the flexible work schedules they now enjoy. I am
20 certain that respite workers will also be disappointed.

21 We hope that you will maintain the exemptions for
22 Wage Order 15-86. If you don't, then we urge the Commission
23 to create a provision which will assure that employers are
24 able to recapture the costs of overtime through some pass-
25 through rate adjustment with our funding source, that is,

1 the Department of Developmental Services.

2 Thank you in advance for understanding the unique
3 nature of our respite providers' employment and our
4 families' special care needs. They're counting on your
5 support in either exempting overtime or assuring additional
6 support to pay the overtime wages.

7 COMMISSIONER CENTER: Thank you.

8 Our next speaker is Connie Delgado Alvarez.

9 MS. ALVAREZ: Good morning. I'd like to thank you
10 for this opportunity to discuss a little bit about the 12-
11 hour shift and its importance to the healthcare industry.

12 I wanted to remind the IWC that in the past, after
13 careful consideration, when there was an 8-hour day with the
14 payment of overtime, the IWC, after careful consideration,
15 adopted wage orders that would allow for the exemption for
16 12-hour shifts in the healthcare setting. These 12-hour
17 shifts are so popular to our nurses and our hospitals, our
18 patients. We can see the popularity of these in the fact
19 that most of the contracts -- or many contracts, union
20 contracts, provide for a 12-hour shift without the payment
21 of overtime.

22 Despite arguments that 12-hour shifts may
23 compromise a patient's condition, there is no evidence to
24 prove that, and continuity of patient care has been
25 something that has been very important to our members, our

1 nurses, and our hospitals.

2 The alternative workweek schedule came about for
3 the reasons of allowing nurses to have the flexibility to
4 choose a 12-hour shift and be able to stay at home, take
5 care of family needs, and provide for a way of life that was
6 suitable and desirable to them. So, we wanted to talk a
7 little bit about that. We have a nurse that will be
8 testifying later on this afternoon or this morning to talk
9 about how that impacts their lives and how this affects the
10 overall condition for the shifts in the hospital and for the
11 nurses.

12 12 hours are critical to our industry because we
13 are one of the industries that service the community 24
14 hours a day, 365 days a year, seven days a week, and we
15 never close our doors. So, it's easy for our hospitals to
16 shift in two 12-hour shifts, as opposed to any of the other
17 provisions that are available in the bill. We understand
18 that there are some alternative provisions in the bill, but
19 it does really help for the healthcare industry, with that
20 24-hour staffing need that we have.

21 And looking about the shortage of nurses in
22 California, if we would have to shift to 8-hour schedules
23 for our nurses, we would have to come up with more nurses
24 available, and we're not sure that those nurses are there
25 right now. Actually, we've been working in a different area

1 to try to assure that we would be able to get some more
2 nurses.

3 So, we just wanted to talk to you a little bit
4 today about the -- hopefully, asking you to take careful
5 consideration and see if you might be able to reinstate the
6 Wage Orders 4- and 5-86 that were amended in '93, because
7 this was the allowance that provided for our healthcare
8 industry to have the 12-hour shifts.

9 I wanted to ask a question, because we have been
10 asking this question before: that if the wage orders that
11 we are going to be reverting to are the Wage Orders 4- and
12 5-86, amended in '93, we'd like to know whether or not those
13 wage orders are going to be available and how those will be
14 distributed to the employers so that, when the bill becomes
15 effective, we will know and be able to tell our members how
16 to get ahold of those wage orders so that they can post
17 them. I know that it's a question that's been asked of the
18 IWC in the past, and we've asked it in additional meetings.
19 And I've been hearing different variations about when and
20 how those documents will be available. So, that's a
21 question of clarification we're looking for.

22 I'd like to thank you.

23 COMMISSIONER CENTER: Thank you. And in an
24 attempt to answer your question, we're looking at all
25 possible ways, maybe making them available on the Internet,

1 if it meets legal requirements. But that's -- we're
2 pursuing that.

3 MS. ALVARADO: Will there be some notification
4 sent out just as soon as those will be available?

5 COMMISSIONER CENTER: Yes.

6 MS. ALVARADO: Okay. Thank you.

7 COMMISSIONER CENTER: Any questions from the
8 commissioners?

9 (No response)

10 COMMISSIONER CENTER: Thank you.

11 And per Mr. Washington's request and others, we do
12 have representatives of the Division of Labor Standards
13 Enforcement here now listening, so -- Miles Locker and Tom
14 Grogan.

15 We appreciate you attending the meeting. Thank
16 you.

17 The next speaker is Michele Buhlert.

18 MS. BUHLERT: Good morning. My name is Michele
19 Buhlert, and I'm a staff nurse at Marshall Hospital in
20 Placerville, where my colleagues and I serve the western
21 slope of El Dorado County. Marshall Hospital is the only
22 community hospital between Folsom and South Lake Tahoe.

23 I appreciate the opportunity to be able to speak
24 to you today about Assembly Bill 60 and how losing the
25 flexibility of the 12-hour shifts will affect not only

1 myself, but my colleagues in nursing.

2 Registered nurses dedicate their careers to
3 healing. In these times of shorter lengths of stay for
4 hospital patients, it is imperative that we're able to
5 maximize the continuity of our patients' care and best
6 utilize the time that we have with our patients and their
7 families. This is crucial time for teaching patients about
8 their surgeries or their disease processes, their
9 medications, preventing complications, and talking with
10 patients and families about how to optimize their wellness
11 and their enjoyment of life.

12 The 12-hour shift allows the nurse caregiver the
13 opportunity to bond with their patient and focus on the
14 tasks, the teaching, and the listening that every patient
15 deserves. With only two shifts every 24 hours, patients are
16 spared the constant changing parade of caregivers. Studies
17 have proven that most errors occur within an hour either way
18 of shift change. 12-hour shifts have the potential for
19 decreasing possible errors by one third.

20 Interviews with patients have shown that they
21 become frustrated with having a different nurse every 8
22 hours. Being hospitalized and being ill is frustrating
23 enough.

24 For nurses, being able to spend 12 hours with a
25 patient instead of only 8 allows us to better monitor our

1 patients' progress towards a favorable outcome. As nurses,
2 we have dedicated our careers to healing and serving the
3 members of our community. However, as people, we also have
4 lives outside the walls of the hospital.

5 I've made Marshall Hospital my career for many
6 reasons, including the unparalleled support and respect that
7 we, as employees, receive from our managers and
8 administrators, the autonomy that we enjoy as members of the
9 healthcare team, and the flexibility of being able to work
10 the hours that we have chosen.

11 Flexibility is a quality that drew many of us to
12 nursing. We choose to work three 12-hour shifts a week
13 because it fits our lifestyle so well and it allows us to
14 have a life outside the walls of the hospital.

15 Many nurses have children at home. Working three
16 days a week allows us the flexibility to volunteer in our
17 children's classrooms, to meet with teachers, take our
18 children to the park or to appointments, to spend quality
19 time that five 8-hour shifts a week does not allow.

20 Some of us are also pursuing advanced degrees.
21 Working three days a week allows us the flexibility to be
22 successful in our quest for higher education.

23 Some nurses take care of elderly parents or
24 disabled children. Working three days a week allows us the
25 flexibility to meet outside obligations and

1 responsibilities.

2 Many nurses commute to work, some of us very long
3 distances. A nurse who works three days a week instead of
4 five spends 40 percent less time driving and polluting the
5 air.

6 Working three 12-hour shifts a week allows nurses
7 and their families a better quality of life. It affords us
8 an opportunity to exercise, to travel, garden, swim, ski,
9 visit with the people that we care about, to unwind and
10 recharge ourselves for a demanding career. It allows us to
11 provide better continuity of care for our patients. This is
12 why we, as nurses, have chosen this schedule.

13 We have opted to forego overtime over 8 hours a
14 day for the flexibility of being able to work three days a
15 week and still earn a full wage. Registered nurses are
16 intelligent and educated professionals. I believe strongly
17 in the right of self-determination and personal choice as to
18 where we work, how we work, and when we work. AB 60 does
19 not provide this flexibility and personal choice we, as
20 nurses, need and want.

21 I appreciate your time and consideration, and I'd
22 be happy to answer questions if you have any of me.

23 COMMISSIONER BROAD: I've got a question.

24 When you -- at your hospital, presumably, some
25 time ago, you shifted from 8 hours to 12 hours.

1 MS. BUHLERT: Correct.

2 COMMISSIONER BROAD: And was that a sort of a
3 unanimously happy decision among the nursing staff, or were
4 there some nurses who were not happy with that?

5 MS. BUHLERT: When my hospital changed from 8- to
6 12-hour shifts, that was before I started working there --
7 I've been at Marshall Hospital a little over five years --
8 so I can't speak to the history of the vote. Many of the
9 nurses that work there now worked then, and the nurses that
10 I've spoken to in the last few weeks about this
11 overwhelmingly supported the 12-hour shift over the 8-hour
12 shift. My manager is also here today, and I'm sure she
13 could speak more accurately to how that went. But we, as
14 nurses, the nurses I've spoken to, feel overwhelmingly that
15 12-hour shifts not only fit their patients' needs better,
16 but their own personal needs.

17 Does that answer your question?

18 COMMISSIONER BROAD: Thanks.

19 MS. BUHLERT: I wasn't there then, would be the
20 short answer.

21 (Laughter)

22 COMMISSIONER BROAD: That's fair.

23 MS. BUHLERT: The fact that Marshall Hospital has
24 12-hour shifts was a strong factor in my choosing that
25 hospital to apply to and to stay with. I personally -- I

1 can only speak for myself -- I would not work at a hospital
2 where 8-hour shifts were mandatory. It's very difficult,
3 with my lifestyle, and I feel it's much better for my
4 patients.

5 COMMISSIONER CENTER: Thank you.

6 MS. BUHLERT: Thank you.

7 COMMISSIONER CENTER: I'd like to go a little bit
8 out of order now to bring up Julianne Broyles, with the
9 Chamber. She might be able to address some issues that some
10 of the other employers will be testifying on, in her
11 comments.

12 MS. BROYLES: Good morning, Mr. Chairman,
13 commissioners. It's a pleasure to be here and having the
14 opportunity to work with you on an issue that's of great
15 importance to our members and to their workers. We have a
16 side-by-side that I know that probably was provided to you,
17 but to become an official part of the record, we would like
18 to actually hand it in today, because I know that having it
19 officially submitted does give it a little bit more weight.

20 When we have looked at the issue of the overtime
21 reform over the last several years, it's been one of
22 conflict, it's been one of, in some ways, great excitement
23 for both workers and their employers, because when we view
24 the issue, we look at it in a positive way. We have felt
25 from the very beginning that having the ability to, one,

1 provide our works with the ability to flex hours in a way
2 that lets them meet their worklife obligations in an easier
3 manner, at the same time which does not penalize the
4 employer for doing so, has always been a benefit that goes
5 two ways. And when you look at what the mandate is to the
6 Industrial Welfare Commission, one of which is assuredly to
7 always look out for the best possible impact on the worker,
8 from the health -- their health and welfare -- by wage and
9 hour applications. You also have the additional mandate to
10 ensure that jobs remain in the state, that employers have
11 the ability to complete, and that job opportunities are not
12 lost. We know that that is a very, very hard line for this
13 Commission to have to walk over the next few months as you
14 look at how to implement a very, very confusing law, in some
15 ways, and the technical challenges that employers have in
16 implementing this law, is going to be great. And we'll be
17 looking to you for the guidance and the information that you
18 will be able to provide.

19 Like Mr. Washington, we do have probably as many
20 questions as we do the ability to provide information to the
21 Commission at this time. And they have -- something that I
22 don't think just a plain reading of the statute is going to
23 provide to the employers, in terms of how to set up, gear
24 up, and be able to roll out the new millennium with a brand-
25 new set of wage and hour rules that, in many ways, are

1 technically very, very impossible to do so without
2 additional guidance on the part of the Industrial Welfare
3 Commission.

4 The definitions within the bill are certainly very
5 troubling to the employer community. For example, Labor
6 Code 500 defines an alternate schedule as "any regularly
7 scheduled workweek with more than eight hours in a single
8 day," but that conflicts with later sections of the same
9 bill that define an alternate schedule as something that has
10 been put through the process, the two-thirds secret ballot
11 vote. And what kind of -- our question -- it's more a
12 question, again -- is there a conflict in those two? Do we
13 now have two definitions of what an alternate workweek is
14 and what an alternate schedule is? And the clarification
15 that the Industrial Welfare Commission could provide on that
16 would be certainly of help to the employer community as
17 they, again, look to provide the flexible schedules where
18 they can, in a manner that works for their workforce, their
19 corporate culture, their business culture in that business.

20 Additional questions that we do have concern the
21 exemptions. Now, as Mr. Broad had noted earlier, certainly
22 we're not trying to cry, "The sky is falling," but we do
23 have many questions because, again, if you do a plain
24 reading of the statute, it says that all employees are
25 subject to 8-hour overtime. And if that is so, then the

1 question's been raised on what about family members? How
2 are they treated? What about babysitting performed on a
3 casual basis? How does that now happen?

4 As you heard from the respite care association,
5 they have questions there on the companionship services that
6 they provide. You have issues dealing with certain truck
7 drivers, some parts of the agricultural industry, and
8 contract workers. We have lots of questions on those, and
9 we'll be happy to provide as much information as we can to
10 you. But, again, we'll be looking for answers as well as
11 providing the questions.

12 You do have, of course, your line of work very
13 clearly set out for you, in that you have to specifically
14 address certain industries, such as the ski industry, the
15 fishing -- commercial fishing industry, healthcare industry,
16 by a date and time certain. However, it's been troubling
17 for us to hear in the employer community that there are some
18 that believe that we now are going to cover industries that
19 have never historically been covered by overtime rules
20 before and would certainly be, as an employer
21 representative, opposed to, say, now suddenly saying that
22 on-site construction or logging or mining are now subject to
23 the provisions of AB 60, where historically they never have
24 been before.

25 Additionally, within your -- within AB 60, you

1 have the issue of the alternate schedules. Certainly Mr.
2 Washington touched on the issue of the menu of choices. Is
3 it one that the employer sets up and the employees choose
4 from? But then further questions when you go deeper into
5 the problem. Certainly, when we talked with workers on --
6 when we went into the alternate schedules that were
7 available under previous law prior to 1997, one of the
8 problems when you got into the situation, you have the
9 employers going, "Yes, I would love to work an alternate
10 schedule, I would love to come into work only four days a
11 week or three days a week;" however, the problem came around
12 when you had -- choosing that schedule, and then what
13 happens when a significant life change, as you -- a term
14 that I know that you've seen in terms of healthcare, but in
15 this instance, it might also be appropriate to view, is to
16 say, "I've got -- something has changed, I'm adopting a
17 child, I have a family member that is now ill; I want to now
18 change to a different menu selection," the process in which
19 an employee is able to do so, or which an employer is able
20 to ensure that he has enough people on a production line,
21 will have to be addressed by the Commission on this basis.
22 We think it's going to be a difficult task to figure out how
23 to do so.

24 What we have with other issues within the
25 alternate schedule choice, while you do have -- I believe,

1 and we'd like just to make sure that that is very clear --
2 in one part of the bill, it talks about any hour outside of
3 the selected schedule being required to have an overtime
4 payment of time and a half applied to it. So, again, if I
5 have chosen that four-day workweek, and I've decided that
6 that's Monday through Thursday, and I want to work some
7 hours on Friday to make it up, we would like to make sure
8 that there's clarification that employees on alternate
9 schedules, if they've been adopted by the two-thirds vote,
10 have the make-up time available to them and would not be
11 able to have the employer required to pay time and a half
12 for hours that -- on that basis for hours that are being
13 made up, underneath, I believe, it's Labor Code 511.

14 Other questions that we do have deal with the
15 legal status of the wage orders. What is the legal status
16 of the wage orders? Questions that -- if they were taken
17 out of effect in 1997, they are no longer legal and valid.
18 What is the status? How -- if we used any of the process
19 that is within those wage orders, what is our legal
20 liability as employers for doing so? Are we subject to
21 lawsuits? Are we subject to being sued and having back
22 overtime or other penalties assessed against us for going by
23 what previous wage orders said, even though AB 60
24 substantially changes some provisions of those?

25 Another challenge for this Commission will be how

1 AB 60 interacts with other leave laws. Now, you have, in
2 many instances, items such as family leave, whether it's
3 state- or federally-protected leave, under both of those
4 programs, whether it's pregnancy disability leave, whether
5 it is ADA compliance in order to accommodate somebody's
6 medical condition, someone with migraines, for instance,
7 someone with severe morning sickness, how does that work?
8 Does it work with the alternate schedules? Does it work
9 with the make-up time? All of those are issues that
10 certainly employers are going to need guidance on.

11 And the last part of this, again, deals with the
12 make-up time. We are happy to help and in any way comment
13 on suggested forms or notifications on the make-up time or
14 the alternate schedules, and we'll be happy to present at
15 least examples and samples of what we think might work and
16 work with the Commission and its staff on those issues.

17 But another issue that you will have to work to
18 clarify is that, under the make-up rules in AB 60, and
19 because it's very specific, make-up time has to be done
20 within the same week in which it is requested, what are you
21 going to do about that make-up time request that comes in on
22 Friday morning? "I've got to get out of here today; I want
23 to make up the time on Monday," how are you going to deal
24 with that?

25 So, again, I do not envy the challenges that

1 you're going to have to deal with in all of this. Certainly
2 we will have very concrete evidence -- in fact, we plan to
3 submit certainly our previous comments that were given to
4 the Industrial Welfare Commission when the changes were
5 being considered, as well as all of the statistical reports
6 that we were able to compile at that time, showing the
7 impact on wages, showing the impact on workers, and the
8 impact on the competitive nature of California businesses as
9 they were moving through this whole process.

10 I would be delighted to answer any questions you
11 might have. And hopefully, we'll be able to work with you
12 in the future on providing the information you may need.

13 Thank you.

14 COMMISSIONER BROAD: I read through your chart,
15 and I just had one question. What's the contract worker
16 issue? I don't understand that one.

17 MS. BROYLES: Well, actually, that's a good
18 question. And we're not -- again, this is something that
19 we're not sure of the impact. Now, a previous statute had
20 expressly exempted parties to a contract to waive 8-hour
21 overtime requirements. That was deleted by the new Labor
22 Code 500 -- 510 -- excuse me. And the question is, was it
23 specifically meant to cover just collective bargaining
24 agreements? Was there any issue dealing with contingent or
25 contract workers that the proponents of AB 60 were trying to

1 cover? And if so, what were they specifically so we can
2 make sure that, one, we don't abridge the law in any way
3 intentionally and knowingly, and then have the knowledge for
4 our employers, when they enter into contractual
5 relationships with workers, so they know their overtime
6 obligations and liability.

7 COMMISSIONER CENTER: Thank you.

8 MS. BROYLES: Thank you.

9 COMMISSIONER CENTER: Our next speaker is Tamme
10 Booth.

11 MS. BOOTH: Good morning. I'm Tamme Booth, a
12 licensed pharmacist working here in the Sacramento area.

13 Distinguished Commission members and concerned
14 individuals in the audience, please forgive me for my
15 inadequacy in public speaking. I'm very nervous, and, to be
16 honest, I'd like to bolt out the door right now. There are
17 probably much better individuals who could represent my
18 profession, but I feel it's very important to voice my
19 opinion.

20 My husband and I are both pharmacists. He is
21 pleased to work five 8-hour days, and he gets overtime for
22 anything over 8 hours in a day. I work longer shifts and
23 enjoy the flexibility that working only four days a week
24 affords me. I spend less time commuting, can take care of
25 medical and dental appointments, and enjoy long weekends

1 without touching my vacation time. I can attend continuing
2 education programs and participate in community and church-
3 related affairs much more readily. Most importantly is the
4 block of family time that my flexible schedule allows me.

5 At first glance, I had no qualms about this issue.
6 But, as they say, reality bites. Last Thursday, I was
7 informed by my regional manager that, under the new law, I
8 would lose certain benefits. Well, I'm still not happy
9 about the benefits I lost last year. As an assistant
10 manager, I'm certain that I could arrange to continue
11 working 10-hour shifts. My upper management in the Pharmacy
12 Division does consist of pharmacists. They're still
13 considered professionals in most states; they're reasonable
14 individuals. But what happens to the other pharmacists?
15 Budget restraints will lean toward the 8-hour workday. This
16 will result in reduction of pharmacists' hours, an increased
17 workload for those working, and endanger patients in the
18 long run.

19 I have seen many changes in the pharmacy
20 profession, and I laud the efforts of those who have brought
21 about advancements in the workplace, making it safer for
22 both the care provider and the patient. There are many
23 laborers in this state who work in some pretty horrible
24 circumstances, and they do need protection. We need to
25 ensure that individuals can use the restroom, take a lunch

1 break, and have a reasonable schedule. I'm just not sure
2 that this bill is the right mechanism.

3 Thank you.

4 COMMISSIONER BROAD: Where do you work?

5 MS. BOOTH: I work for Wal-Mart.

6 COMMISSIONER BROAD: And have they told you that
7 you can't have four 10-hour days under AB 60?

8 MS. BOOTH: No, they have not.

9 COMMISSIONER BROAD: Because you can.

10 MS. BOOTH: Oh, I can, yes. They assured me that
11 I could continue the 10-hour workday, but that's myself, on
12 management. You can have relief pharmacists, staff
13 pharmacists, who may be working 8-hour shifts.

14 COMMISSIONER BROAD: Well, they can work -- they
15 can work four 10-hour days too, under --

16 MS. BOOTH: But wouldn't they --

17 COMMISSIONER BROAD: -- with an alternative
18 workweek.

19 MS. BOOTH: But wouldn't they have to get overtime
20 after 8 hours if they're not considered management or
21 exempted?

22 COMMISSIONER BROAD: No. No, they can vote to
23 have an alternative workweek of four 10-hour days.

24 MS. BOOTH: And what if they don't?

25 COMMISSIONER BOOTH: Well, if they don't, it would

1 sort of seem like they probably don't want to, if they vote
2 against it.

3 MS. BOOTH: Right.

4 COMMISSIONER BROAD: But if they vote for it, then
5 they would be allowed to have those four 10-hour days.

6 I'm kind of concerned that the corporate
7 management of your company is giving you certain
8 misinformation about what the legislation did and didn't do.

9 MS. BOOTH: Well, no. They were clear that I
10 could continue with my 10-hour day, and they said that the
11 pharmacists could choose to do so. But I'm concerned about
12 budget restraints and the other impacts that may come into
13 effect.

14 COMMISSIONER DOMBROWSKI: Have they talked to you
15 about the elections at all at this point, the election
16 process?

17 MS. BOOTH: No. I just learned about this
18 Thursday, to be honest.

19 COMMISSIONER DOMBROWSKI: Okay.

20 MS. BOOTH: I tried to read the bill at home, and
21 it's very confusing to the average individual, and I'm not
22 sure I've perceived everything.

23 COMMISSIONER DOMBROWSKI: It's very confusing to a
24 lot of professional lawyers too.

25 (Laughter)

1 MS. BOOTH: Okay. I feel better.

2 COMMISSIONER DOMBROWSKI: You're not alone.

3 MS. BOOTH: Thank you.

4 COMMISSIONER CENTER: Thank you. That's why we're
5 having these hearings. Thank you.

6 I think it's Timothy Lang.

7 MR. LONG: (Not using microphone) Long.

8 COMMISSIONER CENTER: Okay. Sorry.

9 MR. LONG: Good morning, commissioners. I'm
10 Timothy Long, representing here today the California
11 Retailers Association. And by pure happenstance, the focus
12 of my presentation, as contained in the written submission
13 that I'm handing out and that I'll summarize verbally, deals
14 in part with the pharmacist issue.

15 The focus of my presentation, as well as the
16 testimony that will follow during the course of subsequent
17 IWC hearings, focuses on the administrative exemption. The
18 IWC has been empowered to define and delimit that exemption.
19 Likewise, the IWC has been empowered to review the wages,
20 hours, and working conditions of licensed pharmacists.
21 During the course of these hearings, we would like to put on
22 evidence that would enable you to conclude that pharmacists,
23 licensed pharmacists, who are engaged in specific duties
24 would qualify under the administrative exemption.

25 The duties that we have outlined at Page 3 of the

1 submission focus on those duties that only licensed
2 pharmacists can perform, pursuant to the Business and
3 Professions Code. Now, under the test that exists now with
4 regard to AB 60, or rather, that will go into effect on
5 January 1, the necessary analysis is whether, in fact,
6 exempt administrative employees are primarily engaged in
7 certain specified duties. And you have the task of defining
8 what duties qualify for exempt status. And we would suggest
9 and, again, intend to present both live and written
10 testimony, that licensed pharmacists who are engaged in the
11 duties specified here in this submission should be
12 considered exempt administrative employees.

13 Those are my comments for this morning. As I
14 said, we will be presenting, over the course of the
15 hearings, testimony, both in live and written form, to flesh
16 out this analysis, and I'd be happy to entertain any
17 questions you might have at this point.

18 COMMISSIONER BROAD: Mr. Long, how do you -- I
19 briefly read this, what you just handed in here -- how do
20 you reconcile your comments here with the provisions of SB
21 651?

22 MR. LONG: Well, SB 651, of course, says that
23 licensed pharmacists, effective 1/1/2000, cannot qualify in
24 California under the professional exemption. The
25 administrative exemption, obviously, is a different

1 exemption, as is the managerial exemption. So, with regard
2 to this, the reconciliation is: so long as licensed
3 pharmacists are engaged in these duties, as specified here,
4 they would qualify under the administrative exemption.

5 COMMISSIONER BROAD: And these are the duties that
6 essentially make up the practice of pharmacy.

7 MR. LONG: These are the duties that require a
8 pharmacist to exercise independent judgment and discretion.

9 COMMISSIONER BROAD: So, if we were to adopt this,
10 would there be any pharmacists that would be not exempt?

11 MR. LONG: Presumably. I think I'd dare say that
12 in any given pharmacist -- or pharmacy, rather, that
13 pharmacist, for one reason or another, and often appropriate
14 reasons, will not be primarily engaged in all of these
15 duties. And given that the test is "primarily engaged,"
16 i.e., spending more than 50 percent of the time, there may
17 be situations where licensed pharmacists would not be
18 engaged in such duties more than 50 percent of the time.

19 COMMISSIONER BROAD: Thanks.

20 COMMISSIONER CENTER: Thank you.

21 MR. LONG: Thank you.

22 COMMISSIONER CENTER: Mark Pawlicki.

23 MR. PAWLICKI: Good morning, Mr. Chairman and
24 members. I am Mark Pawlicki, representing Simpson Timber
25 Company. Simpson is engaged in the growing and harvesting

1 of forests and the production of lumber in Northern
2 California. I sent in some written comments, which I
3 believe are included in the record.

4 We have a narrow issue relative to AB 60. Our
5 particular issue concerns the issue of a lunch period that,
6 according to AB -- Section 6 of AB 60, must be offered to
7 those working 8-hour shifts or longer. In the logging
8 portion of our business, our employees are commonly
9 subjected to relatively dangerous working conditions on
10 steep slopes and wet conditions. They're usually a
11 significant distance from an enclosed vehicle or building,
12 and they eat their lunches in the area where -- right in the
13 woods where they're working. They do not want to stop for a
14 lunch break. They would rather opt to, alternately, eat as
15 they go and not shutting down the logging operation.

16 They prefer this because if -- they feel that if
17 they stop for a half-hour lunch break, they will just get
18 colder and wetter, and then when they go back to work,
19 they're going to be subjecting themselves to relatively --
20 you know, even more unsafe conditions and risk of personal
21 injury.

22 We believe that the law permits our employees to
23 opt not to take a formal lunch and continue just as they
24 have been doing. If our interpretation is correct, we hope
25 that the regulations will make this point clear, that upon

1 agreement of the employees and the company, a formal lunch
2 break need not be taken for an 8-hour workday. We believe
3 that in our particular case, this approach provides the
4 employees with the flexibility that they need to assure that
5 they are working under the safest conditions.

6 We do understand that the law does not permit
7 waiving the lunch periods for longer days. If you have more
8 than a 10-hour, you can only waive one of them, is our
9 understanding. But we only -- because of the strenuous
10 nature of our work, we only work an 8-hour shift.

11 So, that was our only point about this. We hope
12 that the regulations will be clear on that. And if there is
13 an issue, we'd certainly like to hear from you about that.

14 Thank you.

15 COMMISSIONER BROAD: Just one quick question.

16 MR. PAWLICKI: Yes, sir.

17 COMMISSIONER BROAD: Is it your assumption that
18 the logging industry is covered by AB 60 as of January 1?

19 MR. PAWLICKI: Well, there seems to be some debate
20 about that, and I -- I don't know. I really can't answer
21 that.

22 COMMISSIONER BROAD: Is the normal workday in
23 logging 8 hours?

24 MR. PAWLICKI: It is. And many of our employees
25 are union and they're covered by a, you know, agreement.

1 But some of them are not. And we only work an 8-hour day
2 because of the strenuous nature. They really can't work
3 more than 8 hours. And like I said, they just prefer to
4 work the 8 hours, grab a sandwich as they run -- as they go,
5 and not shut down.

6 COMMISSIONER BROAD: So, the application of the
7 daily overtime system, to the logging industry, if indeed
8 it's been exempt, would actually not change your operations
9 significantly.

10 MR. PAWLICKI: I would think not, yeah.

11 COMMISSIONER BROAD: Thank you.

12 MR. PAWLICKI: But this new section is added.
13 Section 6 is new to the law, and so I just wanted to make
14 sure it was clear.

15 Thank you.

16 COMMISSIONER CENTER: Thank you.

17 Robert Jones.

18 MR. JONES: Good morning. My name is Robert
19 Jones, and I represent the Northern California Chapter of
20 the National Association of Computer Consulting Businesses.
21 And I've already provided some written information to you.

22 We have -- I'm tempted to say, "Now for something
23 completely different" -- we have a very, very small
24 provision of this law which has a very broad impact on the
25 high-tech industry. There are two words in this law -- they

1 only appear once -- and that's "monthly salary." And
2 they're in 515(a).

3 The problem we have with this is not a new
4 problem. This is a problem that we ran into in the industry
5 under the federal law, and which we had -- an amendment was
6 passed to the Fair Labor Standards Act in 1990 that
7 corrected this problem.

8 Real briefly, the people that we're talking about
9 are the very highly paid computer consultants who perform
10 system analyst, programming, and other computer-related
11 work.

12 Excuse me. I'm coming off a cold.

13 The work that they perform -- these are all people
14 that make between thirty and some make well over a hundred
15 dollars an hour, and they tend to work on a freelance basis.
16 They work on an hourly basis through computer consulting
17 companies who locate the people who have the skills
18 necessary to perform project-based work for businesses that
19 require those computer consultants. And it's an industry
20 that's grown up -- I've been with it for a long time -- and
21 it's grown up. In the old days, they were all independent
22 contractors. Then, with all the problems that arose under
23 independent contracting, they became temporary employees of
24 the agencies which found the work for them. And that was
25 all done on a billed per-hour basis.

1 The reason it's done on a billed per-hour basis is
2 because the projects in this field are almost impossible to
3 estimate. And that -- we've had a number of determinations,
4 by both the IRS and the Labor Commissioner, that the fact
5 that are, in fact, billed hourly, they could still be
6 independent contractors. But there are other problems that
7 arise, including a lot of the companies provide benefits to
8 these people while they are working for them, so they are
9 treated as temporary employees of the consulting companies.

10 I don't want to jump through -- too far ahead as
11 to what's actually done, but basically, a company has a
12 systems problem that they need to have fixed or analyzed or
13 programs readied, and they will contact a company that's
14 part of the NACCB, who has comprehensive data bases of the
15 skills of individual people who work on this basis. The way
16 that they -- and what they'll do, then, is they will locate
17 people with the skills that are willing to perform those
18 services, and they will bill for those services on an hourly
19 basis, and they'll pay the temporary employee, computer
20 professionals, on an hourly basis for the work that they
21 perform.

22 Now, one thing that has been an issue with the
23 Labor Commissioner from time to time is that since these
24 people have always been found to be exempt -- and they are
25 administratively exempt or professionally exempt, depending

1 on which Labor Commissioner you end up in front of, but they
2 are exempt -- but they are paid for all hours worked in
3 addition to 8 and all hours worked in addition to 40.
4 They're basically paid for all hours worked. And so, if
5 they work 60 hours a week on a project and then move on --
6 at \$50.00 -- and then move on to the next project, that's
7 what they do for a living, and that's what they want to do.

8 The problem that comes up is that if you require
9 that they be salaried and paid a monthly salary, which is --
10 there's only -- well, not only -- but less than \$2,000 a
11 month -- if they were actually salaried employees, they
12 wouldn't be entitled to overtime hours on the basis of the
13 hours that they worked; they'd be exempt employees. They'd
14 be salaried, and under some federal statutes, if you were to
15 pay them straight time or time and a half or any type of
16 time based on hours, they'd lose their exemption. So, the
17 only way they could be paid additional time for doing
18 additional work on a faster basis is that they would have to
19 be paid that time in the way of bonuses, which couldn't be
20 tied to hours, but would have to be tied to profits. And it
21 would make a real nightmare for them and the companies.

22 Now, like I indicated, this isn't something that's
23 come up for the first time here. There's never been a
24 salary test, a salary basis test, under California law. We
25 had the remuneration -- which no one can pronounce,

1 including myself -- but that there was a minimum of \$1,150 a
2 month. But under the federal law, there's a weekly salary
3 basis test under the Fair Labor Standards Act. And in 1990,
4 when this first came to light, that said that these people
5 would not be able to work on an hourly basis under the
6 federal law, Congress amended the Fair Labor Standards Act
7 to create -- and it's a little confusing, and I provided you
8 with copies of the statute -- but to create what is commonly
9 called the computer professional exemption. And that
10 exemption says that if they qualify as a systems analyst,
11 programmer, other related computer technologies, and they're
12 paid at least \$27.63 an hour, then they can be paid on an
13 hourly basis and they'll be considered computer
14 professionals.

15 And that's what we've asked and what I've given
16 you in the language I -- as the last page of the three-page
17 presentation that I gave to you. That is precisely the same
18 language which exists under the Fair Labor Standards Act,
19 and we would like to recommend that this Commission adopt an
20 exception which is exactly the same -- under 515(b), by the
21 way, is -- we think that's where the authority is to do
22 this, of the Labor Code -- is that you adopt that exception,
23 saying that if you meet the criteria to be a computer
24 professional and you're paid more than \$27.63 an hour, that
25 you can be paid on an hourly basis.

1 And that's all we're asking for. Those two words,
2 by the way, the "monthly salary" test, the "monthly salary"
3 only appears once in the bill. I can't find it anywhere
4 else in the legislative history, and I can't find where it
5 was discussed. Now, perhaps it was. But the only place
6 that I can find it is in 515(a). And if it said
7 "compensation," we wouldn't be here today. But since it
8 says "salary," and given the nature of the history of the
9 Fair Labor Standards Act salary test, this is something
10 that's going to have to be corrected.

11 One of the -- the last point I wanted to make was,
12 this doesn't just impact the workers themselves, the
13 professionals. What it impacts is the industry itself,
14 because most of these companies that request this type of
15 work being done, they can have this work done anywhere. In
16 fact, the companies in California often bring people in to
17 work on projects for people in Tennessee and Texas and
18 Nevada. And who knows where this person's actually doing
19 the work, because all they have to do is look at the system
20 once -- generally -- and then they can go ahead and prepare
21 the code anyplace they want, e-mail it, and if they do that
22 out of a state other than California, they would be entitled
23 to be paid straight time and overtime for all hours worked.

24 And I'm here if you have any questions on this.

25 COMMISSIONER DOMBROWSKI: Not so much a question

1 as a comment. The situation you described, I find
2 personally -- because in the early '80's -- not in the
3 computer industry, obviously, but in a PR agency, that's how
4 I was working. And I think the issue he's bringing up,
5 unless I'm missing something, has some broader implications
6 to some other -- it isn't just the computer industry. There
7 are a lot of people who do this kind of consulting, probably
8 in the entertainment industry and others, that we're going
9 to need to think about.

10 So, I guess, for the public record, whoever has
11 those kind of thoughts about that should bring it to our
12 attention.

13 MR. JONES: The one comment I'd like to make on
14 that is that these -- all other industries, other than this
15 one, with some really strange exceptions, like people who
16 make wreaths at Christmas and so forth, they're all covered
17 under the Fair Labor Standards Act. And so, if they -- but
18 the only one that provides an exception in the Fair Labor
19 Standards Act for hourly professional is the computer
20 professionals making more than \$27.63 an hour. So, others
21 would still be subject to the federal law.

22 COMMISSIONER CENTER: On the same issue, probably
23 consultants dealing with AB 60 too would be affected.

24 (Laughter)

25 COMMISSIONER CENTER: Thank you.

1 MR. JONES: Thank you very much.

2 Kelly Watts.

3 MS. WATTS: Mr. Chair and members, I'm Kelly
4 Watts, with the American Electronics Association. I'd like
5 to thank the Commission for this opportunity to speak,
6 although I have a major cold, so I'm going to make it very
7 brief.

8 There are three issues of clarification our
9 members have requested, and the first one deals with the
10 voting process. We would like to see clarification on the
11 voting process that will be used for the implementation of
12 alternative work schedules. We're supportive of a simple,
13 easy to implement process that allows maximum flexibility
14 for employees.

15 One element of this process is the definition of a
16 work unit, and we would like to see the work unit defined by
17 supervisor and shift to provide for maximum flexibility for
18 employees.

19 The second issue relates to the hourly rate for
20 alternative work schedules. And assume that since 1997, an
21 employer has kept a consistent schedule of 12-hour days for
22 its manufacturing employees, the schedule was not
23 established pursuant to an employee vote or a plan filed
24 with the Labor Commissioner, and before 1998, the employer
25 did pay daily overtime. When the law changed to weekly

1 overtime, the employer added an hourly premium. Now the
2 employer intends to comply with the new law by paying the
3 daily overtime. May the employer eliminate the hourly
4 premium without violating Section 511(c) in AB 60?

5 And thirdly, we'd like to discuss the issue of
6 make-up time. In the interests of preserving flexibility
7 for employees who unexpectedly need time off toward the end
8 of a workweek, for example, on a Friday, what is the
9 protocol for making up the time, because they will have no
10 opportunity to make up that time during the same workweek?

11 Also, we understand that an employer may not
12 solicit employee requests for the make-up time. What would
13 be the appropriate method for notifying the employees of the
14 lawful request procedure?

15 And finally, in light of the new law and the
16 sufficiency of electronic signatures, may an employer have
17 the option to require that such requests in regards to make-
18 up time be digital or in writing?

19 And in sum, those are some brief issues that we
20 wanted to bring to your attention. And we've submitted some
21 more testimony and detail for your information.

22 COMMISSIONER CENTER: Any questions?

23 COMMISSIONER COLEMAN: I had a quick question.

24 Kelly, are there any examples of employers that
25 have used successful voting models that we could use as

1 we're considering how to write this up? Can you --

2 MS. WATTS: Yes. We do have several members who
3 have attempted to use the voting process in the past. It
4 hasn't been that successful, but I would be glad to get that
5 information to you.

6 COMMISSIONER COLEMAN: If you have any that they
7 like over other ones, that would be, I think, useful.

8 MS. WATTS: Sure.

9 COMMISSIONER COLEMAN: Thank you.

10 COMMISSIONER BROAD: I had one question. Someone
11 earlier raised the issue -- oh, Juli Broyles -- on make-up
12 time in the following week. I don't think that that's a
13 matter that's pre-empted by federal law, because what you're
14 doing is saying that a person's going to work more than 40
15 hours, potentially, in the following week. And I don't
16 think that the state has the ability to regulate -- regulate
17 that area. If somebody works more than 40 hours a week,
18 they get overtime under the Fair Labor Standards Act, so
19 that's why the statute requires that the make-up time be in
20 the existing workweek, for that reason.

21 So, there may be an issue there that's simply --
22 the State of California cannot resolve.

23 MS. WATTS: Thank you.

24 COMMISSIONER CENTER: Lowell Taylor.

25 MR. TAYLOR: I am Lowell Taylor. I'm a registered

1 pharmacist and employee in the State of California for the
2 last thirty years. And I'm here with concerns about the law
3 that's coming to pass in January 1st.

4 Excuse me if I'm a little nervous when I'm talking
5 to you. I haven't done this before, so --

6 Anyway, what we have now in the company that I
7 work with is a choice, a choice that we can either be an
8 hourly associate, paid by the hour, overtime if we worked
9 over 8 hours or over 40 hours per week, and we also have the
10 choice, we can be a salaried employee, which we can work
11 longer hours per day and have fewer shifts per week. And
12 it's sort of a rotating thing, where we can work less hours
13 one week and more hours the next week. And this way, it
14 gives us -- we feel we have a better chance of having more
15 family time at home. We feel that we have a better work
16 relation in the stores because we work -- and we have 12
17 hours, so that we're open in the store, and when we have
18 worked 10-hour overlap, we have a better overlap in working,
19 and which gives us less stress time, and we also have better
20 customer service.

21 And I'm just afraid that, come January the 1st,
22 that we're going to be losing this and we're going to be
23 losing the choice that we've had now. And we've never had
24 this choice before, where we could have the choice of being
25 either an hourly or a salaried employee. And I think this

1 is going to be taken away from us, and I'm just wondering if
2 this is what's going to happen on January 1st, if we are
3 losing this right.

4 COMMISSIONER DOMBROWSKI: We hope not.

5 I have a question. Of your associates, do you
6 have any sense of how many choose to work the manager or the
7 exempt status, choose that route and the longer hours versus
8 the 8-hour?

9 MR. TAYLOR: Well, I can only say -- you know, the
10 ones that I work with, I'd say probably 90 percent of the
11 pharmacists that I work with have chosen the salaried
12 position over the hourly position. Mainly, most of the
13 people that want to work the hourly positions are the ones
14 that are part-time and just -- just want to work a few hours
15 per week or so. The benefits to us are -- far outweigh
16 being in a salaried employee than they would be if we were
17 hourly. We would be taking a step backwards if we would go
18 back to the hourly position.

19 And when I say this, we have more benefits, like
20 we have paid time if we're out sick. We're completely paid
21 for it, and it doesn't matter if we're out two or three
22 weeks. I have a pharmacist right now that's out with
23 appendicitis for two weeks, and he hasn't lost a day's pay.
24 If he were on the hourly, this would be different because
25 it's a built-up time of sick leave and things over the year.

1 And there's just so many more benefits for us.

2 And the time that we have at home is much more now
3 than it was before, when I used to work just a five-hour --
4 I mean an 8-hour, five-day-a-week job. And I think the
5 benefits are much better for us now that we're in the
6 situation that we are now.

7 COMMISSIONER DOMBROWSKI: Thank you.

8 MR. TAYLOR: Okay.

9 COMMISSIONER CENTER: Thank you.

10 Julie Garcia.

11 MS. GARCIA: Hello there. My name is Julie
12 Garcia. I'm from Rialto, California, and my purpose of
13 coming to the committee members is to show the approval of
14 the flexible workweek that are given.

15 We've had -- well, I've worked for thirty years,
16 since graduation, on eight-day rotation, or 8-hour rotation
17 of seven days, which doesn't give you very much time at
18 home. It's seven days off in a 24-hour workday -- or
19 workday week. That's thirteen rotations. So, if you sit
20 there and you do the math, it's seven times thirteen that I
21 have days off. With the flexible workweek, we get fourteen
22 workdays that I have off, and I work for fourteen.

23 What I'm asking for is consideration to allow us
24 to continue this way. We voted. You were asking about how
25 we came to go to the flexible? We were allowed. We brought

1 this up to the company because we knew one of our sister
2 plants in Kentucky went to it.

3 COMMISSIONER DOMBROWSKI: A quick -- which
4 industry are you from?

5 MS. GARCIA: Paper industry.

6 COMMISSIONER DOMBROWSKI: Oh, okay.

7 MS. GARCIA: It's a factory.

8 COMMISSIONER DOMBROWSKI: Okay.

9 MS. GARCIA: And what it is, is they were doing it
10 back east, and some of our people said, "Why don't we take a
11 look at it?" And enough people said, "Well, let's take a
12 vote." Well, we voted. Not everybody was in favor for it.
13 I think, out of 84 people, 18 said, "No, we're not really
14 interested." So, the majority went, and we said, "Let's try
15 it." We tried it. At the last count, when it was -- the
16 six-month trial was over, only eight said they didn't want
17 the flexible. We went ahead and went on the 12 -- or the
18 flexible hours, 12 hours, and we're very happy with it.

19 The people who are working there are happy. It
20 gives us more days off, which we can have our family lives.
21 We have the opportunity to be with our families, to
22 maneuver, to rotate our days off. If somebody has a day
23 that they need off on a certain Friday, you can get somebody
24 who's working on Thursday and rotate it around. They've
25 given us a lot of opportunity to work with the flexible

1 schedule.

2 And, you know, if you sit there and you do the
3 math, seven times thirteen, or fourteen times thirteen, how
4 many days do you have off with your family? We work
5 holidays. We're like the police officers; we work holidays,
6 our birthdays, our kids' birthdays. But if we are allowed
7 to have those fourteen days off, we have an opportunity to
8 be with our families more time. And those days are
9 important.

10 And it's kind of like any other thing -- if you
11 sit there and you look at the numbers, it helps us. It
12 really does, to be on this flexible schedule. And we did
13 vote, and it did fly with the majority of the vote. And it
14 wasn't just a few people pushing it. A lot of people wanted
15 it. We'd like to have the opportunity to be the exception
16 and stay on it, stay on the 12 hours for our particular
17 industry and the people who would like to stay there.

18 COMMISSIONER BROAD: I just was a little confused.
19 What's your schedule? It's --

20 MS. GARCIA: Okay. My schedule, if I'm on an 8-
21 hour rotation, you're looking at a 28-day cycle.

22 COMMISSIONER BROAD: Okay.

23 MS. GARCIA: I work 21 days, and I get off seven.
24 On a flexible schedule, the same 23 days, I get 14 days on
25 and 14 days off.

1 COMMISSIONER BROAD: Okay. But, I mean, what's
2 your actual week -- so, you work a week on and a week off,
3 or two weeks on, or --

4 MS. GARCIA: No. Actually, what it is, is if I'm
5 on a seven-day rotation for an 8-hour shift, I work seven
6 days in a row.

7 COMMISSIONER BROAD: For 8 hours a day.

8 MS. GARCIA: For 8 hours a day.

9 COMMISSIONER BROAD: Okay.

10 MS. GARCIA: And then I get two days off. Then I
11 work. And then -- that's on graveyard. Then I get seven
12 hours (sic) in a row working swing, with one day off. Then
13 I work seven days in a row, and then I get four days off.
14 And this is in a -- this is in a 28-day cycle. So, you go
15 from graveyard to swing to days.

16 And if you try doing that for 29 years, like I
17 have, it's very hard to get your body used to it.

18 COMMISSIONER BROAD: I bet.

19 MS. GARCIA: So -- it is. It's very rough.

20 And what we're looking at is, with the flexible
21 schedule, we are now working two shifts, and we're working
22 three days in a week, then four days in a week, then three
23 days in a week, and then four days in a week, days and
24 nights only. So, your chances are being able to be with
25 your family more often. And that's what we're really

1 looking at.

2 We do get paid time and a half for Sundays. So,
3 any time that we're away from our family on Sundays, which
4 is two days out of the month that we work Sundays, and then
5 we have two days out of the month on Sunday we don't.

6 COMMISSIONER BROAD: What's confusing me is I
7 don't -- in your old shift, I don't understand why you
8 weren't receiving overtime for hours worked after 40 hours
9 in a week.

10 MS. GARCIA: On the old shift?

11 COMMISSIONER BROAD: Yeah.

12 MS. GARCIA: Because it depends on when the week
13 started. The graveyard shift starts on Wednesday. It's the
14 manipulation of the days --

15 COMMISSIONER BROAD: I went into law because I'm
16 no math whiz, but --

17 MS. GARCIA: It's a manipulation of the days.
18 Okay. What happens is, you start your graveyard on
19 Wednesday. Then you work seven days. So, you go Wednesday
20 to Tuesday.

21 COMMISSIONER BROAD: Yeah, but then you worked 56
22 hours, is what you were telling me. You worked --

23 MS. GARCIA: In a row, but in two different work
24 periods.

25 COMMISSIONER BROAD: Oh, I see.

1 MS. GARCIA: You got it, right?

2 COMMISSIONER BROAD: Yeah. Thanks.

3 MS. GARCIA: But, see, the thing is, on this -- on
4 fourteen days off and fourteen days on, we're actually
5 better off because we're working three or four days a week,
6 and we do get our paid time and a half for Sundays, no
7 matter if it's only our third day. So, this is where it
8 benefits us too.

9 And for some reason that they wish to have us
10 overtime for a meeting, a safety meeting, something that's
11 necessary for our health -- we have safety meetings, quality
12 meetings -- we do get double time for after 12. And this is
13 something the company has given us without a problem.

14 But one of the things that was a big issue was the
15 attendance when we were on 8 hours. My plant does not shut
16 down. I personally am in charge of electricity. The plant
17 doesn't run without electricity, so the attendance is very,
18 very difficult. And you're working seven days in a row,
19 it's hard on your body, especially if you're on nights for
20 seven days in a row and -- I have three children -- have you
21 ever tried to keep three children quiet while mom's trying
22 to sleep? It doesn't happen. You hear them come in, you
23 hear them go out.

24 But on this flexible schedule, you're only working
25 three yards of graveyard, the night shift, in a row. So,

1 you get a little more resting in there. And it -- what I
2 really want to do is prove to you that the flexible schedule
3 works for the people who want it. And the people who have
4 voted for my company, the employees, they voted to accept
5 the flexible work schedule.

6 And your comment about the numbers? Only eight
7 people at the end still wanted 8 hours. Everybody else,
8 even those who did not want it at first, they went ahead and
9 changed their vote. And the right to choose is the most
10 important thing, and how we get to do our work schedule.

11 You'll never believe our work schedule!

12 (Laughter)

13 MS. GARCIA: But it has to do -- just like the
14 police officers. But the police officers, they get to
15 schedule themselves completely on night shift. We can't; we
16 have to rotate.

17 But, like I say, the whole main purpose of coming
18 here is to at least encourage the right to the flexible
19 hours. It will help us immensely.

20 Thank you.

21 COMMISSIONER CENTER: I can't read the first name,
22 but it's either Ms. or Mr. Washington from Inland Paper and
23 Packaging -- it looks like Mr.

24 MR. WASHINGTON: (Not using microphone) Tyrus.

25 COMMISSIONER CENTER: Tyrus. Okay. I'm getting

1 old and I don't see so well.

2 MR. WASHINGTON: It's still morning -- good
3 morning. My name is Tyrus Washington, and I am the human
4 resource manager at the plant that Julia works at. And I'm
5 going to echo some of her sentiments as well as add a little
6 more explanation as to how the schedule works.

7 I did fax you a copy of a letter with a copy of
8 the schedules attached to it. If you don't have that, I
9 have about three copies here I could leave with the
10 Commission as well.

11 COMMISSIONER BROAD: We've got a lot of paper
12 here.

13 MR. WASHINGTON: I understand. I have three
14 copies here.

15 Just to give you a little background on the work
16 schedule that our employees work, prior to 1998, employees
17 were on an 8-hour shift schedule. And that's a 28-day
18 rotation cycle. In those 28 days, they worked 21 out of
19 those 28 8-hour days. The workweek is from Monday through
20 Sunday.

21 Prior -- just prior to 1998, November of '97, when
22 we understood that the IWC had changed the wage orders to
23 allow for work over 8 without the payment of overtime,
24 employees approached us and wanted to try the 12-hour shift
25 rotation. At that time, we took a vote. We told employees

1 that before we'd go to that, we'd take a vote, because we
2 understood that everybody did not want to go to a 12-hour
3 rotation. Therefore, we took a vote in November of '97.
4 The count of that vote was 58 to 26, I believe, out of 84,
5 84 affected employees.

6 We did that on the understanding that we would go
7 on a six-month trial to make sure that everyone liked it and
8 wanted to stay on it. Just prior to the end of the six
9 months, sometime in May of '98, we took another vote. And
10 the count for that vote was 77 to 7 in favor of the 12-hour
11 shift rotation. And we have been on that ever since.

12 And employees were given a choice, although we
13 didn't have to have a vote or anything under present laws.
14 Employees were give a choice to vote on that.

15 Now, as we understand it, due to AB 60, we will
16 have to go back to an 8-hour shift. The reason for that,
17 the company can't afford to pay overtime on a daily basis on
18 a 12-hour shift. To try to quantify just a little bit, if
19 you go from an 8-hour shift to a 12-hour shift, that would
20 increase our labor cost some \$532,000 per year. From the
21 shift we're presently on to a 12-hour shift paying time and
22 a half after 8 in a day, that would increase the labor cost
23 an approximate \$440,000.

24 Well, the main thing we wanted to express here is
25 that the employees wanted the choice and they were given a

1 choice to go to the alternative work schedule of 12 hours in
2 day. It's not necessarily a 40-hour workweek because one
3 week's 36, the following week's a 48-hour workweek. We pay
4 time and a half after 40 in a workweek, and we still pay
5 double time after 12 in a workday, even though that's not
6 required at the time.

7 Personally, it would make my life a lot better if
8 we went back to the 8-hour shift, but it's not my job to try
9 to make my life easier. This is strictly a morale issue.
10 We did increase our labor cost when we went from an 8-hour
11 shift to the 12-hour rotating shift we're on now. Labor
12 costs increased some 2.1 percent. In view of that, if we
13 are forced to go back to an 8-hour shift, the employees
14 would receive a reduction in earnings for working the same
15 hours. In each 28-day rotation, employees work 168 hours.
16 On an 8-hour shift, they receive 180 hours times their
17 straight pay for those hours worked. On the present shift,
18 they receive 184 hours of their regular rate of pay for 168
19 hours worked.

20 So, I don't think this bill is really fair to
21 these employees who have voted. They were given an
22 opportunity to vote even though it wasn't required. Right
23 now, for myself, it's really a lot going on. I'm getting
24 calls every day, and Julie and everyone else are knocking on
25 my door, "What are you going to do about this 12-hour

1 shift?" Can we do anything? And we are almost at the end
2 of the road here.

3 So, I'll just ask the Commission to take a look at
4 it. I don't know if you have the power or not to make an
5 exemption for this industry or this organization in Ontario,
6 California.

7 COMMISSIONER CENTER: Any questions?

8 (No response)

9 COMMISSIONER CENTER: Mark Vegh.

10 MR. VEGH: Good morning. I'm Mark Vegh,
11 employment counsel with TOC Management Services. TOC is an
12 employer association with member companies throughout
13 California and the Pacific Northwest.

14 On Friday afternoon, I faxed down our written
15 comments. I believe you have those.

16 Just very briefly, my understanding of the purpose
17 today is for you to gather information on what the issues
18 really are. So, I'm not going to get into a lot of depth on
19 any substantive issues. I believe that that opportunity
20 will come later. But I do want to point out some -- just a
21 very few issues -- the previous speakers have already
22 pointed out some -- a couple of others that I want to point
23 out that haven't been mentioned thus far as well.

24 I believe that the need for clarity, and a prompt
25 need for clarity, is critical. I've been holding a series

1 of briefings, hour-and-a-half briefings, throughout
2 California thus far on AB 60 -- part two to follow next year
3 when the dust settles -- but I've had a lot of questions, so
4 I have -- as well as over the phone, just in my job. So, I
5 have a fairly clear idea on what some of these issues are of
6 concern to employers. And I've tried to give as many
7 definitive answers as I can. Unfortunately, there are a
8 number of areas where reasonable minds would differ. And
9 most employers want to be risk-averse and will use their
10 best guess, which is all they can do at this point, and then
11 an outcome that is conservative so that they don't run the
12 risk of these potentially high civil penalties and personal
13 penalties as well under AB 60.

14 The meal period issue has already been mentioned
15 this morning. I believe that the Commission should clarify
16 that the provision, the exception for an on-duty meal
17 period, still exists. I think that's still an open
18 question, even though I've heard comments in the last couple
19 of weeks from people in authority that it will survive the
20 first of the year. But I believe that's still somewhat of
21 an open question at this time.

22 There are some great reasons for continuing that
23 when the dust clears by the middle of next year. For
24 example, it is a fairly narrow exception, always has been.
25 It applies only when the nature of the work prevents the

1 employee from being relieved of all duty and for business
2 necessity, and it has to be agreed upon. So, I don't really
3 see a harm that's existed through the years with that --
4 with that on-duty meal period exception.

5 Somebody already brought up the issue of the
6 seventh day of work and the difference in the language.
7 I'll just very briefly add my two cents' worth on that. I
8 think, clearly, the -- for the time-and-a-half premium to
9 apply for the first 8 hours, it has to be the seventh
10 consecutive day in the week. I think that's clear under the
11 language of AB 60. What's unclear is the double time
12 language that says over 8 hours is double time if it's the
13 seventh day of the workweek. And therein is the issue.

14 I think that needs to be clarified. And there can
15 only be one reasonable answer, and that is that what's
16 intended here is what we had before 1998: the seventh day
17 premium applies, whether it's time and a half for the first
18 8 or double time over 8, when it's the seventh day of work
19 consecutively. I think that's the only reasonable outcome,
20 but there is still that open question because of the
21 language in AB 60. To say otherwise would also be an
22 anomaly because it would mean that if somebody's on vacation
23 or otherwise not working for the first six days, they come
24 in on the seventh day of the week, the first 8 hours is
25 clearly straight time, and then if they work over 8, it

1 suddenly jumps to double time. And to my knowledge, that
2 would be unprecedented, and that's not the intent.

3 The exemptions, several people have talked about
4 specific exemptions and some of the uncertainty with those.
5 The question was asked a few speakers ago, to Mr. Pawlicki,
6 about whether the exemption for logging, and on-site mining
7 and construction as well, still will survive come January
8 1st. I think the prudent answer, what I've been telling
9 employers, is it will not, because my understanding is that
10 that has been an exemption through the years simply because
11 there's no wage order that covers those occupations. So,
12 that's my opinion on that. I would like to see that
13 exemption continued, which you have the authority to do. I
14 would like to see, hopefully, some proposed rules, and then
15 I would comment further on the policy reasons for continuing
16 those exemptions. There are some special reasons for those
17 exemptions.

18 Another area which has been mentioned briefly,
19 certain intrastate truck drivers. My understanding from the
20 comments just this morning is that those and the other
21 miscellaneous exemptions will probably be continued
22 beginning January 1st, the other exemptions such as personal
23 attendants and the other miscellaneous ones.

24 Also, there were some comments regarding 12-hour
25 shifts. Mr. Washington, the first speaker, brought that up.

1 And I would also like to see some relief, some exemption
2 that would apply to those companies and, in fact, some
3 industries that do go around the clock and really have to
4 have the 12-hour shifts. That's often driven by business
5 necessity in some manufacturing establishments. There are
6 also some industries, such as -- just what comes to mind,
7 co-generation or power plants that traditionally pretty much
8 always have the 12-hour shift, often three days on or a
9 three-day workweek and followed by a four-day workweek. So,
10 it would be nice to see some proposed rules to comment
11 further on that would give some relief to those businesses
12 and those industries.

13 Finally, a couple -- one other definition which I
14 think is -- well, it's brand new, and it's unclear, dealing
15 with alternative work schedules, the term of "reasonable
16 efforts" that employers have to put out. If an employee
17 comes to them who's unable to work an alternative work
18 schedule and who is eligible to vote in the election,
19 employers are required to make reasonable efforts to
20 accommodate such an employee. Questions come up. For
21 example, when does that duty arise? In other words, when is
22 an employee unable to work? What kind of notice has to be
23 given to the employer? And then, finally, probably most
24 glaring, what do "reasonable efforts" really mean? It would
25 be real helpful to have some guidance on that and some

1 definition that we could comment on further.

2 Those are my comments on the issues right now.

3 I'd be glad to answer any questions.

4 COMMISSIONER BROAD: What's your opinion -- this
5 is sort of a question I have, and I'm just not sure at all
6 of the answer -- but what's your opinion about what is the
7 ability of the Industrial Welfare Commission to act in some
8 of these other areas, these sort of ancillary areas, where
9 it's not specifically mentioned that the IWC can act without
10 wage boards? And my assumption is that the normal petition
11 process would apply, and we would have to go through wage
12 boards, that we couldn't engage in some expedited process of
13 granting exemptions, sort of willy-nilly, as part of the
14 implementation of AB 60.

15 MR. VEGH: I'd be leery to give a definitive
16 answer on that off the top of my head, but I do think you
17 have authority to certainly continue, eliminate, or revise
18 any exemptions that are here now. And it would be helpful
19 to see some proposals, for example, on the 12-hour shift,
20 relief for the 12-hour shifts.

21 I could look into that issue and provide written
22 comments, though, on what I believe the bounds of authority
23 are.

24 COMMISSIONER BROAD: Well, I'd appreciate that
25 because, for example, let's say that you're correct and that

1 as of January 1, these five industries that were -- that are
2 in this peculiar situation where they were exempted by
3 custom by not -- or practice, but not -- but there is no
4 exemption in the wage orders, if, on January 1, they become
5 covered, it seems to me that if those industries wish to
6 have exemptions, they would have to petition the Industrial
7 Welfare Commission to grant those exemptions, and that the
8 IWC would have to go through the process of convening wage
9 boards in the normal course of business, as opposed to these
10 particular expedited responsibilities we have, you know, to
11 deal with specific questions without convening wage boards,
12 for example, with respect to pharmacists or back-stretch
13 employees at racetracks and healthcare and so forth.

14 So, I would be pleased to know what, you know,
15 your opinion is, as someone who deals with this.

16 MR. VEGH: I'll be glad to do that and give a more
17 thoughtful response. I think that those are some unique
18 exemptions, and I will look into what our opinion is on your
19 bounds of authority and what some options would be for those
20 industries.

21 COMMISSIONER CENTER: Thank you. What types of
22 employers do you represent?

23 MR. VEGH: We primarily, historically, have
24 represented wood products related. We now represent some
25 totally non-related manufacturing and even some non-

1 manufacturing members. But by and large, it's still those
2 associated with wood products.

3 COMMISSIONER CENTER: Thank you.

4 MR. VEGH: Thank you.

5 COMMISSIONER CENTER: Jan Ross.

6 (No response)

7 COMMISSIONER CENTER: John Dunlop.

8 (No response)

9 COMMISSIONER CENTER: We're wearing them out!

10 (Laughter)

11 COMMISSIONER CENTER: Larry Nelson.

12 (No response)

13 COMMISSIONER BROAD: The early lunch group.

14 (Laughter)

15 COMMISSIONER CENTER: Yeah, a break.

16 Vic -- and I can't -- is it Nard?

17 (No response)

18 COMMISSIONER CENTER: And Daniel McCarthy, it
19 looks like, from the truckers.

20 MR. SWARD: Thank you. I'm Vic Sward, currently
21 the president of the California Trucking Association and a
22 small business owner. Thank you for allowing me to speak.

23 The California Trucking Association represents
24 trucking companies in all areas of California. They are
25 from one truck to companies as large as UPS. As Association

1 president, I've created a special task force, chaired by
2 Dennis Altenaugh, to involve each of our thirteen units that
3 are located throughout California and to advise them of all
4 aspects of the hearings today and the effect this will have
5 on the individual business and employees.

6 Because of the late notice that we got or received
7 on this, this morning was the first chance we had to have a
8 meeting. And we will be having subsequent meetings involved
9 with this with all of our members.

10 One thing that I -- a point I want to make -- and
11 there's a lot of eloquent speakers here today that have said
12 pretty much what -- we're on a fact-finding mission. As we
13 compete in a global economy, and we are a service industry
14 competing with Mexico and the interstate carriers that come
15 into the California market, and I don't want to hurt our
16 employees, and I don't think our employees want to be hurt,
17 by some law that we -- that is different from our
18 competitors throughout this industry. So, as you take into
19 this, we have had exemptions, and we'll need to look at them
20 thoroughly, but right now we don't have any other comments
21 that I'm aware of.

22 So, if there's any questions, that's what I have
23 to --

24 COMMISSIONER CENTER: I apologize for trashing
25 your name there.

1 MR. SWARD: That's all right.

2 COMMISSIONER CENTER: I need to either get bigger
3 type or better glasses.

4 MR. SWARD: It's been trashed worse than that
5 before.

6 Thank you.

7 COMMISSIONER CENTER: Thank you.

8 Daniel McCarthy.

9 MR. McCARTHY: Good morning. My name is Daniel
10 McCarthy. I'm a lawyer representing the California Trucking
11 Association, and my comments will be very brief because
12 President Sward basically stated the California Trucking
13 Association's position.

14 It's our understanding that these hearings will
15 continue into the next year. CTA will be present and
16 participating in all the hearings, and we'll do our best to
17 bring any assistance we can to the Commission in its work.

18 COMMISSIONER BROAD: Mr. McCarthy, I'd like you
19 guys to think about the exemption. Obviously, I don't
20 believe it's -- the truck and bus driver exemption, it's
21 just not really affected by the bill directly. If someone
22 wanted to change it, they'd need to petition the Commission
23 to change it. Nevertheless, it's an issue that's been close
24 to my heart for a long time.

25 And I'd like -- I believe that the hours of

1 service rules are often observed in the breach, and perhaps
2 the Commission should consider a rule that requires the
3 payment of overtime after any -- any hours after those which
4 are lawful to work. And I'd like the Trucking Association
5 to think about that, because, currently, that would mean
6 after 80 hours in eight days or 15 hours on duty in any
7 single day. And since it would illegal to require employees
8 to work those hours, perhaps a further disincentive towards
9 violating those important safety laws would be the payment
10 of overtime in excess of those hours.

11 MR. McCARTHY: Yes, Commissioner Broad. We'd
12 certainly consider that. Safety is our ultimate objective
13 in the trucking industry.

14 COMMISSIONER CENTER: Thank you. You might
15 consider a guillotine too.

16 Teresa Miller, please.

17 MS. MILLER: I'm Teresa Miller, executive vice
18 president of the California Society of Health System
19 Pharmacists. We represent pharmacists that work in hospital
20 and other health system settings, as well as home health
21 settings, managed care, clinics, and ambulatory care
22 settings.

23 A majority of our members who work in -- and most
24 of them do work in hospitals and integrated health systems
25 -- do work in a clinical role, and in that role are involved

1 in specific patient care functions, including things such as
2 pediatrics, neonatal, intensive care, oncology, and critical
3 care. And while we are sympathetic to the concerns of some
4 of our colleagues in the retail setting, which was the
5 impetus for the SB 651 and the removal of the professional
6 categorization for purposes of the Labor Code, because of
7 some of the situations that those colleagues found
8 themselves in with respect to not being able to take lunch
9 breaks and those things, which we, of course, support, we
10 remain concerned about the impact that AB 60 -- actually, SB
11 651, which is directly related to AB 60, will have on our
12 pharmacists being able to continue to provide the quality of
13 patient care services that they have been able to in the in-
14 patient setting.

15 Some of the reasons for that, the impact that we
16 predict, is the fact that, as has been mentioned by a number
17 of the other speakers that have already spoken today, many
18 of our members have 12-hour shifts. They have the
19 alternative workweek schedule such as the seven-day-on,
20 seven-day-off, and those kinds of things. And a lot of the
21 reason for that is because we have 24-hour staffing of
22 hospital pharmacies and those sorts of things.

23 We would like to work with the Commission and are
24 interested in some sort of exemption that might provide for
25 12-hour shifts for members practicing specifically in those

1 kinds of situations so that we continue to provide those
2 kinds of services in the in-patient setting.

3 Also, there was an interesting comment made
4 earlier in terms of clarification of what meets the test for
5 administrative functions for purposes of exemption. And
6 that would be something else we would be interested in
7 pursuing, in terms of the pharmacists who are performing
8 certain types of functions and would qualify under those
9 criteria, so that they would be able to use these flexible
10 scheduling and those sorts of things.

11 If you have any questions, I'd be happy to try and
12 respond to those. And we will be participating in the
13 future hearings.

14 COMMISSIONER CENTER: Thank you.

15 MS. MILLER: Thank you.

16 COMMISSIONER CENTER: Les Clark.

17 MR. CLARK: For the record, my name is Les Clark,
18 vice president of Independent Oil Producers Agency. And we
19 too are in a process of putting some other comments
20 together. Probably those comments will be forthcoming at
21 your San Francisco meeting.

22 We were under the understanding that we weren't
23 even a part of this. We were under a term of exclusion in
24 the past; we weren't even part of the wage orders. And now
25 we were told by -- potentially, by one of the legal folks

1 that happened to come our way, that not only were we a part
2 of it now, but we might be a part of it retroactively, which
3 really concerns us.

4 So, we're looking into providing more information.
5 And I think one of the things that is of interest to me that
6 you've talked about already is the balance of authority,
7 because if we were excluded in the past, I'm not sure how
8 that works back in. I would assume we would have to
9 petition for an exemption, as you so suggested. So, those
10 are some -- that's one of the things we're going to look at.

11 We too -- and the Manufacturers Association,
12 rather than go all back into it, I think he made a very good
13 presentation as the 12-hour shift. The Independent Oil
14 Producers Agency, we represent mom-and-pop operators, and in
15 that representation we have well pullers and well drillers.
16 Those are 24-hour operations. For me to go tell a well
17 puller we're going to take away his 12-hour, you know, shift
18 is not going to be good, because those folks really like
19 that. And this was sort of -- got me -- I mean, our
20 employees are happy with 12-hour and employers are happy
21 with 12-hour, but now we're trying to defend that.

22 The quality of life, I think it's been mentioned
23 several times, the ability to have those long days off after
24 you're working, and I would well pulling and well drilling,
25 I'd put it up there as just as hard work as any other folks

1 that have mentioned their occupations.

2 And also, we've met with -- realizing all of a
3 sudden, in the last week or so, that we might be a part of
4 it, we met with -- we're going to meet with Assemblyman
5 Flores Wednesday. And he asked me to relay to you all that
6 whatever takes place in that meeting, that he'd like to have
7 that -- he'll send it up and would like to have that
8 incorporated as part of the record and testimony. So, he
9 asked if that's okay.

10 Now, the other thing, there's an urgency here
11 without something. We've got -- the shift dates, as far as
12 your hours of work, this is going to have to be done by
13 December -- probably 15th, in order to make sure that you
14 have your schedule in place. And I'm not quite sure how
15 this is going to play out, whether it's going to be three 8-
16 hour shifts or we're going to continue on with the 12-hour
17 shift. So, there's an urgency -- I don't know how the
18 petition thing works, but there's a timing thing here that a
19 lot of folks -- and there's a lot of employees that are
20 going to be impacted by this in Kern County. So, I would
21 think, as you all are doing your deliberations, the urgency
22 -- and I don't know how that works. Can you -- I mean,
23 what's the milestone dates? The dates would be as of
24 January 1, we're -- we're all a part of that, unless we
25 petition prior to. So, how do we do that?

1 COMMISSIONER CENTER: And that's why we're having
2 the fact-finding. That's part of the problem. The
3 legislation does not go into effect till January 1st.

4 MR. CLARK: It is going into effect January 1st,
5 right?

6 COMMISSIONER CENTER: That's when the legislation
7 goes into effect.

8 MR. CLARK: Yeah.

9 COMMISSIONER CENTER: And with the question of
10 retroactive enforcement, that's not been a formal position
11 of this Commission. So, we're doing the fact-finding
12 hearings. We hope to give you guidance as soon as possible.
13 But the Legislature adopted -- AB 60 was signed by the
14 Governor, and now it's our cause to implement it.

15 MR. CLARK: Yeah. I appreciate it. Well, if
16 there's any -- if there's any way in which your suggestions
17 or your thoughts as far as us -- you know, on the petition
18 process, we'd certainly be interested, and not necessarily
19 just how do we -- however process you go through that, so
20 that we could get into the loop to do that before my
21 drillers start drilling around my house.

22 COMMISSIONER CENTER: I understand. I used to
23 work in the dredging industry. It was somewhat similar,
24 so --

25 MR. CLARK: Yeah. The independent oil, they don't

1 call them "independent" for nothing, I'll tell you.

2 (Laughter)

3 COMMISSIONER CENTER: Thank you.

4 MR. CLARK: Thanks a lot.

5 COMMISSIONER CENTER: Brad Trom.

6 MR. TROM: Good morning. I'm Brad Trom. I'm vice
7 president of pharmacy for Albertson's and Savon Drug Stores
8 in the State of California.

9 I just wanted to make some comments, and the first
10 being of which I'd like to augment our support for the
11 comments Tim Long made with regard to the California
12 Retailers Association in regards to the pharmacists being
13 considered as an exempt class due to their extreme
14 discretion and independent judgment making that they must
15 have. So, I'd like to -- I'd like to urge you to consider
16 that as one of your thoughts as the new laws take into
17 effect.

18 Secondly, I want to comment on the family economic
19 impact and the business economic impact and how the new law
20 relates, and the practicality in how it affects pharmacists
21 throughout the State of California.

22 We currently operate over 400 pharmacies within
23 the State of California. We have a number of collective
24 bargaining agreements with different unions, and we also
25 have nonunion locations.

1 The impact of an additional time-and-a-half rate
2 after 8 or after 10, based upon their ballot, has an impact
3 that, due to the fact of the limited and the very small
4 reimbursement that prescriptions give back to the employer
5 and to the owner of the business, the probability of paying
6 additional payroll increases above current rates can impact
7 dramatically. Also, in meeting with many of the pharmacists
8 throughout the state in the past couple of weeks and trying
9 to discuss this situation through, that it would change
10 their schedule, and we have a majority of our pharmacists
11 who work on a 12-hour shift. We also are fortunate that we
12 have enough locations where people have an opportunity to
13 choose whether they want to work an 8-hour shift, a 10-hour
14 shift, a 12-hour shift, depending upon the store they want
15 to work at. And the majority of them prefer the 12-hour
16 shifts.

17 And the points that were brought forth to me by
18 staff pharmacists were of the nature -- and we will have --
19 at future hearings, we will have some pharmacists that would
20 like to comment themselves -- but in summarizing some of the
21 comments that I received back, that it limits their personal
22 flexibility within their -- within their personal lives,
23 limits part-time jobs that they may have outside of our
24 business. Too, the question that was asked earlier about
25 the economic impact on an individual: if we determine --

1 and we believe we have determined -- that we can't afford to
2 pay time and a half or double time, then we are going to
3 have to require our folks to work either 8- or 10-hour
4 shifts. If they work 8-hour shifts, that then, of course,
5 expands their workweek to a five-day workweek.

6 It will limit their vacation and their personal
7 days off because pharmacists -- and within the industry,
8 it's very common for pharmacists to cover each other,
9 somebody taking a day off, somebody else covering it, and,
10 of course, that would be required that they be paid time and
11 a half or double time to cover for their partner.

12 These additional days of work, of course, then
13 requires that they're going to work additional days,
14 additional nights, additional weekends. There will be more
15 commute days to get to work, which, of course, also affects
16 things such as childcare, elder care. And from a business
17 standpoint, we're concerned about the limitation this may
18 have on the ability to offer for the consumer expanded hours
19 that the consumers and the patients can take and get their
20 prescriptions filled. The vast, vast majority of our stores
21 have a minimum of a 12-hour shift. They're open nine to
22 nine; many are open 24 hours. And with the current law as
23 it goes into effect, because of the economics of that, that
24 may force shorter hours in those stores, or if we don't find
25 pharmacists that want to work beyond a 10-hour shift, that

1 also may require us to evaluate the number of 24-hour
2 locations because of the extreme additional payroll that
3 would be required to staff those 24-hour shifts.

4 The easy answer is to say, "Well, we'll hire
5 additional pharmacists within the industry." And the
6 practicality of that isn't real either, since there is a
7 shortage of pharmacists within the State of California
8 today.

9 So, those are my comments. And any questions?

10 COMMISSIONER BROAD: During the debate on SB 651,
11 there was a lot of agitation among pharmacists in favor of
12 the bill because many of them are working 12-hour shifts,
13 13-hour shifts, and in some cases, 14-hour shifts, without
14 any breaks, no meal periods, no breaks at all. And there
15 was concern that those long, extremely long shifts with no
16 breaks raises a question of prescription errors, which, of
17 course, as you know, are going -- have gone up dramatically.
18 And so, my question to you is whether you think there's any
19 public health issue here with pharmacists working very long
20 hours with no breaks.

21 MR. TROM: Well, thanks for bringing that point
22 forward. The State Board of Pharmacy recently passed a law
23 that allows pharmacists to leave the pharmacy to get a lunch
24 break and to have breaks. Previously, it was required by
25 the State Board of Pharmacy or the state regulations that

1 pharmacists had to be in control or be within the pharmacy
2 at all times. Now, with the new regulations, they will be
3 allowed to leave the pharmacy without having to go through
4 and actually close your business down during that time. And
5 as a consequence, that should eliminate any of the concerns
6 of the long shifts without breaks and without lunches, which
7 we, of course, can identify.

8 To comment on your second part that has to do with
9 an increased percentage of errors that you're suggesting, we
10 don't find that to be true. Recently the prescription
11 incidence of errors has gone down significantly due to the
12 introduction of technology and work procedures and workflow
13 procedures that basically eliminate the possibility of an
14 error because of either the technology checking to make sure
15 it's the right prescription in the bottle, or, secondly, the
16 ability of having two individuals review all prescriptions.
17 So, we don't find that to be true at all.

18 COMMISSIONER DOMBROWSKI: Brad, could you talk a
19 little bit about the technology? Because I think one of the
20 things the industry is looking at is greater use of
21 technology in lieu of some of the manual labor back there.

22 MR. TROM: Well, one of the biggest increases in
23 technology that allowed pharmacists to be assured that they
24 had the right medication in the bottle was the introduction
25 of scan-verify technology that is a scanned bar code on the

1 product and a scanned bar code on the label that is
2 generated by the computer. And the ability to scan those
3 two bar codes and make sure that they match ensures that
4 right medication has gotten into the bottle that the bottle
5 -- that the prescription label generates. So, that's one of
6 the technology.

7 Second, technologies that are coming, which are
8 very large capital investments which will be coming, will be
9 the filling of prescriptions by automatic -- automation as
10 opposed to by individuals.

11 COMMISSIONER DOMBROWSKI: Thank you.

12 MR. TROM: Thank you.

13 COMMISSIONER CENTER: Jim Ewert.

14 MR. EWERT: Good morning, Mr. Chair, members of
15 the Commission. My name is Jim Ewert. I represent the
16 California Newspaper Publishers Association. We have about
17 500 members that are in our association, both daily and
18 weekly newspapers throughout the State of California.

19 The daily overtime standard that is re-established
20 in AB 60 may work well for those industries that employ
21 technologies that make widgets, and maybe even some other
22 industries, but for the newspaper industry, where scheduling
23 is quite uncertain and there is no cyclic fluctuation in
24 production, it just doesn't operate very well at all.

25 The models that are also in AB 60 for creating

1 alternative scheduling, the elections, the menu of options,
2 the make-up time provision, also doesn't work well for the
3 newspaper industry because we can't estimate when schedules
4 are going to need to change.

5 We have many employees who are quite unsettled by
6 the upcoming implementation of daily overtime on January
7 1st, primarily reporters. And the reason why they're upset
8 about this is the potential that they may be called off
9 particular stories that they're covering if their employers
10 cannot afford to pay the daily overtime that the law would
11 require.

12 That is why we have proposed an exemption for the
13 newspaper industry that we think is reasonable and may even
14 work for other industries as well. But essentially, our
15 proposal has generally the following provisions. It would
16 allow an employer and an employee to negotiate day by day or
17 week by week up to 8 hours of overtime that would be
18 eligible for compensation as flex time. Both the employer
19 and the employee would be able to request an individualized
20 flex time schedule under this model. The employee would
21 then have the right to refuse the flex time in favor of
22 being paid an overtime premium as of January 1st for the
23 overtime that's worked in excess of 8 hours per day.

24 Again, we think that this would be a reasonable
25 solution for our industry. And if you have any questions,

1 I'd be willing to --

2 COMMISSIONER CENTER: Just to comment on that
3 proposal, when you have two employees and the one employee
4 continues to accept the flex time and the other one accepts
5 the overtime, which employee is going to get most of the
6 work, do you think?

7 MR. EWERT: Well, I don't know. But certainly, in
8 the ranks of the reporters, they would certainly, at least
9 as indicated to me so far, choose the flex time schedule.
10 And it wouldn't be a matter of the employer dictating, due
11 to the provisions in this proposal, what type of schedule
12 that the reporter would be working.

13 COMMISSIONER CENTER: Thank you.

14 COMMISSIONER BROAD: Jim, how did things function
15 before the previous IWC got rid of the 8-hour day?

16 MR. EWERT: Well, either the employer paid the
17 overtime to the reporters that stayed on the stories, and
18 most of the large newspapers were able to do that; for
19 community newspapers, they were not. Under the most recent
20 standards that we've been using under the federal law, the
21 smaller newspapers have been able to dedicate reporters to
22 cover more local news and more local stories that they
23 probably otherwise wouldn't have been able to under the old
24 standard, and may not under the new standard.

25 COMMISSIONER BROAD: Now, I have a technical

1 question about your proposal. There was a provision passed
2 dealing with comp time that's in the Labor Code now that's
3 never gone into effect because it conflicts with the Fair
4 Labor Standards Act in that it requires, in effect, people
5 to work more than 40 hours in a workweek in some future
6 week. And how do you deal with that FLSA preemption issue
7 here in your proposal?

8 MR. EWERT: Well, we wouldn't propose that this
9 carry over into the second week. We would propose that this
10 occur within the same workweek to comport with the federal
11 standard. So, there really wouldn't be a preemption
12 problem, at least in our view.

13 COMMISSIONER BROAD: Okay. Now, are you
14 submitting this as a proposal? Are you petitioning the IWC
15 to do this, or is it your intent that -- this goes back to
16 my question of what the IWC can and cannot do -- or do you
17 feel that we have the authority to just act on this without
18 convening wage boards?

19 MR. EWERT: In the event that you determine you do
20 have the authority under AB 60, it is a formal proposal
21 submitted for your consideration. If, however, it's
22 determined that a formal wage order has to be -- or a formal
23 wage board has to be convened for consideration of the
24 proposal, we'll be more than happy to submit it in a
25 petition form at that time.

1 COMMISSIONER BROAD: Thank you.

2 COMMISSIONER CENTER: Richard Holober.

3 (No response)

4 COMMISSIONER CENTER: He must be getting his meal
5 period.

6 Bruce Young.

7 MR. YOUNG: You guys look pretty good out there.

8 Bruce Young, on behalf of the California Retailers
9 Association. And I appreciate the opportunity, Mr. Chairman
10 and members, to speak to you today.

11 I, frankly, didn't anticipate coming forward with
12 at least my initial concern about the implementation of AB
13 60, but I've been traveling around the state talking to both
14 employees and employers from the retail community as we go
15 about preparing to implement AB 60. And perhaps, as you all
16 know, we were at least involved deeply in the discussions on
17 AB 60 and 651. One thing I think we probably didn't
18 calculate, at least from our side, is the fact that our
19 members, our employers, would, in essence, go to five 8-hour
20 days.

21 And frankly, I think -- and, Barry, you asked the
22 question about the four 10's -- none of our employers feel
23 the ability even to have an election. I mean, there are so
24 many questions about, you know, what is a work group, do you
25 include part-timers, do you -- I mean, what -- I mean,

1 there's a whole process. So, we -- we've told our members,
2 and they're proceeding with the basis on January 1st, you
3 have to have five 8-hour days in place, and there can't be
4 the flexibility, other than the exemption of the -- that was
5 in there for the July 1st. Even that's cloudy in some of
6 our members' eyes.

7 And we have begun the process of implementing it,
8 telling our employees the new schedules, and the response
9 has been anything but favorable. I think -- they complain
10 about the lack of their own personal flexibility. One of
11 the attractions of retail is, because of the number of hours
12 we have and -- and the store settings we have, we can
13 accommodate people who want to work three days or who want
14 to work a four-day shift, because, again, we're open a
15 number of hours.

16 And the problem that -- as I thought, that simply,
17 "Well, then, have the election on January or whenever the
18 Commission acts and change the schedules," but many of our
19 members are now saying that when they're -- when the
20 schedules are in place and they've hired new people on
21 January 1st, it's going to be difficult for them to go back.
22 So, if there's any way, certainly, the Commission or the
23 staff, at least, can give some advisory opinions to the
24 employer community about how to hold elections and what does
25 make up a voting group. And I've given to Mr. Baron a

1 series of questions of all that. Any direction you could
2 give would be helpful, because we need to do -- certainly,
3 perhaps a lot of it has to be formally adopted by the
4 Commission, but at least, again, suggestions or advice or
5 staff counsel on it would be helpful because many of our
6 members, as I say, feel they would get to the point of
7 crossing the Rubicon of giving people new schedules, hiring
8 new people. And at that point, when then it's -- the
9 flexibility is restored, they don't feel like they have the
10 ability to arbitrarily go backwards.

11 And I do want to then speak about two specific
12 issues in AB 60 that the Commission does have the authority
13 and the flexibility and, indeed, we would argue, the
14 direction from the Legislature, to consider. And one of
15 them is the manager exempt issue. And this is one that has
16 been -- has bedeviled the retail community for a long time,
17 because if you fully consider the retail community
18 environment, where our business ebbs and flows, where a
19 manager at -- certainly, at a grocery chain, may at one
20 point where there's -- when it's frantic and busy, either
21 unexpectedly or it's a momentary rush, may have to hop on a
22 register, or help one of his clerks bag groceries, or go out
23 into the parking lot and pick up carts, that person is still
24 the manager. Yet, under California -- it's not even
25 regulation -- interpretation from previous Labor

1 Commissioners, there's been -- it's been more qualitative
2 than quantitative, where there's been an interpretation that
3 people cannot use the contemporaneous hand and mind. The
4 California Labor Commissioner, unlike any other state, has
5 ruled that if a person is using their hands, they are not --
6 then they no longer -- they cease to become a manager. And
7 we would argue that that very narrow interpretation is not
8 realistic, certainly for our industry, but for many others
9 where, again, not as the rule, but just to get -- to service
10 the customer, a manager has many roles.

11 And it's not -- and certainly, I think there has
12 to be a bright line drawn so it's not a matter of not hiring
13 sufficient people, where the manager takes a place of -- for
14 what then would be an under-staffed situation. But as I
15 said, certainly the Commission may -- should -- may consider
16 perhaps making it on an industry-by-industry basis, where,
17 as I say, these ebbs and flows and dealing with the
18 consumers are things that can't be anticipated many times
19 and can't be -- and these peaks and valleys can't be staffed
20 for.

21 But we really are looking to the Commission for
22 some guidance on this issue prior to July 1st. We will be
23 bringing a proposal at a subsequent meeting with our
24 suggestions and thoughts about how to deal with the status o
25 manager exempt.

1 And the second one -- issue that I want to deal
2 with in AB 60 is about the pharmacists. And I think you've
3 heard from just a couple of them, and I guess I'm back not
4 asking for the blanket exemption, but asking for the
5 Commission to consider allowing some freedom of choice
6 between some of these pharmacists. The ones that I've met
7 with over the weekend and during last week have talked about
8 -- some of them doing the seven on and seven off, and then
9 there's also the question of some of them will do four --
10 work four 10's one week and five 10's another week, whether
11 they can do that. They argue with me that it's about their
12 quality of life, their personal -- their personal values.
13 And some of them indeed also have second jobs. I think
14 earlier speakers have spoken -- have mentioned the severe
15 shortage of pharmacists in California. It's not unusual in
16 the stores where we have seven on and seven off to find
17 pharmacists who seven 8-hour days in one week, the next week
18 when they're off they'll work two or three days at a -- at a
19 hospital or another -- and indeed, another chain store.

20 And I -- I guess I bring forward that request for
21 this flexibility on behalf of the pharmacists that I've
22 talked to. And we're going to ask them to come before the
23 Commission and try to give you some of their own personal
24 feelings. But we as the employers -- I mean, as the chains
25 -- are making the -- are adapting -- I think one of the

1 ladies from Longs spoke about how we're actually even taking
2 our assistant managers and making them hourly. Now, that's
3 not punitive; it's just trying to adjust to the fact that
4 we're now going to -- I mean, people are going to be on the
5 clock. In some cases, they are losing their benefits, the
6 flexibility for additional sick time or consideration for
7 vacations. But we are going to adopt and adapt to that.

8 But on behalf of the employees, we think that some
9 flexibility that could be -- could be adopted that would be
10 -- again, give the employee the ultimate of choice, not be
11 dictated -- I think, as Barry mentioned earlier, some of the
12 stories we heard about 651, about where employees were
13 required to work 13 and 14 hours and come back with no time
14 off -- I think that situation is not tolerable. And we're
15 again -- a point where a flexible, reasonable schedule could
16 be adopted at the employee's election with the consent of
17 the employer, we think, would be preferable.

18 Thank you.

19 COMMISSIONER CENTER: Any questions?

20 (No response)

21 COMMISSIONER CENTER: Thank you.

22 Joe Brown.

23 MR. BROWN: Hello. My name is Joe Brown. I'm a
24 plant manager for Conectiv Operating Services Company.
25 We're in the electric power business, electric power plants.

1 My company is based in Wilmington, Delaware, has a few
2 operations here in California, and, very frankly, I've been
3 here as the West Coast initiator of our business, and I've
4 seen it scale back.

5 In the past twelve years, our company did invest
6 \$50 million in power plants in California. And now, because
7 of unsurety (sic) of -- a lot of it because of unsurety
8 (sic) of legislation in California, we've scaled back.
9 We're just in the service business now, not in the
10 investment business any more.

11 And I'm afraid that things like AB 60 makes our
12 East Coast-based company, not familiar with what's happening
13 each day here in the capitol, even more unsure about staying
14 in the service business. We potentially have three more
15 bids next month. AB 60 and the unsurety (sic) of these wage
16 orders has made my company nervous about bidding on those
17 jobs.

18 But anyway, that's my editorial. I'll get to my
19 specific -- thanks for your patience on that -- my specific
20 concerns or request for AB 60 or the wage orders. You know,
21 we're a 24-hour, seven-day operation. Our operators work
22 12-hour shifts, as most electric power plants do. And the
23 unsurety (sic) of whether or not on-duty meal periods are
24 still allowed or not allowed in this interim, I don't know.
25 I've got different interpretations.

1 The unsurety (sic) of the double-time pay after 8
2 hours on the seventh day, because of the wording, currently
3 it's worded -- well, AB 60 says double time after 8 hours on
4 the "seventh day." The previous or currently existing wage
5 order says "seventh work day."

6 We, in all our plants, have four operators that
7 are regularly scheduled on Sunday, which is our seventh day
8 of the pay week. They're working 12-hour shifts, so that
9 would put what currently is time and a half after 8 hours as
10 4 hours of double time.

11 And this is an unsurety (sic). I really don't
12 know what the law says to do January 1st.

13 And the main thing, even though, you know, I don't
14 think AB 60 was necessary, I think it was rash -- but that's
15 editorialism, I guess, again -- what I need to know is what
16 are the rules that I'm working by? Right now, I'm held up
17 on finishing my budget for next year. I'm late. And it's
18 affecting whether or not we get benefit enhancements
19 improved in other areas, like disability insurance and
20 health plans, not knowing whether we're paying double time
21 after 8 or time and a half after 8. It's holding me up on
22 my budget process, getting those benefits approved, which
23 the rest of our company is doing in 51 other states. Ours
24 is on hold, on approval, because of this unsurety (sic),
25 what our expenses are going to be.

1 The biggest impact is the unsurety (sic) of the
2 paid on-duty meal period. There's not a single guy in any
3 one of our plants that's working 12-hour shifts that isn't
4 100 percent for this on-duty paid meal period. I'm not sure
5 that we can continue this without a liability between
6 January and July, that there's not some daily penalty that
7 -- I don't know which wage order we're following here,
8 what's the interim rules.

9 I'm also currently holding up posting our shift
10 schedule for the year 2000. I normally would have done that
11 the first of this month. This is November now. Operators
12 want to plan their lives after January 1. I don't know for
13 sure whether we can have 12-hour shifts, I'm so unsure about
14 interpretations here.

15 So, what I'm asking is that we can get clarity,
16 that we know what the rules are that we're living by, not
17 July 1 next year. The law is effective January 1, and we're
18 going to post the detailed rules July 1 -- that's -- that's
19 totally unacceptable. I need to know today, not -- let
20 alone January 1, because it's affecting my operation today.

21 And I don't -- you know -- you know, I would
22 suggest something as simple as -- I think the intent of the
23 law was that the previous wage order goes back into effect,
24 although there were some changes. So, I have here, like for
25 our case, Wage Order 4-89 for the professional and

1 technical; that was the one in effect before the -- before.
2 I went through here, and I'm kind of -- you know, I'm not
3 the right guy to do this, but I could go through here and
4 compare what I've read off the Internet on AB 60, and I can
5 make four changes to this, with a red line, and then say:
6 "Post this; this is the rules we live by till July 1," or
7 something of that nature.

8 I need to know the rules, and I need to know them
9 like this afternoon, not January 1, and certainly not July
10 1. That's -- that's my big problem.

11 I don't like AB 60, but it's here, we've got to
12 live with it. So, what are the rules to live with it, to
13 live by?

14 COMMISSIONER BROAD: I am sure that -- I mean,
15 speaking for myself, I'd like to be able to tell you
16 definitively this afternoon what you have to do.

17 MR. BROWN: Yeah.

18 COMMISSIONER BROAD: The problem is, we have one
19 of these --

20 MR. BROWN: Yeah.

21 COMMISSIONER BROAD: -- it's been alluded to -- we
22 have one of these kind of structural problems of what
23 happens when bills are passed. They don't go into effect on
24 January 1, so anything that the Commission does officially
25 prior to January 1 to implement the bill would be

1 potentially subject to some legal challenge, that the
2 Commission was without authority to provide definitive
3 anything prior to January 1. So, it's one of those
4 situations where you have to use, I think, the best,
5 reasonable judgment.

6 Now, you know, there's a couple things here.
7 You're probably right: what it's going to look like after
8 January 1 is the restoration of Order 4-89 and the others,
9 with, you know, a relatively small number of changes, good
10 through July, at which point some permanent changes will be
11 made in all the wage orders, based on AB 60.

12 Some of the issues that you alluded to, in my
13 opinion, were simply codifications of existing law. And I
14 think the "seventh day" issue was probably an ambiguity
15 created in the way the statute was drafted, but I don't
16 think that the proponents -- they're not here, but I don't
17 think the proponents intended to change the rules with
18 regard to the seventh day of work. I don't think it would
19 make much sense if they did. I don't think it makes much
20 sense to suggest that if someone works one hour a day and
21 that, on the seventh day -- or, you know, three hours in a
22 week and then on the seventh day of the week, even though
23 they've worked three hours that week, they're suddenly going
24 to get a whole bunch of overtime, that's really -- it's
25 about the seventh consecutive day of work.

1 MR. BROWN: Yeah.

2 COMMISSIONER BROAD: So, I --

3 MR. BROWN: But that word is missing.

4 COMMISSIONER BROAD: I understand that. I
5 understand that, but I --

6 MR. BROWN: Yeah, the "seventh day of work" is
7 missing. The word "worked" is missing, yeah.

8 COMMISSIONER BROAD: Right. I realize that, and I
9 wish it wasn't missing. It is missing, but -- and I think
10 that, you know, if we could provide guidance today, I would
11 certainly vote to say that what that was intending to do was
12 -- was restore -- was actually codify the existing rule.
13 That rule has never really been changed. I mean, you know,
14 in the -- so, I -- I think you have to try to use some
15 common sense in this, and perhaps talk to the Division of
16 Labor Standards Enforcement and discuss with them what their
17 opinion of what happens on January 1.

18 And I think it's incumbent upon us, just as soon
19 after January 1 as we can do it, to give people a definitive
20 answer to these questions. But, you know, it may be January
21 10th before we could do that, because we would have to hold
22 public hearings based on what the statute says, hear many of
23 these concerns again, have something out, probably prior to
24 that, for people to at least be looking at, so that they
25 have the ability to comment and suggest changes that they

1 might like before we were to adopt something.

2 But your point is well taken. Businesses have to
3 operate as of January 1, and they don't want to operate in a
4 vacuum without guidance. But I think we all have to sort of
5 move forward with as logical an approach to this as
6 possible.

7 MR. BROWN: Yeah. I appreciate -- I appreciate
8 your guidance, as much as you can give at this point. But
9 you need to respect that there are penalties in this, that
10 include civil penalties, and there's a daily penalty which
11 could be considered a bounty type thing, the daily penalties
12 that are in this new AB 60, \$50 a day per incident. And I'm
13 going to be doing payroll January 1 because I don't pay my
14 payroll person enough to take the liability for \$50 -- and
15 she gets paid very well, but she's nervous about doing
16 payroll January 1.

17 But I do respect your position, that you can't
18 maybe legally take action or guidance today for fear of --
19 and a legitimate fear of somebody filing suit, but you're
20 putting me and all the other employers in that position
21 January 1 by not taking that action. That's the problem
22 here, is the penalties that are written into this. And they
23 could be -- they could be bounty type penalties.

24 COMMISSIONER DOMBROWSKI: I don't know if you have
25 done anything about contacting either the Department of

1 Labor with some specific written questions on these matters,
2 because, obviously, everybody this morning has the same
3 problem you have there. There's mass confusion about how
4 this thing's going to be implemented. But I would think it
5 would be appropriate to at least try to get some questions
6 on paper to them, see if they can give some guidance, at
7 least.

8 MR. BROWN: Okay. Thank you.

9 COMMISSIONER CENTER: And as earlier noted, their
10 chief counsel is here today listening to the testimony,
11 so --

12 MR. BROWN: Oh, good.

13 COMMISSIONER CENTER: -- hopefully, he takes that
14 into consideration. So --

15 MR. BROWN: Where's he at?

16 COMMISSIONER CENTER: I don't want to identify
17 him. You'll lynch him right now. So --

18 (Laughter)

19 COMMISSIONER CENTER: You need to bend their ear a
20 little bit.

21 COMMISSIONER DOMBROWSKI: He's the guy in the red
22 tie.

23 MR. BROWN: Okay.

24 COMMISSIONER CENTER: Thank you.

25 MR. BROWN: Well, thank you very much for

1 listening.

2 COMMISSIONER BROAD: Mr. Chairman, maybe it would
3 be appropriate to ask the chief counsel to come up and ask
4 if they've taken any -- given opinions on this and what
5 their opinions might be on some of these things that have
6 come up repeatedly. Is that -- after lunch? I mean, after
7 the people have testified.

8 COMMISSIONER CENTER: Yeah. Is there anybody else
9 in the audience who has not testified who would like to at
10 this time?

11 (No response)

12 COMMISSIONER BROAD: No. We're done.

13 COMMISSIONER CENTER: I don't know. Miles, are
14 you prepared to address the Commission?

15 MR. LOCKER: (Not using microphone) Certainly.
16 Would you prefer I do it now, after lunch, or what?

17 COMMISSIONER CENTER: Well, we're not going to
18 have lunch, but -- yeah, I listened to you -- so, don't take
19 too long, Miles.

20 MR. LOCKER: Hi. I'm Miles Locker, chief counsel
21 for the State Labor Commissioner. And thank you for
22 inviting me to speak.

23 A couple of the questions that -- first of all, I
24 just want to say that we have been amassing quite the
25 collection of requests for opinion letters on AB 60, on how

1 we interpret it and how we would intend to enforce it. And
2 it's our hope to start getting these out very quickly,
3 within the next two weeks. And it's also our hope that as
4 they come out, we would like to see them posted on the
5 Department of Industrial Relations Web site. I think that
6 would be very helpful to the entire public. So, that's what
7 we're aiming for.

8 And in assessing a lot of the questions we've
9 gotten, both in terms of written letters to us and also what
10 I'm listening to today, we do -- you know, preliminarily, I
11 think we do have answers to a lot of the questions that seem
12 to be troubling people.

13 First of all, in terms of just a few things, I
14 guess, the confusion about the "seventh day" of work, the
15 same way as Commissioner Broad was speaking before, we do
16 agree that that needs to be read in the context of the
17 entire section there. And we would interpret that to --
18 it's an ambiguity. We would interpret the provision for
19 double time after 8 hours on the seventh day of work to mean
20 after the seventh consecutive day of work in the workweek,
21 that it needs to be read in conjunction with the earlier
22 part about -- the section that talks about time and a half
23 for the first 8 hours in the seventh consecutive workday of
24 the workweek. So, that would be the answer to that.

25 There -- I think, you know, one issue that we've

1 heard a lot about, and I guess I was listening to today come
2 about, in terms of the issue of meal periods and whether or
3 not AB 60 does away with the on-duty meal period. And we do
4 not believe it does away with the on-duty meal period. And
5 there are a couple reasons that we would say that. First of
6 all, with respect to, I guess -- let me just find this here
7 -- Section 516 is added to the Labor Code to provide that:

8 "Notwithstanding any other provision of law,
9 the IWC may adopt or amend working condition
10 orders with respect to break periods, meal
11 periods, and days of rest for any workers in
12 California consistent with the health and
13 welfare of those workers."

14 When you start something with "notwithstanding any other
15 provision of law," that seems that there's clearly an intent
16 to give the IWC the authority to regulate as to, you know,
17 the on-duty meal period.

18 Also, going back to Section 512 that's added to
19 the Labor Code under AB 60, I think what's significant in
20 reading this is it talks about the requirement for the first
21 meal period of the day, that if -- it's required if you're
22 working more than 5 hours in a day, but it can be waived by
23 mutual consent if you are working up to 6 hours, over 6
24 hours, then, it says you have to get that meal period. It
25 then goes on to say, though, that:

1 "An employer may not employ an employee for a
2 work period of more than 10 hours per day
3 without providing the employee with a second
4 meal period of not less than 30 minutes,
5 except that if total hours worked is no more
6 than 12 hours, the second meal period may be
7 waived by mutual consent of the employer and
8 the employee" --

9 -- and here's the key --

10 " -- only if the first meal period not
11 waived."

12 What that tells me, then, is that despite what it says
13 earlier in the section, that you can't do a waiver if it's
14 more than 6 hours, the next sentence after that is saying,
15 yes, there can be a waiver; what you can't waive is the
16 second one, then, if you're working, you know, more than 12
17 hours. It provides that you can waive the first.

18 So, we're kind of thinking, "What does this mean,
19 if it first says you can't waive the first and then implies
20 that you can waive it?" And our thinking on that is there's
21 only one way you can still waive that first meal period, and
22 that would be, then, through an on-duty meal period. So, we
23 do not think there was an intent to do away with that. And
24 I know this sounds a little convoluted, but, you know, in
25 searching through this language and trying to figure out

1 what it all meant, I think that's the most reasonable
2 reading of it.

3 I know there's a lot of other questions out there
4 in terms of, for example, provisions in the existing IWC
5 orders that provide for express exemptions such as -- we
6 were talking about truck drivers before. I think, clearly,
7 AB 60 provides that as to any of the pre-1998 wage orders,
8 if you have -- if there is an exemption contained within one
9 of those orders, such as the truck driver situation, then
10 that exemption would still apply. So, that would be our
11 answer to that.

12 And, I guess, in terms of just some enforcement
13 issues that I just want to touch on, because what I was
14 hearing was an awful lot of discussion about -- well,
15 suggestions to the IWC to somehow expand the administrative
16 exemption somehow to cover certain groups of people now, I
17 think it is important to note that with respect to how DLSE
18 enforces the administrative exemption, in terms of -- and
19 certainly, we enforce it -- to the extent that California
20 law is inconsistent with federal law, to the extent it
21 provides for greater protections to workers than federal
22 law, we are very careful to apply, you know, the California
23 greater protections, as the recent Supreme Court case,
24 *Ramirez v. Yosemite Water Company*, that talks about that.

25 But, on the other hand, where the purposes of the

1 law and the law is -- where there is a consistency, then we
2 do rely on federal law and federal regulations. And in one
3 area on that is with respect to the definitional question of
4 the administrative exemption. Certainly California law
5 differs from federal law in that you have the "primarily
6 engaged in" test versus the "primary duty" test. But with
7 respect to defining certain things about the administrative
8 exemption, the question of discretion, independent judgment,
9 what's found in intellectual work, those phrases that are
10 found in the existing IWC orders, we do look to the Federal
11 Code of Regulations and federal case law. And one of the
12 things that we get out of that is the dichotomy between
13 production workers versus workers who would truly be
14 administratively exempt.

15 And I think that, certainly, in terms of our own
16 enforcement, with respect to workers who are employed by an
17 employer, where what that employer is doing is producing a
18 product or a service for customers of that business, if
19 that's what that enterprise is doing, then the workers who
20 are engaged in doing that cannot come under the
21 administrative exemption. There's a whole bunch of federal
22 cases in the last ten years under the FLSA that have spoken
23 about that. And instead, the administrative exemption is
24 geared towards workers who are employed dealing with
25 administrative issues for the enterprise itself. And I

1 think that's an important distinction, because otherwise, I
2 think you'd be running into some issues there.

3 COMMISSIONER BROAD: So, in other words, if people
4 were coming forward and saying, "Let's just take the
5 administrative exemption and instead of having the test
6 that's in the wage orders now, primarily engaged in
7 activities which are intellectual, et cetera, et cetera,
8 we're going to have a list -- a laundry list of things -- if
9 it's a pharmacist, if they actually -- if they, you know,
10 look at the bottle and see if it's got the right
11 prescription in it" -- that, in effect we would be running
12 up against a federal Fair Labor Standards Act preemption
13 question --

14 MR. LOCKER: Absolutely.

15 COMMISSIONER BROAD: -- squarely.

16 MR. LOCKER: Yes, squarely. There's simply no way
17 that -- if you have a pharmacist, for example, employed by a
18 pharmacy or a hospital, let's say, there's no way under
19 federal law that person is going to fall within the
20 administrative exemption. It's just -- it's consistent with
21 -- within the production versus true administrative
22 dichotomy, they would fall as a production worker.

23 So, I did want to mention that.

24 In terms -- earlier there was a little bit of
25 discussion, I guess, with respect to the issue of, I guess,

1 in the computer industry and hourly employees. The speaker
2 was correct that under federal law, which has a salary basis
3 test under the FLSA, and also, certainly, under AB 60 now,
4 that it will have a salary basis test, if you are an hourly
5 employee, you -- that you're not going to be exempt. And
6 that's -- you're simply -- that can be the end of the
7 discussion. The only way, under federal law, these computer
8 professionals could now be exempt is because, in 1990, the
9 FLSA was amended by Congress to specifically provide for
10 that type of exemption for computer professionals, and it
11 provided that they could be paid on an hourly basis and
12 provided that they were making six and a half times the
13 minimum wage and were engaged in certain types of activities
14 that are delineated in the Code of Federal Regulations.

15 Under California law, it's a different situation.
16 First of all, as I indicated, you do have a salary basis
17 test in now. But secondly, there's nothing in California
18 law in any of the existing IWC orders that would apply that
19 provide for a special exemption with respect to workers in
20 the computer industry. Instead, what we look at is really
21 the learned professional exemption that's been, you know,
22 set out in the IWC Orders 1, 4, 5, 7, and 9, I believe, in
23 the 1989 versions of those.

24 And quite frankly, there, there's a little bit of
25 a dichotomy there too between state and federal law.

1 Federal law dealing with computer workers specifically
2 provides that they are -- that they would be exempt under
3 the special new federal provision, notwithstanding whether
4 or not they would have been exempt under the learned
5 professions exemption. In California, the 1989 IWC order
6 "Statement of Basis," talking about how DLSE ought to be
7 enforcing the learned professions exemption, it basically
8 DLSE and suggests that DLSE ought to be relying on federal
9 regulations in delineating the learned professional
10 exemption. And in looking at that, one of the things that
11 the Code of Federal Regulations talks about in that
12 exemption is that it is almost universally expected that for
13 someone to be exempt as a learned professional, they would
14 not only have a basic academic degree, but some sort of
15 advanced degree or certificate beyond that. So, in general,
16 what we're looking it not just a B.A., but also some --
17 perhaps a year or something beyond that, a master's degree
18 or some certification beyond that. Again, this is different
19 than federal -- than the federal provisions on the computer
20 industry, because there you could have someone who perhaps,
21 you know, doesn't have a bachelor's degree at all, but
22 because they're doing this type of work and making more than
23 six and a half times the minimum wage, they'd be exempt.
24 But that did take a specific law.

25 If you have any other questions or anything, I'd

1 be happy to respond.

2 COMMISSIONER BROAD: One question that's come up
3 is the collective bargaining exemption. My understanding is
4 that that proponents of AB 60 intended to codify the
5 existing collective bargaining exemption that was in -- that
6 was in the wage orders. Is that how you view that? Or do
7 you view it as accomplishing something different?

8 MR. LOCKER: Codification and going a tiny bit
9 beyond it, I would say, is how DLSE view it.

10 COMMISSIONER BROAD: Okay.

11 MR. LOCKER: Under the existing wage orders --
12 well, certainly, the most -- the one difference that's
13 visible right away is, instead of a dollar an hour more than
14 the regular rate now, it's thirty percent more or whatever.
15 But that's clear.

16 The other difference that I think is very
17 important is, in the existing wage orders, it talks about
18 premium pay for "overtime hours worked." The language that
19 the statute now uses, AB 60 uses, is premium pay for "all
20 overtime hours worked." And adding the word "all," I think,
21 was significant. We had been involved -- DLSE had been
22 involved in a couple of court cases on that very subject,
23 where you had collective bargaining agreements that
24 provided, let's say, for no premium pay until the tenth hour
25 or the twelfth hour of employment in a day, and then did

1 provide for premium pay. And it's our understanding the
2 intent of "all" and how we interpret "all" is to mean there
3 has to be some premium pay for all overtime hours worked,
4 and overtime hours would be defined by the statute as
5 anything over 8 in a day or 40 in a week.

6 Now, having said that, premium pay, that's the
7 area where -- premium pay does not necessarily mean time and
8 a half. It could be ten cents an hour more than the regular
9 rate of pay. But we do think there has to be premium pay
10 for all overtime hours worked.

11 COMMISSIONER CENTER: Any other questions?

12 COMMISSIONER COLEMAN: Chuck, I had a sort of a
13 procedural question.

14 In terms of giving some guidelines to the
15 employers, as we go through these hearings, can we -- are we
16 talking about maybe drafting some guidelines that people can
17 comment to us so that we can then implement them as soon
18 after January 1 as we can gather ourselves, to give us much
19 assurance as possible as soon as possible?

20 COMMISSIONER CENTER: Yeah. I think our goal
21 right now is by the December meeting, to have some draft
22 guidelines, to have the industry comment -- labor and
23 industry, and then be ready to act as soon as possible in
24 January.

25 COMMISSIONER COLEMAN: Okay.

1 COMMISSIONER CENTER: I think that's our goal and
2 that's where we're trying to go right now.

3 MR. BROWN: (Not using microphone) A question
4 from the audience.

5 Can I -- can I ask a question?

6 Yes. I just wanted to ask about the on-duty meal
7 period.

8 THE REPORTER: Identify yourself, please, and come
9 to the microphone.

10 MR. BROWN: Joe Brown, from Conectiv Operating
11 Services Company.

12 COMMISSIONER CENTER: You should address that out
13 of the room. We're an independent commission, and we'll
14 offer guidelines to DLSE. But if it's a DLSE question, you
15 might just want to address him individually outside.

16 MR. BROWN: Oh, okay.

17 COMMISSIONER CENTER: That's a suggestion.

18 MR. BROWN: Okay.

19 COMMISSIONER CENTER: No other comments from the
20 audience?

21 (No response)

22 COMMISSIONER CENTER: And Miles will be here to
23 answer questions. He likes to answer questions.

24 MR. LOCKER: Absolutely.

25 COMMISSIONER CENTER: With that, I'll entertain a

1 motion to adjourn.

2 COMMISSIONER BROAD: So moved.

3 COMMISSIONER CENTER: And a second?

4 COMMISSIONER DOMBROWSKI: Second.

5 COMMISSIONER CENTER: All in favor.

6 (Chorus of "ayes")

7 COMMISSIONER CENTER: Motion carries.

8 (Thereupon, at 12:29 p.m., the public
9 meeting was adjourned.)

10 --o0o--

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1 CERTIFICATE OF REPORTER/TRANSCRIBER

2 --o0o--

3 I, Cynthia M. Judy, a duly designated reporter and
4 transcriber, do hereby declare and certify under penalty of
5 perjury under the laws of the State of California, that I
6 transcribed the three tapes recorded at the Public Meeting
7 of the Industrial Welfare Commission, held on November 8,
8 1999, in Sacramento, California, and that the foregoing
9 pages constitute a true, accurate, and complete
10 transcription of the aforementioned tapes, to the best of my
11 abilities.

12

13 Dated: November 22, 1999

14

CYNTHIA M. JUDY

15

Reporter/Transcriber

16

17

18

19

20

21

22

23

24

25

EXHIBIT F

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

Santa Rosa Legal Section
50 D Street, Suite 360
Santa Rosa, CA 95404
(707) 576-6788

H. THOMAS CADELL, *Of Counsel*

January 10, 2003

Robert L. Wenzel
Atkinson, Andelson, Loya, Ruud & Romo
17871 Park Plaza Drive, Suite 200
Cerritos, CA 90703-8597

Re: **Temporary Employment Agency Placements With Public
Employers** (00142a)

Dear Mr. Wenzel:

I have been asked to respond on behalf of the Division of Labor Standards Enforcement to your letter seeking an opinion from the DLSE regarding the applicability of the Industrial Welfare Commission wage order to individuals employed by a temporary employment agency who are placed for temporary employment with various city, county, and other public employers.

We understand from your letter that your firm represents an employee staffing agency which places or leases employees on both a permanent and temporary basis with public and private employers throughout California. According to the facts you submit, with respect to these employees, the staffing agency acts as the employer of these individuals and charges its client, the employer with whom the employee is placed, an hourly fee for the services of the employee. The length of these leasing arrangements varies greatly depending upon many factors, including the needs of the employer with whom the employee is placed and the desires of the employee.

Frequently, a public employer will have an alternative workweek schedule in effect such as a 4/10 or 9/80 work schedule, and the public employer requires the leased employees to work these alternative workweek schedules. Since the Industrial Welfare Commission wage orders do not apply to public employers, you presume that these

2003.01.10

alternative workweek schedules were not adopted pursuant to the election procedures contained in the wage orders.

You ask a number of questions related to the above-described facts:

1. Does Wage Order 4, or any wage order, apply to Staffing Agency employees for the period of time they are placed in employment assignments with a public employer?

Answer: As you know, IWC Order 4-2001, Section 1(B) provides:

"Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district."

We cannot answer this question without knowing whether, in fact, the affected workers are "employees" of the public entity. Such a determination is fact-intensive and, according to the California courts, is not determined by the relationship between the public entity and your client. (*Service Employees International Union v. County of Los Angeles* (1990) 225 Cal.App.3d 761, review den.) It is not clear from the facts you submit whether the public entities exercise any control over the activities of the workers or if your client, in fact, exercises any such controls¹.

If, as experience teaches is the usual fact pattern, the public entity directs the activities of the workers, that public entity is the employer. Your client probably does not exercise any control over the details of the work performed

¹An agent such as your client may be a joint employer, a dual employer or a special employer. (See *County of Los Angeles v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 391, 405). However, such a relationship arises only where both the general employer and the special employer have the right to control the employee's activities. (*Ibid.*) Whether the right to control existed and was exercised is generally a question of fact to be resolved from the reasonable inferences drawn from the circumstances shown. (*Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 175, 151 Cal.Rptr. 671, 588 P.2d 811.)

by the workers and may be, at best, a joint employer. More likely, however, the staffing agency performs nothing more than a bookkeeping function, keeping track of the hours and making the checks out. If this is so, then the workers are employed directly by the public entity and the bulk of the wage order provisions would not apply.

On the other hand, in the event that your client does, in fact, direct and control the work functions, then your client is the employer and, as such, the employees may not, absent a validly adopted alternative workweek arrangement, be expected to work more than eight hours in any one workday without being paid the applicable premium for overtime.

2. If the wage orders do apply, which provisions apply to these workers?

Answer: Again, if the workers are, in fact, employed by the public entity, only Sections 1, 2, 4, 10, and 20 of the orders apply. If, on the other hand, they are not employed by the public entity but are, in fact, employed by your client, all of the provisions of the orders would apply.

3. If the wage orders apply, which entity is liable to the employee for violations of the wage order: the staffing agency, the public entity, or both?

Answer: If the wage orders apply it is because the workers are not employed by the public entity, but by the staffing agency. If that is the case, only the staffing agency would be liable for the violations.

4. If the public employer has an alternative workweek schedule in place which sets forth a regular schedule exceeding eight hours per workday but not over 40 hours in a workweek, such as a 4/10 or a 9/80, may the leased employee work the alternative workweek schedule without having to be paid daily overtime?

Answer: This would, of course, depend on whether the workers were employed by the public entity or were simply employees of the staffing agency as discussed above.

2003.01.10

5. Are there any steps that can be taken, or specific requirements which must be fulfilled, by either the staffing agency or the public employer, or both, that would allow the leased employee to work more than eight hours per day for the employer without having to be paid daily overtime?

Answer: Obviously, if the workers are employees of the public entity, then they are not subject to the wage orders and any work schedule which meets the requirements of the Fair Labor Standards Act would suffice. If the workers are not employees of the public entity they must be employees of the staffing agency. If the workers are employed by the staffing agency, they may petition the employer (the staffing agency) to hold an election to adopt an alternative workweek.

We are sorry that we cannot give you a more definitive answer to your questions; but as you can see, the question revolves around the status of the staffing agency and/or the public entity.

This agency takes no position regarding any other liabilities and responsibilities which the public entity might face when it hires its work force in this manner.

Yours truly,

H. THOMAS CADELL, JR.
Attorney for the Labor Commissioner

c.c. Arthur Lujan, State Labor Commissioner
Tom Grogan, Chief Deputy Labor Commissioner
Anne Stevason, Chief Counsel
Assistant Labor Commissioners
Regional Managers

2003.01.10

EXHIBIT G



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Statement as to the basis for the general minimum wage order - IWC MW - 2001

Statement as to the basis for the general minimum wage order - IWC MW - 2001

TAKE NOTICE that the Industrial Welfare Commission (hereinafter the "IWC"), having proceeded according to its authority in the Labor Code and the Constitution of California, article 14, §1, has amended Sections 1, 2, 3, and 5 of the General Minimum Wage Order, MW-98. Section 4, Separability, has not been changed. The IWC began its review of the minimum wage in December 1999 and voted to convene a wage board on March 31, 2000. Following its receipt of the report of the wage board, the IWC held additional public meetings and public hearings pursuant to Labor Code §§ 1178.5(c) and 1181 during which it considered the recommendations of the wage board, proposed new minimum wage regulations, and received testimony and written materials regarding the proposed regulations. The only recommendation that received a two-thirds (2/3) or more vote of the wage board was that the IWC consider the appropriateness of continuing the existence of exemptions from the minimum wage for certain occupations and industries. Therefore, after consideration of all of the non-statutory full and partial exemptions from the minimum wage, the IWC included the elimination of some of these exemptions in its proposed regulations. The public hearings on the proposed regulations were held in September and October 2000.

The IWC adopted the amendments to the General Minimum Wage Order on October 23, 2000. They will become effective January 1, 2001, and will be



included in the appropriate sections of the IWC's industry and occupations orders. The IWC considered all correspondence, verbal presentations, and other written materials that were submitted prior to the amendment of the Order. IWC submits the following statement as to the basis for the amendments to Sections 1, 2, 3, and 5 of the Order.

1. APPLICABILITY

This Order is applicable to all workers in the State unless specifically exempt.

The IWC received some testimony and information on exemptions from the minimum wage regarding personal attendants, carnival employees, public employees, professional actors, and sheepherders. Employers of personal attendants, carnival employees, public employees, and professional actors, initially expressed concerns about the action contemplated by IWC. Once they were clear that the IWC proposed to make the employees at issue subject to minimum wage requirements, their concerns were alleviated. Employers in and attorneys for the sheep herding industry registered fervent opposition to the repeal of their exemption and presented some employees who supported their position. They argued that the federal H2a program covering this industry worked fine and did not need to be fixed. On the contrary, other employees and their legal representatives testified about abject living and working conditions. Based on that information, the IWC decided that it should conduct an investigation of hours and conditions of labor of sheepherders in California.

In light of the information received, and in the absence of other public comment, the IWC determined that it should retain the exemptions from the minimum wage for outside salespersons, administrative, executive and professional employees, and any individual who is a parent, spouse, or child of the employer previously contained in this order and the IWC's industry and occupation orders. The IWC eliminated the following non-statutory full and



partial exemptions from the minimum wage: employees of the State and local government and any political subdivision thereof, full-time carnival ride operators, professional actors, personal attendants in private homes except for persons under the age of eighteen who are employed as baby sitters for a minor child of the employer in the employer's home, student nurses, and minors paid not less than 85% of the minimum wage rounded to the nearest nickel. The IWC amended the present partial exemption for learners to include minors.

The IWC also amended the provisions in Section 1, Applicability, of Wage Order 14 to be consistent with Labor Code § 515(a). Thus the remuneration test set forth in subsection (A) is now increased from \$900.00 per month to a monthly salary equivalent to no less than two times the state minimum wage for full time employment.

2. MINIMUM WAGES

The IWC received testimony and correspondence from, employees, labor organizations, private employers and their representatives, attorneys representing all these groups, and state and local legislators, as well as information from government and educational publications. As with the report from the wage board, there was no consensus regarding the adequacy of the minimum wage. Employees and their representatives and supporters testified as to the difficulty in finding safe and affordable housing, and in being able to otherwise provide for families and enjoy a tolerable standard of living. They urged the IWC to increase the minimum wage to at least \$8.00 per hour. Employers who testified primarily represented the restaurant, farming, movie theater, and manufacturing industries. They and their representatives testified that an increase in the minimum wage would result in an increase in costs to the public for products and services, the inability to provide adequate health care benefits for employees, the relocation of businesses from California to other states or abroad, and/or the complete



failure of some businesses. The IWC determined that an increase in the minimum wage was appropriate. In light of the vast differences in the testimony it received, the IWC decided to adopt its proposal for an increase of fifty (50) cents for each of the next two years, such that on and after January 1, 2001 the minimum wage will be no less than \$6.25 per hour, and on and after January 1, 2002 the minimum wage will be no less than \$6.75 per hour.

3. MEALS AND LODGING

The IWC increased the amounts for meals and lodging that may be credited against the minimum wage to amounts that are proportionate to the increase in the minimum wage. Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee.

5. AMENDED PROVISIONS

This order amends the minimum wage and meals and lodging credits in MW-98 as well as in the IWC's industry and occupations orders. Other provisions of the IWC's industry and occupations orders are also amended by this order so that they are consistent with the IWC's actions regarding the repeal of exemptions from the minimum wage for the types of employees set forth in Section 1, Applicability, above.

Industrial Welfare Commission (IWC)

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EXHIBIT H

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Meeting

December 15, 1999

Ronald Reagan State Office Building
300 S. Spring Street, Auditorium
Los Angeles, California

P A R T I C I P A N T S

--o0o--

Industrial Welfare Commission

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1 P R O C E E D I N G S

2 --o0o--

3 (Time noted: 10:10 a.m.)

4 COMMISSIONER CENTER: Good morning. I'm Chuck
5 Center. I'm the chairman of the Industrial Welfare
6 Commission. I welcome you to this hearing today.

7 And just to let you know what we're going to be
8 doing, our first order of business will be to open up the
9 minimum wage hearing. And then, after that, depending
10 how long it will take, we will go into AB 60. And
11 between minimum wage and AB 60 implementation, we'll
12 break for a short lunch. I hope we get out of here by
13 five o'clock.

14 But I will ask you do, in your testimony --
15 well, first, let's call -- let's call the roll, I guess,
16 so we can have a quorum.

17 Mr. McCarthy?

18 COMMISSIONER MCCARTHY: Here.

19 COMMISSIONER CENTER: Barry Broad?

20 COMMISSIONER BROAD: Here.

21 COMMISSIONER CENTER: Bill Dombrowski?

22 COMMISSIONER DOMBROWSKI: Here.

23 COMMISSIONER CENTER: Leslee Coleman.

24 COMMISSIONER COLEMAN: Here.

1 COMMISSIONER CENTER: And Chuck Center. We're
2 here and we have a quorum, so we can now start this
3 meeting. Thank you.

4 What we will do -- and I will ask, because
5 there's a number of speakers here today -- if you have
6 written testimony, just briefly introduce yourself and
7 don't go into your written testimony. We will review
8 that here at the Commission. And if you -- somebody else
9 comes up and comments on the same comments you want to
10 make, if you could just come up and say you agree with
11 those comments, then we can -- might be able to get out
12 of here before dark. So, we'll ask that.

13 And what -- we will first have on the minimum
14 wage --

15 AUDIENCE MEMBER: (Not using microphone) Can
16 you clarify something really quick? Does that mean all
17 of us who are here for AB 60 are really not needed here
18 till after lunch?

19 COMMISSIONER CENTER: We have no idea how long
20 the minimum wage will go. If it goes for two hours, if
21 it goes for an hour and a half, or an hour, or four
22 hours. We don't know.

23 What we'd like to do now is call up a panel in
24 favor of opening up the minimum wage. And I think Mr.

1 Pulaski is here. I'd like Mr. Pulaski to start that off.

2 And when the speakers do come up, we'd ask them
3 to introduce themselves and the organization they
4 represent and their title. And if they could possibly
5 give a business card to the recorder, we'd appreciate
6 that.

7 MR. PULASKI: Mr. Chairman, thank you.

8 Testing.

9 I have to say, Mr. Chairman, that your mike is
10 not very strong in the back of the room, and I'm not sure
11 --

12 AUDIENCE MEMBERS: (Not using microphone) Can't
13 hear! Can't hear anything.

14 MR. PULASKI: That's the answer to that
15 question.

16 COMMISSIONER CENTER: Is yours on?

17 MR. PULASKI: It's on, but it's marginal.
18 Testing, one, two, three.

19 COMMISSIONER CENTER: Kind of holler if you can.

20 MR. PULASKI: I can do that.

21 COMMISSIONER CENTER: I know you can.

22 (Laughter)

23 COMMISSIONER CENTER: And briefly, just to
24 apologize, our executive director is not here today.

1 He's got an illness in the family. And our principal
2 consultant is on his way down, so we have a one-man team
3 here, Christine Morse. So, be patient with us, if you
4 could, please.

5 MR. PULASKI: Chairman Center?

6 COMMISSIONER CENTER: Thank you.

7 MR. PULASKI: Members of the Commission, thank
8 you for your kind attention today.

9 COMMISSIONER CENTER: Is this for a video?

10 MR. PULASKI: I'm getting some extra light.

11 COMMISSIONER CENTER: Okay. Thank you.

12 MR. PULASKI: May I ask, can the people in the
13 back of the room hear? Yes?

14 COMMISSIONER CENTER: She's just running to the
15 audio-visual people now.

16 THE REPORTER: What is your name?

17 MR. PULASKI: Art Pulaski, P-u-l-a-s-k-i.

18 Testing, one, two, three. Can you hear in the
19 back?

20 Oh, good. Okay.

21 Chairman, members of the Commission, thank you.
22 Art Pulaski, California Labor Federation, joined today by
23 a panel of experts, economic analysts, a policy person,
24 representatives and advocates of low-wage workers, and

1 the real experts, one or two low-wage, minimum-wage
2 workers themselves. We appreciate your kind attention
3 today.

4 What it reads in the Code of California law, the
5 Commission's duty, it is to set a minimum wage that is,
6 quote, "adequate to supply the costs of proper living and
7 that eliminates the conditions of labor that is
8 prejudicial to the health and welfare of employees," end
9 quote. California has the highest cost of living, yet we
10 still become the lowest minimum wage on the West Coast.
11 In Oregon, they recently raised the minimum wage to \$6.50
12 per hour. In Washington State, they also, two weeks from
13 today, will begin the new minimum wage of \$6.50 an hour.
14 But more importantly, they will index that minimum wage
15 every year to the cost-of-living increases to the people
16 in the State of Washington.

17 There is no way that a reasonable person can
18 rationalize that \$5.75 per hour, California's minimum
19 wage, is not sufficient for a full-time, year-round
20 worker to live a life of health and a life of dignity.

21 You know that nearly one million California
22 workers are earning the minimum wage right now. In
23 addition to that million workers, there are two and a
24 half million more that earn \$8.00 an hour or less.

1 That's important, for two reasons. One is the federal
2 government says that \$8.00 an hour or less is below the
3 poverty level for a family. But secondly, in 1968, some
4 thirty years ago, the minimum wage was at a level that is
5 far above, in real wages, what it is now to us. And
6 there is no way -- and I'd be interested to hear any
7 argument from any person that would say, suggest that we
8 should have a lower comparable living wage today for
9 California's workers as compared to what we did for them
10 some thirty years ago.

11 Three and a half million workers in California
12 below the poverty level, below what we were thirty years
13 ago -- those are people that have jobs, that work hard,
14 and I would suggest perhaps that may even work harder
15 than you or me to make a living.

16 Let me just dispel a couple of myths about
17 minimum-wage workers.

18 The typical worker at or near the minimum wage
19 in California is an adult, not a teenager, a permanent
20 worker, not a teenager who's earning extra Christmas cash
21 or a teenager that's looking to buy a new pair of gym
22 shoes. Eighty-two percent of minimum-wage workers in
23 California are 20 years or older. Three quarters of them
24 are full-time workers, and most of them are the main

1 breadwinners of their families.

2 These hard-working Californians support every
3 industry and every community of our state. They are the
4 foundation of our economic success, and they are not
5 sharing in today's prosperity. For too many workers,
6 today's booming economy, for them, is bursting their
7 bubble.

8 We are committed to working with you to enhance
9 the desperate lives of three and a half million workers
10 in California. We rely on you to change the condition of
11 life for California workers. We urge you to take
12 seriously your charge by statute and law of the State of
13 California, and we look to a minimum wage of \$8.00 an
14 hour or greater.

15 Thank you for your kind attention.

16 (Applause)

17 COMMISSIONER CENTER: Are there any questions
18 from the Commission?

19 COMMISSIONER MCCARTHY: Yes. I have a question.

20 COMMISSIONER CENTER: We've got a nice buzz
21 here.

22 MR. PULASKI: That's the rumble of California
23 workers who are making less than \$8.00 an hour. The
24 rumble is getting louder and louder!

1 (Laughter and applause)

2 COMMISSIONER MCCARTHY: You said that your
3 target is \$8.00 or greater. Could you give us the full
4 range. What is the "greater" number that you would want?

5 MR. PULASKI: Well, commissioner, if you look at
6 the comparable wage rate of thirty years ago plus one
7 year, I believe \$1.65 an hour, at the current real-wage
8 comparison, it takes you to over \$8.04. If you figure a
9 2 percent cost of living for next year by the time you
10 get done with this, I would say that probably brings us
11 in the realm of \$8.20 an hour.

12 COMMISSIONER MCCARTHY: So, \$8.20 an hour.

13 A couple of questions here, in terms of who
14 currently receives the minimum wage. You say that
15 basically, most are adult, full-time. Would you --
16 conceivably, however, many are not. Would you find it --
17 would you agree, then, that teenagers supported by their
18 families, living at home, would you say they should be
19 exempt from this?

20 MR. PULASKI: No, sir.

21 COMMISSIONER MCCARTHY: All right. So, why not?
22 I mean --

23 MR. PULASKI: Because you'll have a situation
24 where there will be enormous competition of work by

1 breadwinners and for comparable wages for a comparable
2 kind of work. And how are you going to ask employers to
3 differentiate between teenagers and a 20-year-old
4 breadwinner? And how -- and how do you differentiate
5 between a 19-year-old who is a breadwinner for a young
6 family and a 20-year-old who is a breadwinner for a
7 family?

8 COMMISSIONER MCCARTHY: What about tipped
9 employees, many of whom, say, are waiters, waitresses? I
10 was a waiter when I was in college, and I generally
11 received far more from tips in compensation than I did
12 from my base pay. Why -- I mean, if you're basically
13 saying that -- looking at \$8.00 as compensation, why,
14 say, would you not consider excluding, say, tipped
15 employees?

16 MR. PULASKI: Simply because there ought to be a
17 base rate. It was in effect in 1968 and in all prior
18 years, when we said there's a minimum base rate for all
19 workers in the state. And it was the equivalent then of
20 what this wage would be now. And we didn't make
21 exceptions for people --

22 COMMISSIONER MCCARTHY: Well, you're saying what
23 it should be, and we don't have to consider the
24 implications of it. That doesn't make a lot of sense.

1 I'm talking about tipped employees, many of whom -- I
2 earned well beyond the minimum wage when I added my tips
3 in, as I say, as a waiter in college. And, I say, as a -
4 - so, I mean, I see a category of people here who are
5 teenagers or students, supported by their families,
6 receiving, say, in certain kinds of job classifications,
7 significantly more than that. And it's something one
8 might want to consider. That's the only point I'm
9 making.

10 MR. PULASKI: Well, that's all I would say, that
11 why should we take away from workers what they have
12 historically had?

13 COMMISSIONER MCCARTHY: Well, as I say, I'm not
14 -- I'm talking about tipped employees here.

15 MR. PULASKI: We've always given tipped
16 employees the minimum wage. So, that would take away
17 from them.

18 COMMISSIONER MCCARTHY: Let me -- one final
19 question. It's just a question out of curiosity. The
20 last raise in the minimum wage was established by --
21 primarily by the labor movement, who carried it as an
22 initiative on the ballot and did an excellent job in
23 terms of the campaign. There's no doubt about it. In
24 fact, the major figure behind that -- I saw Richard out

1 here someplace -- did an excellent job.

2 Why -- my question is, why, when labor carried
3 this as an initiative on the ballot, why did you not put
4 \$8.00 an hour on the ballot when it was being introduced
5 to the voters of the State of California?

6 MR. PULASKI: Because, sir, we knew that one day
7 we would have an enlightened Industrial Welfare
8 Commission.

9 (Laughter and applause)

10 COMMISSIONER MCCARTHY: Well, what you're really
11 saying -- what you're really saying, Mr. Pulaski, is you
12 didn't trust the voters of the State of California to
13 give you this. That's as I see it.

14 Thank you.

15 COMMISSIONER BROAD: I just wanted to add, by
16 way of clarification, that a tip credit in California is
17 illegal. And the courts have determined that the
18 Commission has no authority to establish a tip credit.
19 It's in the Labor Code and it's a settled issue.

20 COMMISSIONER CENTER: And one -- kind of more of
21 an analogy, Mr. Pulaski, to the comment about teenage
22 children living at home earning minimum wage, is that
23 much different than an elderly parent living with their
24 children that can't afford their own house that gets

1 minimum wage too?

2 MR. PULASKI: I'm sorry?

3 COMMISSIONER CENTER: Is there any difference in
4 an elderly parent living with their children that can't
5 afford to rent a house either and earns minimum wage and
6 gets less because they're living with their children?

7 MR. PULASKI: No.

8 COMMISSIONER CENTER: Thank you.

9 MR. PULASKI: If there are no other questions, I
10 thank you very much.

11 (Applause)

12 COMMISSIONER CENTER: And please, after doing
13 testimony -- it's going to be a long day -- we would ask
14 please hold the applause.

15 MS. MARIN: (Through Interpreter) Good morning.
16 My name is Maria Marin. I'm 36 years old. I have three
17 children. One of them is 13, one of them is 7, and the
18 other is 10 months old.

19 I live in (inaudible), and the reason I'm here
20 today is to tell you about a job earning minimum wage.

21 I'm a person who has worked here in California
22 for sixteen years now in many jobs, and all of them have
23 been minimum-wage jobs.

24 I understand that I should be grateful to this

1 land that gives me a lot of opportunities, but I also
2 understand that we should be earning a little bit more
3 for the hard work that we do.

4 Some of the work that I've done is I've worked
5 in hospitals, I've worked in housekeeping, I've worked in
6 warehouses, packing food, and unfortunately, a lot of
7 these jobs not only pay a low wage, but they don't have
8 the benefits needed.

9 And the reason that I'm here today is to talk
10 about myself and also everybody in -- all the people in
11 California that, with a higher wage, we could get some of
12 these benefits that we can't get, like medical insurance
13 for our kids and maybe even a better education for our
14 children so that we might not have to depend on other
15 government agencies.

16 And today I'd like to thank you for giving me
17 this opportunity, and I'd like to ask you that, for the
18 year 2000, you could think about a higher wage law for
19 California. And I personally have some goals of getting
20 -- maybe going -- getting a better career so I could earn
21 a higher wage, higher than minimum wage.

22 Thank you.

23 (Applause)

24 COMMISSIONER CENTER: Thank you.

1 Again, we'll ask you please hold your applause.

2 A question from the reporter. The spelling of
3 your name?

4 THE INTERPRETER: Maria, M-a-r-i-a, Marin,
5 M-a-r-i-n.

6 MR. BARRAGAN: Good morning.

7 COMMISSIONER CENTER: Good morning.

8 MR. BARRAGAN: My name is Orlando Barragan,
9 O-r-l-a-n-d-o, Barragan, B-a-r-r-a-g-a-n.

10 Hi. My name is Orlando Barragan. I'm 19 years
11 old, and I live in (inaudible), California.

12 I collected 7,536 signatures across the state
13 for people who want the California minimum wage to be
14 higher. These signatures are Los Angeles, Contra Costa,
15 Santa Clara, and Alameda Counties. I've been going down
16 the street talking to people who know and understand the
17 difficulty of living on minimum wage. The minimum wage
18 (inaudible), I volunteered for Californians for Justice
19 and other centers. I have seen that the majority of the
20 people with whom I had seen and spoken to have had
21 (inaudible).

22 To be able to have a job, minimum-wage workers
23 have to get -- have to get another job just to meet their
24 rent, bills, and food. They can't buy any -- they can't

1 get any clothes (inaudible). And this is (inaudible)
2 they're living in that condition. Also, when they get a
3 notice to move, they (inaudible) labor so they won't
4 (inaudible). (Inaudible) justice unless we complaint.

5 Although I'm not a minimum-wage earner, it
6 affects my community and friends. It is not about me as
7 an individual; it is about the whole community. I'm here
8 because, on a personal (inaudible), I now have a high
9 chance of being minimum wage earner, because two thirds
10 of minimum-wage earners are people of color, and half are
11 Latino. It's not just about economics earnings, it's
12 also about racial justice.

13 Today I'd like to present 7,536 signatures that
14 we at Californians for Justice collected across the
15 state. These are people who know that they cannot live
16 on minimum wage.

17 (Applause)

18 MR. BARRAGAN: Are there any questions?

19 COMMISSIONER BROAD: We need to receive his
20 signatures.

21 COMMISSIONER CENTER: Yeah. Can you give us
22 your signatures too, please?

23 MR. BARRAGAN: Sure.

24 COMMISSIONER CENTER: Christine is out, so just

1 leave them up here for a moment, please.

2 Thank you.

3 COMMISSIONER BROAD: I'll take them.

4 COMMISSIONER CENTER: Take them, Barry.

5 COMMISSIONER MCCARTHY: Or just leave them here.
6 We'll get them.

7 COMMISSIONER CENTER: Again, we ask that you be
8 brief, and if you have written testimony, just summarize
9 it. Don't read the written testimony. Provide it to us
10 and we'll read it.

11 Thank you.

12 MS. CASILLAS: Good morning. My name is Larisa
13 Casillas, and I'm a senior policy associate with Children
14 Now, which is one of California's largest public advocacy
15 organizations. And I'll try to be brief.

16 We know that in California, there are 2.2
17 million children living in poverty. That's one out of
18 four children in poverty in California. And as you know,
19 the majority of them have working parents. I'm here to
20 speak a little bit about the consequences, the lifelong
21 consequences, of poverty, which can only have
22 (inaudible).

23 But anyway, poor children are more likely to be
24 born with low birth rate, cry in infancy, and be a victim

1 of abuse and neglect. Later in life, poor children are
2 more likely to repeat a grade or drop out of school and
3 be the victim of a violent crime.

4 I wanted to share with you a comment. Last year
5 I had the pleasure of meeting with working parents
6 throughout California, and I listened to families
7 describe how (inaudible) sometimes when family members
8 are ill (inaudible) about that. And this was from
9 families that are fortunate enough to have someone to be
10 able to rely or to lean on during hard times. Families
11 make up 37 percent of homeless populations, a number that
12 has increased over the years. And I wanted to add a
13 comment that had come up while (inaudible), just to
14 illustrate how inadequate the minimum wage is for raising
15 a family and to communicate with you the quality of life
16 that parents and families are -- that poor and neglected
17 parents and families don't have.

18 And a father said, "I work from sunrise to
19 sunset. I go to work when it's dark outside and the kids
20 are in bed. When I come home from work, it's dark
21 outside and the kids are in bed. As a father, I feel
22 bad. I wish I could spend more time with my children.
23 But what can I do? They need to eat, they need to have a
24 roof over their heads, they need books."

1 For the hundreds of thousands of hard-working
2 parents in California, we need to make it more possible
3 for them to provide for their children. An increase in
4 the minimum wage is one of the many steps we need to take
5 to improve the lives of our children and, indirectly, the
6 quality of life for all Californians.

7 Thank you.

8 COMMISSIONER CENTER: Thank you.

9 (Applause)

10 COMMISSIONER CENTER: And to clarify -- please,
11 don't applaud.

12 To clarify for the speakers, this is opening of
13 the minimum wage hearings. We'll be conducting wage
14 boards throughout the state next year, so there will be
15 plenty of opportunity to testify at the wage boards too.

16 Thank you.

17 FATHER O'CONNELL: Good morning. My name is
18 Father David O'Connell -- that's O-C-o-n-n-e-l-l -- and
19 I'm pastor of a church in Los Angeles of 4,000 families,
20 most of them poor, Latino, and African-American. And I'm
21 just here this morning to speak on behalf of families in
22 my congregation.

23 One family that I want to mention is the Lara
24 family, Mr. Jose Lara works full-time, so he's not able

1 to keep the family fed because he's earning minimum wage.
2 His wife, Gloria, she has now a job with McDonald's.
3 She's only on minimum wage. She's got to be out of the
4 house from three o'clock to eleven o'clock every day,
5 five days a week. She says she's glad to work and needs
6 the wages or they would not still be able to make ends
7 meet.

8 And also, I'm worried about the effect this kind
9 of absence of workers from the family is going to have on
10 that family over the long term, where they don't have a
11 chance to play with the children, to be together as a
12 family, to read to their children, just to be by their
13 children. And this kind of story is repeated all over
14 our city and our state all the time, and I think it's
15 having a very bad effect on families.

16 Our state -- not our state, by families, just by
17 accident -- it won't happen by accident -- we have to do
18 certain things in our state, and our businesses have to
19 help, in trying to support families. The California
20 Budget Project said that two-parent families with one
21 outside parent need an annual income of \$31,250 to have a
22 modest standard of living. That's equivalent to an
23 hourly wage of \$15.00 an hour. With two parents working,
24 they need a minimum wage of at least \$10.78 an hour. The

1 single-parent family needs, for a modest living, \$17.00
2 an hour. So, we can see we're even speaking here today
3 of very low increments toward that.

4 I just want to finish off by saying that we need
5 stable families in our society. We need stable families
6 more than we need more cheap hamburgers. McDonald's gets
7 labor cheaply so they can sell their hamburgers cheaply.
8 We need stable families a lot more than we need low-
9 priced hamburgers.

10 Thank you very much.

11 COMMISSIONER CENTER: Thank you.

12 (Applause)

13 COMMISSIONER CENTER: You guys aren't paying
14 attention to the chairman here.

15 MR. GALPERN: Good morning. Thank you very
16 much. My name is Dan Galpern. I am from the California
17 Budget Project, though the previous speaker stole a
18 little bit of our thunder here. However, I'm going to
19 make a couple points and perhaps you could follow along
20 with the remarks that I just handed you that are -- I've
21 handed to you my full testimony -- before you.

22 Looking strictly to Chart 2, as you can see, the
23 typical family budget necessary for a family to make ends
24 meet that was just referred to, a full-time minimum-wage

1 worker earns less than a third of this statewide basic
2 family budget. Even when you factor in the federal
3 earned income tax credit, that family will only earn 40
4 percent of the basic family budget. Clearly, the minimum
5 wage is inadequate.

6 Second, with respect to the impact of minimum
7 wages on the wages of workers, wage and employment trends
8 in California show clearly that recent minimum wage
9 increases have indeed led to real wage gains for low-wage
10 workers, without significant job losses. As you can see
11 in Figure 3 in your packet, the increase in the minimum
12 wage arrested and reversed what was a seven-year decline
13 in its value, and in turn arrested and reversed a decade-
14 long decline in wages at the bottom of the income
15 distribution.

16 And finally, on the question of job losses
17 themselves, an examination of employment rates reveals
18 that the recent minimum wage hikes in California have
19 been accompanied by declining rates of unemployment. And
20 most significantly -- you can see this on Figure 4 -- for
21 young workers, the unemployment rate has dropped by seven
22 points since January of '96. Unemployment rates have
23 also dropped for non-white workers and for workers as a
24 whole -- this is California.

1 And with respect to industries that heavily
2 depend on low-wage workers, particularly retail trade and
3 services, again, the available data provides -- ran to
4 the opposite, about the impact of minimum wage on
5 unemployment. We saw trade employment has grown slowly
6 but steadily since 1996, and service industry employment
7 has grown moderately.

8 And this basic finding that you can have minimum
9 wage increases leading to real wage gains with no or very
10 little employment losses is consistent with several of
11 the studies that I noted in my full prepared remarks that
12 are before you.

13 To conclude, then, the weight of evidence
14 supports the point that, first, California's minimum wage
15 is entirely inadequate to support typical basic
16 expenditures of families, and secondly, that minimum wage
17 increases may have little or no disemployment effect.

18 COMMISSIONER CENTER: Any questions?

19 (No response)

20 COMMISSIONER CENTER: Thank you.

21 MS. CAMPOS: (Speaks Spanish)

22 INTERPRETER: She says, "Good morning." Her
23 name is Josefina Campos. She's been here for twenty-five
24 years in this country and she's earned minimum wage for

1 about seventeen years.

2 MS. CAMPOS: (Speaks Spanish)

3 INTERPRETER: She says she works for a company
4 called DC. She has worked for the minimum wage for ten
5 years, and she continues to earn the minimum wage,
6 although they increased the flexibility as she's been
7 with the company longer.

8 MS. CAMPOS: (Speaks Spanish)

9 INTERPRETER: She says she's supporting -- she's
10 raised four kids. She's supporting, currently, only
11 three kids and one grandchild, they doesn't get any aid
12 from the state or the county for the kids, and that she
13 works normally nowadays, sometimes 12-hour shifts. They
14 count -- they take out of the wages for a 30-cents lunch
15 break. She said it's very hot (inaudible).

16 MS. CAMPOS: *Gracias.*

17 COMMISSIONER CENTER: Questions?

18 COMMISSIONER BROAD: Does your employer supply
19 you with any benefits? Do you get, specifically, any
20 paid vacations, health insurance, dental, any insurance
21 of any sort?

22 MS. CAMPOS: No.

23 COMMISSIONER BROAD: Thank you.

24 INTERPRETER: Thank you.

1 MS. CAMPOS: (Speaks Spanish)

2 INTERPRETER: She's a member of a community
3 organization, AHOL.

4 (Applause)

5 MR. GARCIA: (Through Interpreter) Good
6 morning. My name is Maximo Garcia and I'm for an
7 increase.

8 I've been a farm worker for five years, and I've
9 always earned the minimum wage. That's \$230 a week.
10 After I discount my taxes on that, it's \$200 a week.
11 That \$800 a month, with that to pay rent, you have to pay
12 all your bills, you have to pay your transportation on
13 the bus. Another thing, I'm not including medical
14 problems. My wife got sick a few months ago, and we
15 couldn't pay some repairs. We couldn't pay for the
16 expenses with this salary.

17 The minimum wage is not enough for us. And so,
18 I think that it should be taken into account, the meaning
19 of where we are at today, that the minimum wage will not
20 meet our needs, well, basically, for any workers.

21 Most of the time, the products that we are
22 making, the things that we are working on, we can never
23 afford to buy because our salary isn't enough for us to
24 be able to pay for the products we make with our own

1 hands.

2 And we can't give the kind of education, what we
3 would like, to our children because our wives and
4 children have to work. With that salary, we can hardly
5 get even closer to our expense. Many parents have no
6 time because we're not able to be with them because we
7 have to work. The salary is not enough. And anything
8 like our medical expenses, things that we would like to
9 pay for, and healthcare, we're unable to pay for because
10 our salary is not enough.

11 Thank you.

12 (Applause)

13 MS. BREIDENBACH: Good morning. My name -- good
14 morning. My name is Jan Breidenbach, and I'm the
15 executive director of the Southern California Association
16 of Non-Profit Housing. We are a membership organization
17 dedicated to the production, preservation, and management
18 of affordable housing for low-income people. The core of
19 our membership and our leadership are community
20 development corporations, or CDCs, that are neighborhood
21 community-based nonprofits. These organizations, in this
22 region alone, have built over 30,000 units of housing in
23 the last two decades, producing thousands of jobs and
24 contributing over a billion dollars to the regional

1 economy.

2 We exist for one reason: low-income workers and
3 their families cannot afford a safe, affordable, and
4 decent place to live. In particular, households that
5 survive on one or even two minimum-wage jobs simply
6 cannot afford to rent.

7 Let me share some housing information with you.
8 California as a state and Los Angeles as a region both
9 have major affordable housing crises. The state has one
10 of the lowest home ownership rates in the nation at 55
11 percent, compared to the nation at 67 percent. Los
12 Angeles County has a 48 percent ownership rate, less than
13 half. We are clearly a region of renters because we
14 cannot afford to buy.

15 But more importantly for our concerns today is
16 the relationship of those of us who are renters and also
17 minimum-wage workers. A recently released national study
18 entitled "Out of Reach: The Gap Between Housing Costs
19 and Income of Poor People in the United States," by the
20 National Low-Income Housing Coalition, compared the
21 federal minimum wage with rental costs throughout the
22 nation. Recognizing that California's minimum wage is
23 higher than the federal, this study still found one of
24 the widest gaps in the country in this state.

1 The study also determined what would be a
2 housing wage, the hourly rate necessary to afford an
3 apartment at the fair market rent. And this is the
4 amount that the government determines, if you are
5 receiving subsidies, and it lags consistently behind
6 actual rents. Throughout the region, the California
7 minimum wage is little more than half what would be
8 required by a housing wage. Rents in Los Angeles and
9 Orange County require at least \$16.00 an hour, and San
10 Bernardino and Riverside, they go up to \$14.00 an hour.

11 Another way of looking at this same issue is to
12 calculate how many hours a week must be spent by a worker
13 to earn enough to pay the rent. The number start at
14 about 80 hours a week and continue up until there are no
15 more hours left in the weeks, clearly a fiscal
16 impossibility.

17 Further, rents tie back to wages. According to
18 Real Facts, a statewide company that quarterly tracks
19 average rents, rents in Los Angeles County are edging up
20 to about \$1,000 a month. In the city, they are over \$800
21 a month. We're talking to get an apartment here. More
22 importantly, they have increased by approximately 6
23 percent last year and are scheduled to go up another 6
24 percent the coming year.

1 So, the economic boom that has created more jobs
2 and restored real estate prices is the very boom that is
3 being lowered on low-wage workers when it comes to
4 housing. All of this situation (inaudible).

5 Los Angeles County has the highest rate of
6 overcrowding and severe overcrowding in the nation, and
7 all of California is following suit.

8 Families overpay for rent. The federal
9 definition of affordable housing is no more than 30
10 percent of income to rent. Overpayment is endemic in
11 California. A study nineteen years ago found 73 percent
12 of all low-income residents paying more than 50 percent
13 of their income to rent.

14 Families find the other affordable housing, the
15 non-subsidized apartments that actually do rent for \$300
16 a month. These units have a particular name, however.
17 They are called slums, and Los Angeles in particular has
18 an increasing number of them.

19 The numbers I've discussed here are repeated in
20 all national reviews and studies. L.A. and Orange County
21 have the highest ratio of poor families compared to
22 available low-cost units. There's four families for
23 every one available unit. The low-income houses in our
24 areas are defined by overpayment and overcrowding in

1 substandard units. The rents are increasing at the
2 quickest rate in the west, particularly in California,
3 and particularly in the Inland Empire.

4 We have a crisis on our hands, and we can deal
5 with it a number of ones. We would advocate for a two-
6 pronged effort. While we would obviously argue for
7 adequate production of rental subsidies, we believe just
8 as strongly that the minimum wage that is, in fact, a
9 living wage, and is indexed to inflation, is crucial for
10 our neighborhoods and for our moral health. For your
11 information, attached are some charts describing housing
12 statistics throughout the region.

13 Thank you for the opportunity to address you
14 this morning.

15 (Applause)

16 MS. TODASCO: Hello. My name is Ruth Todasco.
17 That's spelled T-o-d-a-s-c-o. I'm here today
18 representing the Wages for Housework Campaign and
19 affiliated groups and would like to speak in support of a
20 raise in the minimum wage.

21 Raising the minimum wage is a central issue for
22 women and children. The feminization of poverty has
23 become one of the tenets of the last decade. At least 60
24 percent of minimum-wage earners are women. The gap

1 between women's wages and men's wages has actually
2 increased during the '90's, from women making 76 cents on
3 a dollar to women making only 74 cents on the dollar.
4 The gap, of course, is even worse for black, Latina, and
5 other women of color, those most likely to be on the
6 minimum wage.

7 Many experts have expressed a view that welfare
8 reform has contributed to that widening gap. Women also
9 do two thirds of the world's work, own one percent of the
10 resources, and receive five percent of the pay. As a
11 result of welfare reform, women are now being forced out
12 of the house, often must pay another women who is making
13 minimum wage to take care of her children and do
14 childcare, while she goes out to work for minimum wage
15 and comes home to continue doing housework of all
16 varieties for no wage. In fact, many licensed, exempt
17 childcare workers are being paid by the State of
18 California below the minimum wage, \$2.20 an hour.

19 I want to point out that this work that we are
20 doing, either for free or for \$5.75 an hour, is the work
21 of raising the next generation and caring for the sick
22 and elderly, not making bombs or killing people.
23 Soldiers earn more, when you include room and board, and
24 even though they're -- even though many of them qualify

1 for food stamps.

2 Even the Republican mayor of Los Angeles,
3 Richard Riordan, has recently quoted -- was recently
4 quoted as saying, "Employees who earn under \$10.00 an
5 hour cannot lead an independent life." The inability of
6 women to earn wages that will make them and their
7 dependents -- take women -- take them out of poverty will
8 force many back into violent marriages in order to house
9 and feed their children. They will be more vulnerable to
10 rape and beatings. Others will be forced into
11 prostitution to feed their kids. At least it usually
12 pays above minimum wage.

13 Today you can give millions of women -- and as
14 you listen to this testimony, I hope you will be mindful
15 of what an awesome responsibility and what an opportunity
16 you have. The truth is that keeping the minimum wage so
17 low, coupled with the pay gap between women and men, is a
18 massive subsidy to business, large and small. Women can
19 no longer afford this to be done on the backs of women
20 and children.

21 A raise in the minimum wage would be a step in
22 the right direction.

23 Thank you.

24 (Applause)

1 MS. LEE: (Through Interpreter) Hi. My name is
2 Jung Hee Lee, and I do work for minimum wage. I have two
3 young children.

4 About three years ago, I started working at the
5 restaurants in Koreatown. During my employment, I worked
6 in a couple of restaurants. In all these restaurants, I
7 worked about 10 to 12 hours a day, six days a week,
8 receiving \$2 to \$3 an hour. Currently I make minimum
9 wage, but I barely make ends meet because it's just not
10 enough.

11 As a restaurant worker, I work 40 hours a week
12 at a rate of minimum wage of \$5.75. The worker makes
13 about \$1,000 a month. However, after taking out the tax,
14 for the family of four, the worker is left with only
15 about \$800 a month. In my case, I get \$800 a month, my
16 salary, plus with about \$700 in tips, I make my living.
17 But this is also -- and I get help from my husband's
18 salary.

19 I make my living as follows. For a babysitter,
20 I pay about \$500; for rent \$800; two car payments, \$300;
21 food, \$400; utilities, \$400; gas, about \$150; medical
22 bills, \$150 or more; and et cetera, about \$200, and
23 household supplies. And that totals about \$2,500.

24 It is very difficult for me to have a living

1 with this situation. I do not know why -- I do not know
2 what's the point of working when I get home at one
3 o'clock in the morning from my job and see my children
4 and my husband asleep.

5 After paying the rent, food, and the bills, we
6 barely survive. My co-worker, who works as a cook
7 helper, works about 12 hours a day, six days a week, and
8 makes about \$1,400 per month. Latino co-workers, who
9 work as dishwashers, get paid minimum wage. How can they
10 live on minimum wage at 40 hours a week? So, they often
11 have two jobs, morning shift in one restaurant and the
12 afternoon-evening shift at a different restaurant. I've
13 heard many stories where a Latino worker gets off at one
14 restaurant and has only about ten minutes to go to his
15 job as fast as he can to another restaurant. That only
16 leaves the worker and family with early in the morning
17 and late in the evening.

18 This is what we want. We the workers want a
19 guaranteed adequate amount of time spent at work, and
20 guaranteed an adequate amount of wage for what's done,
21 and guaranteed adequate amount of time to spend with our
22 families. In order for all these things to happen, the
23 minimum wage must go up.

24 Thank you.

1 COMMISSIONER CENTER: Thank you.

2 (Applause)

3 COMMISSIONER McCARTHY: I have a question. Some
4 weeks, do you work overtime, more than 40 hours a week?

5 THE INTERPRETER: Can you repeat?

6 COMMISSIONER McCARTHY: Yeah. Some weeks, do
7 you work overtime, more than 40 hours a week?

8 MS. LEE: (Through Interpreter) Yes.

9 COMMISSIONER McCARTHY: Do you receive time and
10 a half when you work overtime?

11 MS. LEE: (Through Interpreter) No.

12 COMMISSIONER McCARTHY: That's illegal.

13 COMMISSIONER CENTER: Talk to Roger -- the Labor
14 Commissioner is right there. He'll help you out.

15 Don't let her get out of here, Roger.

16 MS. LEE: (Through Interpreter) Usually, the
17 older schedule, the work is less than 40 hours because
18 they don't want to pay overtime. So, oftentimes it's 39
19 hours, 38 hours, so that these workers are having to work
20 two jobs.

21 COMMISSIONER McCARTHY: I see. That's okay.
22 That's different.

23 MR. ECKERT: My name is Judith Eckert,
24 E-c-k-e-r-t, and I'm a member of the United Domestic

1 Workers, and I work for IHSS, which is In-Home Supportive
2 Services.

3 I've been sitting here watching everyone, and I
4 was trying to imagine you folks up there trying to put
5 yourselves in my shoes. And at one time, I wasn't in the
6 shoes that I'm sitting in right now, and so I know that
7 it wouldn't be hard for me to imagine earning minimum
8 wage, except when I was working through high school and
9 college.

10 One of the things that came out in my
11 observations is everyone in this room is going to have
12 one thing in common: one, they were all going to get
13 old, and God forbid, one of us or all of us in this room
14 have a tragic accident or disease and gets so we become
15 paraplegic or brain-damaged. Everyone who works for IHSS
16 taking care of someone, like one of the members of your
17 home -- it could be your mother, your father, your
18 brother, your sister, or a neighbor -- and everyone in
19 this room is going to end up with one person or more in
20 their family that you're going to be responsible for,
21 making decisions as to how they're going to be cared for.

22 People with IHSS, we don't -- we receive minimum
23 wage, but we don't just put in 8 hours a day. Many of us
24 are taking care of family members -- they might be

1 comatose, they might be paraplegic -- and it's a 24-hour-
2 a-day job. At IHSS, they decide how many hours you're
3 entitled to. Even though you're up 24 hours, you might
4 only be paid for 10 or 15 or 20 hours a week. And at the
5 rate of minimum wage, it doesn't cut the bill. Whether
6 we're sick or we're well, we still have to get up and
7 turn that comatose patient every two hours, 24 hours a
8 day.

9 A lot of us might say, "Well, why don't we
10 institutionalize them?" But I know a lot of us in this
11 room are like that, we'd rather have someone take care of
12 us at home.

13 On minimum wage, more and more people nowadays
14 are needing in-home care, and we're finding it's a lot
15 cheaper to have people take care of us at home than it is
16 to take care of us in a convalescent home that costs over
17 \$15,000 a month.

18 But none of these people in this room that are
19 working for minimum wage, whether they're waitresses,
20 whether they're in-home care services, or whether they're
21 laborers, they're all sure of one thing that all of us up
22 here have, and that's to have a life with dignity and
23 respect. And when they're earning minimum wage, they
24 can't have that. Their children aren't having good meals

1 at home. They don't have their family at home to help
2 take care of them because mom and dad are working around
3 the clock, whether it's in your home or whether it's
4 someplace else. And those children need to have their
5 parents also.

6 But they need money to do this. They need money
7 to pay for their medical bills. They need money for
8 food. And if we don't tie these people to a life that's
9 (inaudible) -- in my case, I lost a special job -- I was
10 never making minimum wage since high school. I lost
11 many-thousand-dollar-a-year jobs because my son's in a
12 coma and my daughter has (inaudible). I work 24 hours a
13 day. I work for In-Home Support Services, and I can't
14 get another job right now. I had five surgeries just to
15 take care of my children, and the five surgeries were
16 physical surgeries, my hands and my arms and my elbows,
17 from lifting 121 pounds. And I'm saying these people --
18 \$8.00 an hour isn't even enough. I know what I used to
19 need to buy when I was making a regular job, when I was
20 in a regular job. Even \$15.00 an hour is more like what
21 people need to live a good life. Money and a good life
22 (inaudible).

23 I don't have anything more to say, but I
24 understand these people, neighbors, make at least \$10.00

1 an hour, and these people put their hearts into a lot of
2 work. When you pay wages and tips, they might make a
3 tip, but that doesn't mean that everyone in this room
4 pays the minimum tip of 15 percent. You know, how many
5 of us walk away and just throw a dollar on the table, no
6 matter how much we paid. And these folks work a lot.

7 And I've got a waitress that I -- I know there's
8 lots of people who don't pay a lot of tips, even though
9 you think of them as giving out their tips. Most of them
10 live off tips when they're in college, but you can't
11 (inaudible).

12 Anyway, that's what I have to say.

13 (Applause)

14 MS. LYLES: Good morning. My name is Carol
15 Lyles, L-y-l-e-s. I'm a Los Angeles County homecare
16 worker. I've been a minimum-wage earner most of my adult
17 life. I'm part of the group of workers, SEIU 434B, 7,400
18 strong, who are basically working to establish a formula.
19 The work we provide through our procurement and
20 assistance saves the state millions of dollars annually.
21 Those savings should be passed to providers who do not
22 get employee benefits such as medical and dental
23 insurance. They should be employed as the source.

24 The minimum wage increase would allow any worker

1 to get the medical and dental insurance and protection he
2 needs.

3 In closing, I would like to invite each and
4 every one of you on the panel to become a homecare worker
5 or a minimum-wage worker for at least one day.

6 (Applause)

7 COMMISSIONER CENTER: Thank you.

8 MR. PULASKI: Mr. Chairman, members of the
9 Commission, thank you again for your kind indulgence. I
10 want to thank the panel for their taking their time to
11 join us today and give their testimony to all of you.

12 With your indulgence, I understand that
13 Assemblyman Wally Knox is in the back of the room, has
14 arrived, and needs to catch a plane to go elsewhere. He
15 is the chief author of AB 60, the daily overtime bill,
16 which you are taking in front of you now. So, with your
17 permission, I'd like to acknowledge and invite the
18 Assemblyman to come forward.

19 COMMISSIONER CENTER: Thank you.

20 MR. PULASKI: Assembly Member Wally Knox.

21 (Applause)

22 ASSEMBLYMAN KNOX: Thank you very much, Chair
23 Center, commissioners, and working people gathered here
24 today. I want to thank you for allowing me to go out of

1 order and to briefly address you on the subject matter
2 you'll be dealing with later in the day, that is, the 8-
3 hour day issue. And in particular, I want to thank those
4 people who are here today to testify on the minimum wage
5 for granting me the courtesy of going out of order to
6 address this other issue that's of major concern to every
7 working person in the State of California.

8 I did not come to give a speech. I came to
9 briefly comment on two aspects of the bill. So, this
10 will not be rhetorical at all; I've simply come to
11 present information to this Commission regarding two of
12 the issues that I know you will be grappling with, with
13 regard to the 8-hour day. Very briefly, those two issues
14 are: Was AB 60 intended to cover the construction
15 industry? And the second issue pertains to the aspect of
16 the bill that deals with the healthcare industry and
17 nursing in particular.

18 Here's why I came today. I came to tell you the
19 author's intent. The author's intent was very simple.
20 The bill was intended to cover the construction industry
21 in the State of California. That was the intent of the
22 bill from the beginning. It remains so through the final
23 signature of the Governor. And it's my joy to be here as
24 author of the bill to present that information to you.

1 If you have questions in that regard, I'd be happy to
2 respond to them.

3 The second reason I'm here today is to bring you
4 information that has nothing to do with my intent or
5 anyone's intent. It's information that I'm reluctant to
6 bring you. It's discouraging news. And that is this:
7 it has come to my attention, and I've been able to
8 confirm, that a small number, but a significantly large
9 minority number, of healthcare institutions are engaged
10 in aggressively slashing base pay for nursing employees
11 in anticipation of the January 1st implementation date of
12 AB 60. It is astonishing that these actions would be
13 taking place at this particular moment in time,
14 astonishing that during the holiday season people's base
15 pay rates would be cut. And as author of the bill, I
16 have to say it is astonishing and of dubious legality --
17 at best, dubious legality -- for persons' base pay to be
18 cut expressly in anticipation of the implementation date
19 of a bill, the policy of which is to foster good pay for
20 employees. That flies in the face of the fundamental
21 policy of the bill itself.

22 It's important for me to bring this information
23 to you today.

24 Chairman Center, I have written you a somewhat

1 lengthier letter on this topic.

2 And I thought that it was imperative for me to
3 come here and provide a sense of that to you for your
4 consideration. It's something that the State of
5 California needs to pay attention to.

6 We've worked hard on this measure. I believe
7 it's a workable measure. And it's clear to everyone who
8 worked on the measure that we reached out to the
9 healthcare community to draw them into one of the more
10 complex aspects of the negotiations of the measure, how
11 to handle overtime issues in the healthcare industry. We
12 asked the industry, "Put your concerns on the table," and
13 they did. And we believe we dealt with the concerns
14 honorably.

15 To now found a few dissident organizations
16 attempting to end-run the fundamental policy of the bill,
17 to the detriment of their own employees, during a holiday
18 season, is astonishing. I'm sorry to have to bring you
19 that information, but I think it is my duty.

20 COMMISSIONER CENTER: Mr. Knox, I have a
21 question. You mentioned the construction industry, but
22 if you read the bill, it says "any work." So, effective
23 January 1, it says "any work" is covered under daily
24 overtime. There's also other industries that were

1 considered exempt but never formally exempted by the IWC
2 -- that would be mining, oil drilling, and logging.

3 Wouldn't they also be covered, effective January 1st too?

4 ASSEMBLYMAN KNOX: Yes, I believe so.

5 COMMISSIONER CENTER: Thank you.

6 ASSEMBLYMAN KNOX: The level of controversy is
7 not as high as you might perceive. That's why I took it
8 upon myself to point to that. Believe me, as you well
9 know, there are a host of other issues as well. And if
10 we had six hours, we could go over them. But I thought
11 I'd limit my comments.

12 COMMISSIONER CENTER: Yeah. We've been going
13 over them a lot, so --

14 ASSEMBLYMAN KNOX: I've worked on the bill for a
15 while, and I do have to say, as far as what you've heard,
16 that was a great committee sitting in front of Dan
17 Galpern, who was the lead staff person on this
18 legislation, everyone who worked on the legislation knows
19 him by first name and knows him for his hard work.

20 COMMISSIONER CENTER: Thank you.

21 Any questions?

22 COMMISSIONER DOMBROWSKI: Yeah. Assemblyman
23 Knox, just -- I, for one, was kind of blindsided by this
24 construction industry issue when it came up. I didn't

1 think it was --

2 AUDIENCE MEMBERS: (Not using microphone) Can't
3 hear you!

4 COMMISSIONER DOMBROWSKI: Can you explain why
5 there's this confusion? I'm still trying to sort it out.

6 ASSEMBLYMAN KNOX: I can give you my impression,
7 Mr. Dombrowski. It's my impression that the confusion
8 may arise because there was relatively little discussion
9 of the issue in the course of the bill. And at the same
10 time, the bill had vigorous discussions about how should
11 we handle the nursing issue, and literally twenty other
12 issues were wrestled with vigorously. At no point during
13 the legislation, it's my recollection, did the
14 construction industry begin to raise cares and concerns
15 about particular drafting of the bill. For that reason,
16 that whole aspect of the bill simply was not -- it wasn't
17 even discussed. And I believe that may have led some
18 folks to misunderstand it. That's my take, more of a
19 psychological interpretation than a legal interpretation.

20 COMMISSIONER CENTER: Thank you, Mr. Knox.

21 ASSEMBLYMAN KNOX: I want to again thank you for
22 your courtesies, and in particular, I want to go out of
23 my way to thank everyone that came here to testify on
24 minimum wage for their courtesy in allowing me to address

1 this other important issue.

2 Thank you.

3 (Applause)

4 COMMISSIONER CENTER: Do we have any other
5 people who want to testify in favor of raising the
6 minimum wage?

7 Why don't we just have a showing of hands?

8 People in favor of raising the minimum wage, can
9 you just --

10 (Show of hands)

11 AUDIENCE MEMBER: (Not using microphone) Can
12 you repeat that?

13 COMMISSIONER CENTER: People that are in favor
14 of raising minimum wage?

15 Okay. Thank you.

16 People opposed?

17 (Show of hands)

18 COMMISSIONER CENTER: Oh, boy. We have some
19 speakers, I guess. But we have to have some -- this is
20 going to take a little while, but we will conduct
21 hearings and we'll see where it goes.

22 But thank you very much for the testimony.

23 (Applause)

24 COMMISSIONER CENTER: I think we have some -- a

1 number of employer groups that would like to come up and
2 testify about the minimum wage. Can you come up as a
3 panel and sit in the front row?

4 (Pause)

5 COMMISSIONER CENTER: I've got a sign-up list.
6 Do you want me to go by the sign-up list?

7 Okay. I want you guys -- work it out. Okay.

8 (Pause)

9 MR. ROSS: Yeah, Mr. Center and commissioners,
10 my name is Jon Ross. I'm here today on behalf of the
11 California Restaurant Association. I'll limit my remarks
12 today the adequacy of the current minimum wage.

13 With me is Ted Burke, of the Shadowbrook
14 Restaurant in Santa Cruz, who will speak after me for a
15 moment on how he, as one restaurant operator, has
16 adjusted to the near 35 percent increase in the minimum
17 wage that's occurred in the course of the past few years.

18 We've distributed written remarks to you. Also,
19 I've got a couple of charts. I'm going to truncate my
20 remarks here in the interests of time.

21 First, I'd like to take a moment to review the
22 standard that has been employed over the years to
23 determine whether the state minimum wage is adequate. As
24 I hope my comments will demonstrate, based on the

1 traditional standard employed to determine adequacy by
2 this Commission, and most recently by the people of
3 California when they passed the Living Wage Act of 1996,
4 it's our conclusion that a minimum wage increase at this
5 time would be premature.

6 That said, we stand ready to help you in your
7 deliberations and want to work with you to address the
8 many important and valid policy considerations that were
9 raised earlier this morning by the earlier panelists.

10 As was stated earlier, the California Labor Code
11 requires you to review whether wages paid to employees
12 may be inadequate to supply the costs of proper living.
13 That standard has guided this Commission's deliberations
14 since 1913. We believe, therefore, that the best measure
15 of the adequacy of the current minimum wage is determined
16 best by looking at how the standard has been applied over
17 time and how the current minimum wage compares to the
18 implementation of the standard over that period.

19 First, in our review, we looked at the historic
20 average of the state minimum wage. Where perhaps we
21 differ from the panel that you heard from first this
22 morning that spoke about the minimum wage that existed in
23 1968, which was an all-time historic high, what we have
24 done is we've looked at the minimum wage in every year

1 since 1956, adjusted that minimum wage for inflation to
2 real dollars, and come up with what the average minimum
3 wage has been in the state, adjusted for inflation, in
4 today's dollars.

5 That number, as the chart demonstrated, is
6 roughly \$5.85, adjusted for inflation, in real-time
7 dollars. And that number presumably was reached over the
8 years by looking at the standard test you're looking at
9 and coming to a conclusion as to what was adequate.

10 Second, we looked at how this panel construed
11 adequacy when it was last charged with that review, or
12 determining whether or not the minimum was. In 1988, the
13 IWC adopted a minimum wage of \$4.25. That minimum wage,
14 deemed adequate by this body then, adjusted for
15 inflation, today would equal approximately \$5.67.

16 Finally, as noted earlier, the people of the
17 state, in 1996, were asked to establish a minimum wage
18 that was sufficient to raise people out of poverty and
19 provide proper living to people of the state. The people
20 of the state in 1996 concluded that as of March 1, 1998,
21 that level was \$5.75. In our view, a substantial
22 departure from that level set by the people three years
23 ago to the level we hear this morning, in the \$8.00
24 range, would necessarily involve a reformulation of the

1 policy considerations that underlie what is adequate.
2 And while we can all have a debate about what should and
3 shouldn't be the necessary -- or the appropriate
4 considerations, as I suspect will happen in the course of
5 the next few months, I would certainly argue that
6 employing the considerations that this Commission and
7 others have looked at over the period of the last 43
8 years, you'd reach a far different conclusion.

9 Finally, before I turn it over to Ted, two more
10 points.

11 Is it the appropriate time now to increase the
12 minimum wage? In 1998 when the minimum wage was last
13 raised by this Commission, the wage in effect at that
14 time was \$3.35. It was better than 26 percent less than
15 the then-average minimum wage historically at that point,
16 a far greater gap, certainly, than exists today between
17 the current wage of \$5.75 and the average historical rate
18 of \$5.85.

19 When the people moved in 1996 to raise the
20 minimum wage, they were acting at a time when the minimum
21 wage was at a four-year low. We don't face nearly the
22 same circumstance today. Again, the \$5.75 was
23 established as an appropriate wage in March of '98, and
24 it's been a very short time since that period.

1 A final point, and then I'll conclude. You
2 heard some testimony today about the effect of raising
3 the minimum wage on jobs, and it was asserted that the
4 increase in the minimum wage over the last few years has
5 not resulted in job loss, and, in fact, there's been job
6 growth over that period. That's true. But we think that
7 that's a rather limited statement. If you look at -- we
8 provided a chart -- where the job growth has occurred,
9 it's been very uneven. While we've seen a huge job
10 growth in various sectors of the economy, the job growth
11 in the retail, restaurant, and other sectors that employ
12 historically more minimum-wage or entry-level workers has
13 risen at a rate, job growth rate, far below the state
14 average job growth in that time. So, while we've had an
15 increase in the economy, an increase in jobs generally,
16 the effect on these sectors of the economy, we think, has
17 been dampened to a great extent by the 35 percent
18 increase in the wage levels when you look back over that
19 period.

20 With that, unless there are questions, I'd like
21 to turn it over to Mr. Ted Burke.

22 COMMISSIONER MCCARTHY: I'd like to make a
23 comment, in light of some of the remarks you said. Let
24 me

1 -- by way of background here, I guess I've earned the
2 reputation over the years on this Commission as being
3 someone who's, above everything else, I think, committed
4 to the processes of our political system, our democratic
5 system. And sooner or later down the line, I seem to
6 have antagonized everyone, which told me I thought I was
7 doing a pretty good job.

8 And specifically, some time ago, I'd say, I
9 objected and voted against altering the laws with regard
10 to overtime, on the basis that since a vote had been
11 introduced into the Assembly and the Legislature and they
12 had voted against repealing our overtime laws, I thought
13 it was extremely arrogant, you know, on the part of the
14 Commission, among other things, to have an end run around
15 the will of the Legislature, which is clearly superior in
16 our political system to this Commission.

17 I mention that by way of background, because it
18 raises, I think, a much more important issue with regard
19 to the overtime issue. And that's that we had a public
20 initiative, where the voters of this state, okay, voted
21 on a measure that was largely introduced and proposed by
22 labor as a living wage at the current level. And the
23 voters of that state overwhelmingly indicated not only
24 that they supported that, but that, obviously,

1 implicitly, they had the right in that situation to set
2 the minimum wage.

3 And what we are in the process of doing is
4 taking a position here where, while the voters of the
5 state were useful for the time being, now they're
6 inconvenient, so what we're going to do is essentially
7 take an end run around something that was passed just a
8 few -- few years ago. And I think this is a rather grave
9 situation.

10 Now, some people will say it doesn't appear that
11 way at all. But let me ask you this. If today we were
12 considering or beginning to consider lowering the minimum
13 wage below what the voters of the state had established
14 just a few years ago, I'm sure, as you are, that all hell
15 would break out and we would be accused of usurping the
16 power of the voters of this state. However, since we
17 want -- since some want to go in the opposite direction,
18 I'm sure you will never hear that argument from that side
19 of the thing.

20 And I just -- as I say, I'm not here at this
21 point to argue what is the proper wage or not, but rather
22 to introduce what I think is a very serious issue, that
23 since we took the extraordinary step as a state to bring
24 this issue, not before the Commission, but before the

1 voters, recently to do so, all right, and now to
2 basically exclude the voters and the will of the voters
3 from the decision that was made, I think this bears some
4 attention and some concerns.

5 And that's -- that's just an observation I want
6 to make. And as I say, it's a very serious consequence,
7 not in this day and age when we do whatever it takes to
8 get whatever we want, but I think, in the greater scheme
9 of things, I do think it's a very serious issue.

10 Anyways --

11 (Applause)

12 COMMISSIONER CENTER: Go ahead, Barry.

13 COMMISSIONER BROAD: First a comment. If you
14 actually read the initiative, what it says is that the
15 Industrial Welfare Commission shall have a minimum wage
16 of "no less than \$5.75 an hour." So, the voters have
17 made it quite clear that we have the power to raise it.
18 It wasn't setting the level of the minimum wage for all
19 time.

20 And I, having been one of the people that
21 drafted that initiative, I -- it was very clear in my
22 mind what we were doing at that time and presenting to
23 the people of the State of California. That was raising
24 the minimum wage to a level that would be adequate for

1 the time covered by the initiative, but not forever and
2 for all time.

3 Let me ask you this question, Mr. Ross. In the
4 period of 1913 to the present, has the California
5 Restaurant Association ever supported an increase of the
6 minimum wage?

7 (Laughter)

8 MR. ROSS: I can speak to the period for which
9 I've been involved with the Restaurant Association, which
10 is two years. And recently, that I know, they have not.

11 COMMISSIONER BROAD: Okay. So, then -- okay.
12 So, if we go back historically, that they've opposed the
13 initiative, they opposed increases in the minimum wage
14 before this Commission, that means they had some idea of
15 what the minimum wage ought to be. And how far do we go
16 back before we figure out what the Restaurant Association
17 thinks is the proper minimum wage? 25 cents and hour?

18 MR. ROSS: Certainly not. And, Mr. Broad, my
19 comments here today are -- one is an adequate wage now
20 and an adequate wage as the statute defines it. And I
21 suppose the position of the Association in the past has
22 been based on their view of adequacy at that time. But
23 currently, given the history of the last few years and
24 the wage over time -- excuse me -- the wage today is much

1 closer to the historic sense of adequacy.

2 Second, just to clarify, we don't question the
3 authority of this body to raise the minimum wage. That's
4 not the point of our -- of my testimony, nor would I say
5 it would be inconsistent with the will of the people for
6 this body to take some action. Clearly you have the
7 statutory ability to do that.

8 What I'm trying to suggest is that there are
9 certain policy considerations inherent in what the people
10 did and in what the IWC has done over time when reaching
11 conclusions of adequacy, and that a substantial departure
12 from where the people arrived at their conclusion in 1996
13 would certainly involve a different menu of policy
14 considerations than that have been historically employed.

15 COMMISSIONER BROAD: Thank you.

16 COMMISSIONER MCCARTHY: Just a quick rejoinder,
17 if I may. With regard to the initiative, my colleague
18 and friend here and I disagree. I think that the fact of
19 the matter is, whatever the legal argumentation that's
20 presented is, that the level that was put in the
21 initiative was not \$8.00 an hour, and the reason that
22 labor did not put \$8.00 an hour into that initiative is
23 because they knew damn well the voters of the State of
24 California would not approve it. And whatever else one

1 might want to say, I think that I would say that's pretty
2 clear.

3 And as far as our authority, of course we have
4 the legal authority, and of course the initiative didn't
5 mean to tie our hands, as Mr. Broad says, forever. But
6 1996 today is not forever. We're talking about very
7 recent history, with a small, but very small, change in
8 the cost of living.

9 COMMISSIONER CENTER: I'm on here as another
10 labor appointee. Barry's the smart one, so I had to get
11 down to basics to understand things.

12 I used to, when I -- in 1968, I think I was
13 working at a Taco Bell in Long Beach, and I don't know
14 what the minimum wage was -- it was a dollar and
15 something -- but I remember the cost of the taco was 19
16 cents. That's how much -- could you give me a chart and
17 a price of -- what the minimum wage is now compared to
18 the cost of the taco at Taco Bell, by the next hearing?

19 MR. ROSS: Certainly.

20 COMMISSIONER CENTER: To me, that's a basic
21 understanding.

22 MR. ROSS: But I think, inherent in what we've
23 done, we've tried to adjust wages in '68 to the present
24 and wages in '56 to the present, counting changes in

1 things like the increase in the price of the taco.

2 COMMISSIONER CENTER: Yeah. Well, that's how
3 much things cost. And that's basic stuff. I'd like to
4 have that information if I can get it.

5 MR. ROSS: Can I introduce briefly Ted Burke?
6 Ted is with the Restaurant Association and owns a
7 restaurant in Santa Cruz and, I think, would like to
8 share his perspective on how the minimum wage works in
9 practice.

10 MR. BURKE: Good morning, Chairman Center and
11 commissioners. As Jon Ross introduced me, my name is Ted
12 Burke, and I'm a restaurateur from northern California,
13 the Santa Cruz area. And I've traveled some distance
14 today because changing the current minimum wage, or the
15 starting wage, as I like to call it, is that my important
16 to my ability to operate my restaurant in a manner that
17 truly provides a net benefit to my employees.

18 You just heard, and you will hear, some good
19 arguments today, by representatives of the California
20 Restaurant Association and others, to move slowly in
21 modifying California's current minimum wage. Of course,
22 as a restaurant employer, one might say I am biased.
23 However, I truly believe that any disinterested third
24 party that reviews carefully CRA's testimony would find

1 their arguments compelling. I urge you to be that
2 noninterested or nonbiased third party and find that
3 after California voters increased the minimum wage 35
4 percent over 18 months, there needs to be a compensating
5 period of time for an employer to absorb such an increase
6 before it's modified again.

7 But beyond the legal arguments and beyond all
8 the statistical information that CRA and others on both
9 sides have offered, let me briefly tell you about the
10 effect on my business from changing the starting way.

11 As background, I am an independent restaurant
12 operator. My partner and I have worked in the restaurant
13 industry for nearly thirty years. I started out as a
14 part-time food server the summer after graduating from
15 college, having completed my military service. I was on
16 my way to graduate school that summer, and I was paid a
17 dollar an hour after the modest in meal prices available
18 then. I had never before worked in a restaurant. I soon
19 found that I was earning so much in tips that summer that
20 I postponed studies for a semester in order to build a
21 financial nest egg sufficiently large enough that I
22 wouldn't have to work while attending graduate school.

23 In the months following that summer, I fell in
24 love with the restaurant industry. I was asked to accept

1 a manager position, and I did. I have never left
2 Shadowbrook, where I ended up buying the business in
3 1978.

4 And why am I telling you all this? First, to
5 let you know that minimum wage is just a starting wage.
6 There is so much opportunity for those who start out
7 inexperienced but work hard in this industry to succeed,
8 to get promoted, to become supervisors, managers, and
9 even owners. It happens all the time.

10 Charles Halliday worked as a minimum-wage food
11 server and later as manager at Shadowbrook. Today he is
12 president of the Florida Hotel and Restaurant School in
13 West Palm Beach.

14 Greg Alexander was a busboy earning minimum wage
15 at Shadowbrook, and later assistant manager. Today he is
16 the new owner of a three-restaurant chain in Mammoth
17 Lakes.

18 Bob Montague worked at Shadowbrook and earned
19 minimum wage. Today he is the chef-owner of Café Sparrow
20 in Napa.

21 There are many, many other stories about people
22 who began at the lowest rung and quickly moved up the
23 economic ladder. Every single individual who holds a
24 supervisory or management position at Shadowbrook today

1 started out earning minimum wage.

2 However, just as it was when I was hired, there
3 needs to be an economic environment that encourages and
4 allows employers to hire people that unskilled and then
5 provide some training. Regrettably, one of the most
6 significant responses to the last increase in minimum
7 wage has been a reluctance to hire and invest in people
8 that are unskilled. We can no longer afford to take the
9 chance with unskilled or inexperienced workers that my
10 employer took when he hired me, and that I took when I
11 hired Greg and Charles and Bob. It's just way too
12 expensive now to risk hiring an inexperienced worker.
13 Instead, in recent years we reluctantly tell promising
14 workers to come back after they get more work experience.

15 When the minimum wage burden has less an
16 economic impact than it does not, we can afford to take
17 some chances in hiring inexperienced workers, but not any
18 more.

19 There are some who would say, "Well, just raise
20 your prices," as though that simple action would solve
21 the economic squeeze that results from large mandated
22 wage adjustments. I often find myself asking in
23 response, "Don't these people realize that if I could
24 raise my prices higher and find that the public would

1 just go along with them, that I would have already done
2 that?" The reason that prices are where they are is
3 because they were as high as they can go before the
4 public starts finding alternative places to go, such as
5 lower cost, less service restaurants, or even take-home
6 meals from high-end grocery stores. And when that
7 happens, job numbers go down, work hours diminish, and my
8 contributions to my community, in the form of taxes and
9 charitable giving, shrink.

10 Commissioners, there are real consequences to
11 raising starting wages beyond levels that are affordable.
12 I couldn't raise my menu prices 35 percent in eighteen
13 months to compensate for the last increase. Instead, we
14 now close one half-hour earlier every night of the week.
15 We reduced our kitchen payroll by restructuring our menu
16 to replace labor-intensive items with those that require
17 very little time to prepare. And we now serve lunch in
18 our lounge during the day with a limited menu and three
19 employees rather than with an extensive menu and full-
20 service staff in the dining room.

21 For business to continue having the type of
22 worker the minimum wage was meant to hire, and for
23 employees to find first-time work and get sufficient
24 amounts of it, we need to let some time go by after the

1 huge increase of 35 percent.

2 I would hope that I could again be able to
3 imitate my hiring experience by having the opportunity to
4 hire inexperienced and unskilled youth at a starting wage
5 that is affordable, that allows for training, and
6 provides an opportunity for everyone to succeed.

7 Thank you very much for listening.

8 COMMISSIONER CENTER: Thank you.

9 Any questions?

10 (No response)

11 COMMISSIONER CENTER: Thank you.

12 (Applause)

13 COMMISSIONER CENTER: You guys got -- I've got a
14 list. You want to go by the list? All right. I'll go
15 by the list. That way, somebody won't get mad at me --
16 unless you're ready, Julie.

17 MS. BROYLES: (Not using microphone) Not yet.

18 COMMISSIONER CENTER: Okay.

19 MR. ALBA: Hi. Good morning, everybody -- or
20 afternoon.

21 I want to say a little bit about myself --

22 MS. BROYLES: (Not using microphone) Jamie,
23 your name.

24 COMMISSIONER CENTER: Name?

1 MR. ALBA: I'm sorry. Jamie Alba, A-l-b-a.

2 COMMISSIONER MCCARTHY: You might pull the mike
3 in a little closer.

4 MR. ALBA: Is that --

5 COMMISSIONER MCCARTHY: Yeah.

6 MR. ALBA: Okay.

7 I was a busboy for many years. I was a waiter
8 for many years, and a manager for many years. I now own
9 two restaurants and I have about 300 employees.

10 Now, what I want you to know is, is that the
11 busboys, the waiters are not --

12 AUDIENCE MEMBER: (Not using microphone) Speak
13 into the mike!

14 AUDIENCE MEMBER: (Not using microphone) Can't
15 hear.

16 COMMISSIONER CENTER: Speak into the microphone.

17 MR. ALBA: Sorry.

18 The busboys and the waiters who work at our
19 stores are not minimum-wage employees. The busboys make
20 between \$10 and \$12 an hour, and the waiters make between
21 \$20 and \$40 an hour. I think the people who are here are
22 mostly restaurant people because we're the ones who are
23 most adversely affected by increasing minimum wage
24 because we, in essence, pay a minimum wage, yet we pay

1 taxes on it, tips as well. So, these people are, in
2 fact, not minimum-wage employees.

3 I have nine minimum-wage employees. The reason
4 -- the nine happen to be dishwashers. These people, at
5 this point, don't speak any English and are starting at
6 the bottom to work their way up. Most of the
7 dishwashers, we try to bring them in as prep people, and
8 then we try to put them on the hot line and cold line as
9 we move them up. It's a solid wage for these people.

10 What I want to tell you is, is when I was a
11 busboy, I supported myself. When I became a waiter, I
12 supported my wife and my children. As a manager, I did
13 the same. And obviously, as an owner, I do that as well.

14 Interestingly enough, today we cannot find the
15 people to hire and pay \$7 or \$8 an hour to, because
16 there's people -- the people out there are not trained to
17 do much within our industry. And so, we need to bring
18 them in, cultivate them, train them, and bring them up.

19 But the people who work the front of the house,
20 which is approximately 70 percent of the people, are
21 minimum-wage employees on one hand, and tipped employees
22 on the other hand. So, they're making a substantial
23 amount more than minimum wage.

24 And I don't know other industries, and I can't

1 speak for other industries. I can only speak for the
2 restaurant industry. We have gotten eaten up over the
3 last seven or eight years. And as the gentleman before
4 me spoke, it's true, you can't raise your prices 35
5 percent. But we're increasing -- we've gotten -- we've
6 had to pay 35 percent more than the minimum wage. And
7 for the front of the house, it's ridiculous. It really
8 is. There's nobody who's a minimum-wage employee. I
9 know I've said this three or four times, but I'm saying
10 it even one more time before I finish. They're making
11 \$20 to \$40 an hour, and they work anywhere from 20 to 35,
12 40 hours a week. So, for that, a raise is -- it's unfair
13 to our industry.

14 That's all I really wanted to say. Would anyone
15 like to ask me any questions?

16 COMMISSIONER CENTER: Thank you.

17 We have -- do you want to go first, Julie, for
18 the Chamber people?

19 MS. BROYLES: Good afternoon, Mr. Chairman,
20 members. If I can find the microphone here, I'm Julianne
21 Broyles, with the California Chamber of Commerce, and I'm
22 very pleased to be able to talk to you today.

23 The minimum wage is an issue of concern to
24 certainly a significant number of small businesses in

1 California. And I'm not here today in opposition or in
2 support, but to add some points for you to consider as
3 you deliberate these very important issues.

4 The minimum wage in California certainly, as
5 it's been discussed by other speakers, is where people
6 with no skills start their career, for the most part.
7 And as they gain skills, as different research that we
8 will be submitting to the Commission as part of our
9 comments, indicates, 40 percent of them are earning
10 substantially more than the minimum wage after just the
11 first four months, and almost 60 percent are earning even
12 higher amounts by end of their first year as their skill
13 base goes up.

14 Some other issues that don't seem to get
15 mentioned very often is the issue of what the minimum
16 wage has as an impact on other parts of a business'
17 operation. Now, I remember the last time this whole
18 issue was being discussed by the Commission, and I got a
19 call from a reporter. It was a young reporter from the
20 Los Angeles going, "I am very upset. I just came back
21 from getting a cup of coffee next door and I felt I just
22 had to call someone who was involved in the minimum wage
23 process to complain about it." And I said, "Well, what
24 is the issue?" She said, "Well, there's a notice on the

1 front of this shop saying that as a result of the
2 increase in the minimum wage, that they were raising
3 their menu across the board by about 4 or 5 percent" -- I
4 don't think it was any higher than five. And she said,
5 "I want to know, isn't it illegal for an employer to pass
6 on the minimum wage increase to their customers?"

7 (Laughter)

8 MS. BROYLES: I said, "No, it's not. It's what
9 normally happens." And anyplace where an employer can't
10 or a business can't, the reason it costs you money is
11 producing your product or your service usually is passed
12 on to the consumer. And that's rather a vicious cycle
13 that you see ensue. You have the minimum-wage worker
14 who's saying, "I'm not making enough now to make ends
15 meet; therefore, the minimum wage should be increased."
16 If the minimum wage is increased, then the business then
17 raises the prices of whatever they're doing to -- you
18 know, for their product or their service, and then that
19 minimum-wage worker then, of course, is going to be
20 paying more for that product or service, therefore
21 necessitating yet another increase in the minimum wage.
22 So, you do have a cyclic effect as a result.

23 But other ways that minimum wage impacts a
24 business is possibly -- and it's something that I have

1 researched before -- the workers' compensation insurance
2 premium price, in that for every 25 cents, on average,
3 that the minimum wage goes up, you have about a \$30-
4 million increase on the workers' comp premiums throughout
5 the state, overall, on average, because as business
6 people know, your workers' compensation insurance is
7 first calculated on the size of your payroll. If the
8 payroll goes up, there's a -- as a -- and we calculated
9 this -- of course, that's with a
10 -- certain number of employers who probably have minimum-
11 wage workers as a significant part of their workforce.
12 You can see how the increase really can add up, how you
13 have just a -- you know, at the very beginning of this,
14 there was talk about an \$8.50 increase -- you're looking
15 about a \$750-million increase in workers' comp rates
16 across the board, just with what they're discussing as
17 their number.

18 And, again, that's probably not what's going to
19 be the prime issue for this board, but certainly that
20 should give you some food for thought.

21 Some other issues that you may want to consider
22 is what California is right now. Now, these are numbers
23 either from the Bureau of Economic Analysis in
24 Washington, D.C., that advises the White House on the

1 condition of the economy, or from the Bureau of Census.

2 And these are all from 1998 and 1999 numbers.

3 An issue that -- some of the numbers that you
4 might find of interest, but per capita income, on
5 average, in California, is \$27,503. That puts us about
6 thirteenth in the rank of all the states in terms of per
7 capita income. But you have to think about what we also
8 do in per capita taxes. Per capita taxes, we are number
9 four in the country, and we are number two in the country
10 with the escalation of taxes over just the last year.
11 Taxes went up in California over a year -- from a year
12 ago to now by 6.6 percent. From where they were in per
13 capita taxes, they've gone up 11.4 percent overall.

14 Additionally, when you look at these numbers,
15 you have to think there are other ways to make California
16 an affordable place for people to work and leave. And
17 that's really what you have an obligation as a
18 Commission, because you're supposed to look at what makes
19 California affordable for everyone, not just minimum-wage
20 workers, but for everyone in the state. And you have to
21 look at what the impact is on, say, housing cost, what --
22 and figure in, if you do this, what is the increase in
23 tax rates that might ensue, what is the increase and the
24 impact on insurance rates, what does this do to make

1 healthcare more or less affordable, what does this do to
2 make the cost of a meal more or less affordable.

3 And all these things have to -- I'm hoping are
4 going to be sitting in the back of your mind as you look
5 at numbers and different deliberations concerning minimum
6 wage, because it's not an easy task. I'm hoping, at
7 times, as we go through these hearings, to provide more
8 and more economic information to you on this issue. And
9 again, the California Chamber has not taken a position on
10 the increase in the minimum wage at this time because
11 there is not a concrete number, unless the Commission is
12 going to set one today, that we can actually provide
13 specific comments on.

14 But at this time, I certainly hope that you will
15 look at the California Chamber of Commerce as a resource.
16 We have over 11,000 members, almost 12,000 members now,
17 who employ over three and a half million workers in the
18 State of California. And through our local chambers,
19 we're able to reach out to about a few hundred thousand
20 employers, to provide information and data for this
21 Commission. So, I hope you will take them up on that.

22 COMMISSIONER CENTER: Ms. Broyles -- so
23 everybody understands, what we're doing here, we're
24 statutorily required to do.

1 MS. BROYLES: Yes, I understand that.

2 COMMISSIONER CENTER: And we'll be conducting
3 wage boards.

4 I know we -- Mr. McCarthy and I, we sat with
5 another commissioner when they were doing the initiative,
6 and hopefully, the employers don't do "the sky is
7 falling" and start doing away with the senior citizen
8 discounts, before we conduct all our business, in
9 restaurants again. That's not very nice.

10 MS. BROYLES: I don't think I was saying the sky
11 is falling. I'm asking for you to consider how to make
12 the sky not fall and make sure that, if you're looking at
13 increasing the minimum wage, that you do so in a
14 reasonable manner and based on reasonable facts.

15 COMMISSIONER CENTER: And we will do that.
16 Thank you.

17 MR. HEIDT: Good afternoon, commissioners. My
18 name is Horace Heidt, and I currently the president of
19 Sherman Oaks Chamber of Commerce. We're a small chamber
20 in the heart of the City of Los Angeles, and we're
21 committed to protect the rights of our small business
22 members.

23 I guess the best way to give us notoriety is we
24 are in Wally Knox's district; he is our Assemblyman. And

1 one of the main reasons I appear today is we have tried
2 for years to explain some of the needs of our businesses
3 in this district at our Government Affairs Committee
4 meetings, and we really haven't had a good response. We
5 really feel we haven't been listened to. And I'm hoping
6 -- hoping that this board will take a little time to
7 consider that this great State of California is made up
8 of more than just entry-level employees. There are --
9 there are many people in the state -- I think we have 33
10 million residents and 16 million workers. And we have to
11 consider all of them.

12 And I would like to echo, before I start, one
13 thing that I think is the biggest mistake any of us can
14 make politically in this state, and that's not listening
15 to the will of the voters, because when you don't listen
16 to the will of the voters, most young people coming in to
17 our country or growing up here lose the will to be
18 involved in politics. They feel that they're not
19 listened to, why even -- why even care? Why even
20 participate?

21 So, I really think it's important to listen. I
22 don't know this year there's been an agenda not to listen
23 to the small business owners, because I believe all the
24 statistics show that the growth in employment in this

1 state comes from small business. That is simply a fact.

2 Our membership is made up of mom-and-pop
3 restaurants, shopping malls, doctors, drugstores, grocery
4 stores, car dealers, insurance, manufacturers,
5 communication businesses, retail stores, bank, apartment
6 complexes, theaters, artists -- go on and on -- they are
7 all small business people. They are all small people
8 that started at the bottom of the businesses and worked
9 very, very hard to become owners and managers of their
10 companies.

11 Those small business owners are having a very
12 tough time today making ends meet. I'm an apartment
13 house owner. I happen to have 80 percent older, retired
14 people in my complex. We're under rent control. Because
15 we have older people, I have to have a large staff to
16 take care of them. Last night, one of the husbands of
17 one of the residents went out and no one knew where he
18 was. I was at my business to eleven o'clock trying to
19 locate him and placate the fears of his wife. That takes
20 a step. That takes extra time.

21 If the wage, the entry-level wage, of my staff
22 members keeps on going up, and also, if AB 60, which I'll
23 discuss later, is applied, we have to cut down on our
24 staffing. We can't have the number of people to care for

1 these people. And I just feel the state isn't going to
2 be there at eleven o'clock at night to see that these
3 people are cared for.

4 So, there's really two sides to the story, and I
5 think there are other ways of helping these good people
6 that are here today that are concerned about affordable
7 living. There's other ways to help them.

8 My biggest problem with minimum wage, it's
9 across the board. It's one suit fits everybody, one wage
10 is for every industry. I just think that's absolutely
11 absurd. That is not scientific, it is not flexible, it
12 is not workable. I don't know what the problems are with
13 other owners in different industries. I know one of my
14 employees is a nurse, and she has to work two jobs to
15 make ends meet
16 -- to make ends meet, but she does work those two jobs.
17 And she's happy to do it. And I -- I can't -- I know
18 that industry is very concerned about AB 60, but that's
19 another subject.

20 The other ways that I think the minimum wage
21 should be taken care of is, I would feel better if you
22 would pinpoint the industries where there are the
23 greatest abuses and try to do something for that
24 particular industry, instead of just blanketing every

1 single employer in the state. I mean, I think it's
2 pretty cavalier that you think you know the problems of
3 every employer in the state. We're in the business of
4 providing goods and services and do the best job we can.
5 And we have very individualized problems, so you could
6 pinpoint industries.

7 Another thing, I really feel, in this country,
8 this great country of ours, that minimum wage is a
9 federal issue. It should be set by the federal
10 government, not each individual state, because if ours is
11 higher than the next state, then we have a competitive
12 disadvantage in this state.

13 And I agree and will echo, of course, the
14 speakers before me: minimum wage is an entry-level wage.
15 It's a starting wage for kids in high school, for people
16 that may want a second job, for people that want to make
17 some extra money. But when you raise minimum wage,
18 you're just raising the cost of living in California.
19 Every service will go up. The cost of a babysitter will
20 go up, the cost of food will go up, the cost of getting
21 gas will go up, the cost of electricity will go up. All
22 the city services, all the costs of your apartment will
23 go up. I look at it like a high jumper that's supposed
24 to go over six feet. So, you raise the minimum wage so

1 it's only five feet, but by raising the wage, you've got
2 to raise the bar another foot. So, you're really just
3 making the cost of living more in this state. And the
4 more it costs, the less people will be able to live here,
5 and the less competitive we will be in this now world
6 market, world economy, which we have.

7 I have a few more comments, and I thank you for
8 listening to me.

9 Taking away minimum wage also, I feel, will take
10 jobs away from people. Employers will be caught. We
11 feel, as employers, that we contribute to society by
12 hiring the people. That's how we make a difference. We
13 want full employment for our country and our state. With
14 raising the minimum wage, we will be not allowed to hire
15 more people. We will actually maybe have to reduce the
16 number of people. And small businesses are supposed to
17 be the engine for creating more employment.

18 Finally, I would just like to say that raising
19 the minimum wage raises the cost of doing business across
20 the board and will deal a severe blow to the prosperity
21 of our state. We need to be more competitive. We need
22 to hire more people.

23 Again, I will say there isn't one person in my
24 business that is working now at a minimum wage. They are

1 all working far above it. But for the very first job,
2 before I got to know what their skills were, before I had
3 the ability to see if they were interested in the type of
4 work that I do, it gave me a chance to hire more people
5 than I'm able to do.

6 I thank you very much for listening to me, and
7 I'm sorry that I was not eloquent enough to discuss this
8 issue. But please don't forget small businesses.
9 They're the engine of prosperity in this country, and
10 they have to be able to make it too. And if you want to
11 look at any statistics, look at the number of businesses
12 going out of business in this state. Look at the number
13 of bankruptcies. I would love to have some report on the
14 record number of bankruptcies that are going on this year
15 with small business, because they can't make it. They
16 can't make ends meet.

17 Thank you very much.

18 COMMISSIONER CENTER: Just a question. And Dan
19 Galpern testified earlier, from the California Budget
20 Process (sic), and it showed, after the initiative passed
21 and the minimum wage increased, that unemployment went
22 down in California.

23 MR. HEIDT: Employment went down?

24 COMMISSIONER CENTER: Unemployment went down.

1 MR. HEIDT: That -- that may be due to other
2 factors. There's a tremendous influx of people into
3 California. You remember that Hong Kong has now become
4 part of China. There was a mass exodus from that -- from
5 that country to California, bringing a lot of money and a
6 lot of people here. There are many other reasons why
7 California has less unemployment right now.

8 And one of the problems for employers that
9 really needs to be considered, we're having a hard time
10 finding qualified employees. You know, we honestly need
11 people that speak English, because my old -- my older
12 tenants speak English. And I have to have someone that
13 can come to them and talk to them, in my industry. And
14 we need more qualified, educated workers.

15 And I mention as another alternative, as other
16 people did, nothing is more important than education, and
17 trade schools and training. If you want to take money
18 and put it somewhere, put it into educating our people in
19 our state and training them to do a good job so we can
20 serve each other better, because that's all we're doing.
21 We're serving each other. We're supplying goods and
22 services to each other. And there has to be a
23 relationship between your qualifications and how hard you
24 work and the result and what the business does in its

1 goods and services. If you just get it automatically,
2 you just automatically get this and you don't have to do
3 anything, it creates havoc with the employer-employee
4 relationship.

5 COMMISSIONER CENTER: Any more questions?

6 MR. HEIDT: Thank you.

7 COMMISSIONER CENTER: Do you have anything?

8 (No response)

9 COMMISSIONER CENTER: Thank you.

10 I've got a list. Do you want me to call names
11 or jump up or --

12 MS. BROYLES: Sure.

13 COMMISSIONER CENTER: All right. I lost it now
14 already.

15 We've got Sandra (sic) Frohlich.

16 MS. FROHLICH: Sondra.

17 COMMISSIONER CENTER: Sondra. That's why --
18 they just jumped up.

19 MS. FROLICH: A very common challenge for
20 people.

21 I'm Sondra Frolich. I'm currently the executive
22 director of the Sherman Oaks Chamber of Commerce. I've
23 been in Chamber management for more than twenty years.
24 And I would like to make a couple of comments from my

1 experience.

2 When the initiative was proposed for the ballot,
3 one of our gas station owners -- and I shouldn't say -- I
4 had all these thoughts that a gas station was one of the
5 minimum-wage places -- the owner said, in the course of
6 the Chamber's discussion about the pros and cons, that he
7 didn't really like to hire somebody at minimum wage, but
8 he found it very necessary. The reason he didn't like it
9 is that he recognized that it was not going to support a
10 family or the majority of the needs of most individuals,
11 but in hiring, it was necessary because of the training
12 when somebody was just starting in the business. And his
13 goal was that that employee, for six or eight months at
14 the outset, would have become better skilled and,
15 consequently, would be promoted, both to more
16 responsibility and a higher pay.

17 And I think that is the attitude of a great many
18 business owners. It would appear from some of the
19 remarks from some of the employees they may not believe
20 that the business owner has that at heart, but I think a
21 great many of them do.

22 Another thing that, again, disturbed me earlier
23 when employees were speaking about working at minimum
24 wage and having no benefits, I don't think they are aware

1 of how many small business owners have no personal
2 benefits. I could take you into the south San Fernando
3 Valley and introduce you to business owners who have no
4 medical insurance for themselves, who lack many of the
5 things that are commonly considered to be employee
6 benefits. And so, the fact that the minimum-wage
7 employees are not being provided with those benefits is
8 perhaps not as unique as many of us might believe.

9 Also, I would like you to take into
10 consideration the many legislative mandates that are
11 being placed on business ownership these days. It's not
12 only the workers' comp percentage going up, of which
13 Julianne spoke, but it seems as if every session of the
14 Legislature addresses some business employee-related
15 problems, and they end up saying, "Well, the business
16 owner can just take care of this problem." And so, there
17 are a great many pressures and additional expenses beyond
18 just paying wages.

19 Thank you.

20 COMMISSIONER CENTER: Thank you.

21 Any questions?

22 (No response)

23 COMMISSIONER CENTER: Jim, I don't see your name
24 on here. You probably can't talk here.

1 MS. FROLICH: Pardon me?

2 COMMISSIONER CENTER: No, I was talking to Jim
3 Abrams.

4 MS. FROLICH: Oh.

5 MR. ABRAMS: It's on the one outside.

6 COMMISSIONER CENTER: Okay. Then we'll let you
7 talk.

8 (Laughter)

9 COMMISSIONER BROAD: Can we vote on that?

10 COMMISSIONER CENTER: No. Be courteous.

11 (Laughter)

12 MR. ABRAMS: Thank you, Mr. Chairman and members
13 of the Industrial Welfare Commission. I'm Jim Abrams,
14 executive vice president of the California Hotel and
15 Motel Association.

16 And I'd like to take perhaps a different tack
17 with respect to this whole issue, because I think
18 statistics, to the extent that they are thrown out at
19 this kind of proceeding, can be very misleading. And
20 while it's true, for example, that California has the
21 lowest unemployment that it's enjoyed in many, many, many
22 decades, we still have the highest unemployment rate in
23 the country. So, it can go both ways, and I think that
24 misses the point, quite frankly.

1 And a couple of people who have spoken today,
2 and some of the questions that some of you have asked,
3 have pointed up what I think is, hopefully, an avenue
4 that you will explore, and that is to take the minimum
5 wage and not apply it across the board, one-size-fits-
6 all. The gentleman from the Sherman Oaks Chamber of
7 Commerce told you this. And I think that as we go
8 forward in the wage board process, people in the public,
9 employers and employees, need some guidance from you.

10 For example, I think we need to pinpoint exactly
11 what it is that you want to know about or the wage board
12 wants to know about, in terms of what the minimum wage is
13 designed to do. Mr. Pulaski read from the code, from the
14 Labor Code. And that is certainly what the legislative
15 mandate of this Commission is. However, the statistics
16 that you hear thrown around or talked about -- let's take
17 \$8.00 an hour, for example, to hit the poverty line for a
18 family

19 -- I will submit to you that the minimum wage is not
20 designed to deal with a family of two people, three
21 people, four people. And how big is a family? We heard
22 a number of people talk this morning, earlier on, about
23 dependents, two, three, four, five dependents. Should
24 the minimum wage be a function of whether I have five

1 dependents or two dependents? I submit to you that, no,
2 it should not be.

3 The minimum wage, as I think many people
4 originally envisioned it and, I believe, got lost in the
5 mix, is to -- I would submit to you, is to deal with what
6 it takes to take care of the health and welfare, proper
7 costs of living, of a single employee.

8 Now, I think if you say to yourself, "We have to
9 presume that people don't live by themselves -- many of
10 them do -- but that people live in family units, and
11 therefore we have to be able to support a family," that's
12 -- that's saying basically that two people doing the same
13 work, we're going to pay everybody as though you are
14 married or have a significant other and you've got a lot
15 of dependents. And that becomes the floor, when, in
16 fact, that is not what it takes to supply the proper
17 costs of living for someone who is an individual
18 employee.

19 So, I think it is incumbent upon the Commission
20 to tell the public, which will come before you and
21 testify at the wage board hearings and subsequent
22 hearings on this issue, is the minimum wage designed to
23 take care of a hypothetical single person, a family of
24 two, three, or four, because depending on what you select

1 as your target, what you feel your legislative mandate
2 is, right or wrong, it will focus and change dramatically
3 the outcome of the testimony that's presented to you and,
4 I submit to you, the outcome of your own individual
5 deliberations.

6 Secondly, I think it's critical to look at --
7 and whether it's a family or one person, whatever you
8 decide is the target of the minimum wage mandate from the
9 Legislature -- I think you need to say to yourself that
10 the minimum wage needs to focus in on, with some degree
11 of individuality, but not worker by worker -- some degree
12 of individuality based on that person's circumstances.

13 For example, I think it's very critical that you
14 look at the whole issue of tipped employees. And while I
15 appreciate what Mr. Broad says, that Labor Code Section
16 351 and sections around that have been held by the
17 California Supreme Court to preclude a separate, lower
18 minimum wage for tipped employees, I think it is
19 incumbent upon this Commission to not only make decisions
20 that the minimum wage, for example, will or will not go
21 up, or go up by so many dollars, or whatever else, but to
22 find out really what it takes to best serve the needs of
23 the employees of the State of California. And if you,
24 for example, come to the conclusion that there should be

1 a separate minimum wage for tipped employees, I think it
2 is inherent in your duty and I think you have a mandate
3 to tell the Legislature, "We suggest to you that you, the
4 Legislature, look at the question of whether or not there
5 should be -- Labor Code Section 351 should be amended to
6 permit some sort of a -- either a lower minimum wage for
7 tipped employees or a tip credit, which is common
8 throughout the United States, with the exception of about
9 four or five states." The fact that the law today may
10 prohibit you from setting up a separate, lower, or
11 different minimum wage for tipped employees does not
12 preclude you from voicing your opinion, based on all the
13 input -- this is where the input comes from, is through
14 the Industrial Welfare Commission. You're the only ones
15 who really have the hearings all around the state. And
16 if you come to the conclusion that a legislative change
17 is needed, I think it is your obligation to tell the
18 Legislature, "Here's a suggestion." Obviously, you can't
19 order them to do anything, but you can make suggestions
20 based on your input. You are the experts, and you have
21 the ability to go and get information.

22 The same thing is true with the comment, as it
23 was stated in the earlier hearing. People had testified
24 in favor of being able to go on 12-hour days. I

1 appreciate that AB 60 doesn't allow that at the present
2 time. But if, in the course of your hearings, you come
3 to the conclusion that that is a good social goal, then I
4 think you have the obligation -- I think you certainly
5 have the right -- the mandate from the Labor Code to tell
6 the Legislature and the decision-makers of the state that
7 this is something that they should look at as a desired
8 social goal.

9 I also think it's important to look at the fact
10 that this affects a great many people. They are
11 teenagers living at home, supported in other
12 circumstances, who are getting their first jobs and for
13 whom their skill levels are, at best, perhaps minimal, in
14 terms of what the employer needs. And I think that it is
15 certainly within your right to say that we are going to
16 recognize that differential, and that we are going to
17 recognize that people who don't have a lot of work
18 experience, who are just brand new to the workforce,
19 should perhaps be -- we should perhaps provide incentives
20 for employers for hiring these people by recognizing the
21 fact that their productivity level, when they first enter
22 a lot jobs, when their job skills are not yet refined --
23 should perhaps be different than the minimum wage for
24 someone who is working full-time, is on his or her own,

1 with or without a family, depending on where you set the
2 target.

3 And also, I would like to propose to you that
4 you let it be known whether or not you are willing to
5 take testimony, whether you're willing to consider what I
6 will call a system of setoffs. And I'm speaking strictly
7 for myself -- I'm not speaking on behalf of the Hotel and
8 Motel Association, and I haven't asked my board whether
9 they think this is a good idea or a bad idea -- but I
10 think that, as the lady from the Sherman Oaks Chamber of
11 Commerce who spoke -- and I apologize for forgetting her
12 name -- it is true that a great many people don't have
13 any benefits. But I think that if you assume, for the
14 sake of argument, that the minimum wage should go up --
15 I'm not advocating that -- that employers who now provide
16 benefits that really make it possible for people to have
17 a better standard of living, whether it's health
18 insurance, transit assistance, childcare assistance, 401K
19 plans, whatever it happens to be, health clubs, whatever
20 it is, that if you make up a list of what you feel are
21 socially desirable goals, things you want to do for
22 workers to make their standard of living better, I would
23 submit to you that one of the best ways to do that is to
24 tell an employer that, "We are going to raise the minimum

1 wage" -- and I'll just use this as a hypothetical; I'm
2 not advocating raising it, or certainly not to the \$8.00
3 that Mr. Pulaski recommended -- but, "However, if the XYZ
4 Hotel or the ABC Restaurant or So-and-So Service Station
5 provides healthcare benefits or provides childcare,
6 provides transit assistance, that there ought to be a
7 tradeoff." I would submit to you it ought to be a
8 dollar-for-dollar tradeoff, not below the \$5.75; if I'm
9 not getting that, then you go back to square one.

10 But, for example, in the case of healthcare, in
11 our small office we have eight people, and we pay about
12 \$250 a month for healthcare for our employees, for a
13 single employee, more if there's a dependent. And that
14 works out to -- if you figure 160 hours a month, that
15 works out to what? -- about \$1.50 an hour, give or take a
16 little bit. I would submit to you that if I gave an
17 employee \$8.00 an hour, he could not, on that difference
18 between the \$5.75 and the \$8.00, take that money and go
19 out and buy him the kind of healthcare that the employers
20 provide through group coverage. And if I provide that
21 kind of benefit, should not I have an incentive to do
22 that, particularly if I don't now provide it? I would
23 submit the answer is yes. We all would like employers to
24 provide health insurance.

1 But secondly, what you're doing is taking away
2 the incentive for an employer to take away some benefits
3 that he now provides them. And I think it is certainly
4 true that -- or we might argue that raising the minimum
5 wage throws people out of work or not, but it's certainly
6 true that employers in many industries, not across the
7 board, but certainly many industries, have to look at the
8 level of benefits they provide. They may not now be able
9 any longer to provide healthcare to their employees. And
10 they say to the employees, "I have to now have you pay 10
11 or 20 or 30 or 40 or 20 percent a month towards your
12 health insurance because I can't afford to pay 100
13 percent of it," or "I can no longer contribute anything
14 to your 401K plan." So, while it might not necessarily
15 in unemployment or disemployment, I think that if you as
16 a Commission decide this is something you're interested
17 in, I think you need to tell the public, "Come to us and
18 tell us what are you providing in the way of benefits,
19 what does this cost you per employee or per work unit,
20 whatever else it is?" How can we look at molding
21 something that's truly creative instead of the usual
22 'Don't raise the minimum wage,' 'Raise it to \$3 million,'
23 and it ends up somewhere in the middle or it doesn't
24 change at all? I think the Commission needs to tell the

1 public that come to these wage board hearings what kinds
2 of creative opportunities and ideas that you'd like to
3 hear about, what kind of information do you want, so that
4 you don't get the same old rhetoric. And I don't mean
5 that disrespectfully of anybody's comments; it's where
6 we've been.

7 And I think -- I think the key, really, to go
8 forward -- and I don't know, Mr. Center, if you're going
9 to be announcing the kinds and numbers of wage board
10 hearings and planning or anything else, what kinds of
11 boards, at the beginning of the year, but I think it is
12 time for the Commission to start to focus in on really
13 who the minimum wage is designed to help. And that will
14 determine an awful lot of what is done. I think you
15 should look at some creative ways. I would suggest to
16 you -- my personal suggestion -- that looking at
17 incentives to provide extra benefits or not lowering
18 existing benefits is a good social goal and needs to be
19 factored into the minimum wage equation, and that looking
20 at brand new hires, people who are living at home, who
21 really have an independent source of income and living,
22 needs to be factored into the equation as well.

23 Thank you for your time. It's been a long
24 morning for you, but I'd be happy to answer any questions

1 that you have.

2 COMMISSIONER BROAD: Mr. Abrams, you know, I
3 have that strange distinction of actually being a
4 business owner, a small business owner, with two
5 employees, so I feel your pain. But also, I think I'm
6 deeply familiar with the advantages of being a small
7 business owner that this society provides. And while
8 there's a lot of moaning and groaning here, there are
9 significant advantages.

10 In terms of the incentives that our society
11 provides, one need not go any farther than the Tax Code
12 to look at the incentives that employers are given to
13 provide these benefits. They are 100 percent -- they can
14 be written 100 percent off against your income in any
15 given year. Beyond that write-off, how much of a subsidy
16 do the taxpayers of the United States pay to low-wage
17 employers to keep them, you know, in their Jaguars? I
18 mean, that's really ultimately what it comes to.

19 MR. ABRAMS: May I respond?

20 COMMISSIONER BROAD: Please.

21 MR. ABRAMS: Mr. Broad, with all respect,
22 sincerely and personally, if this is going to be a debate
23 about tax credits and small business employers driving
24 Jaguars and the salaries of CEOs of Fortune 500

1 companies, then -- and I mean this sincerely, Barry, with
2 respect -- that's not where I believe this discussion
3 should go.

4 The Tax Code says that ordinary -- expenses
5 incurred in the ordinary -- necessary and ordinary course
6 of doing business are deductible. There are a lot of
7 things, education expenses, and things like that. There
8 are a lot of employers who, right now, cannot afford to
9 provide healthcare. If they did provide healthcare, they
10 could probably write it off. They can't afford it.

11 So, my question to you as a body responsible for
12 the health and welfare of the whole economy and the
13 employees in it, in a roundabout, very connected way, is,
14 "If you raise the minimum wage, is there a social value
15 in telling an employer that we would also like you to
16 provide healthcare? You can't -- we really don't think
17 we can make you do both. You can provide better
18 healthcare for that employee because you are a group than
19 that employee can provide on his or her own, no matter
20 how high we raise the minimum wage, within reason. And
21 therefore, we want to at least consider whether that is a
22 proper thing to do." I'm not telling you it is or it
23 isn't, but I think if the Commission says, "Damn it,
24 employers are driving Jaguars and they've got 100 percent

1 tax write-offs," I think a golden opportunity will be
2 missed.

3 COMMISSIONER McCARTHY: Yeah. I think there are
4 some excellent suggestions here. I don't know how they
5 are practically implemented.

6 And this is a little off of what you said, but I
7 know a lot of minimum-wage employees do not receive
8 benefits. But among those who do, I suspect one has to
9 take into account that a major increase in the minimum
10 wage will lead to a reduction in the benefits of those
11 who do receive benefits.

12 MR. ABRAMS: Tax write-offs -- a 100 percent tax
13 write-off doesn't mean it is still a profitable good
14 thing for a business to do.

15 COMMISSIONER McCARTHY: No. And as evidence of
16 that, I would cite a man I greatly respect, Assemblyman
17 Knox, in talking about AB 60 this morning before us. I
18 mean, what he pointed out is there's something out there
19 called a market, and the effort on the part of the
20 healthcare industry to reduce base pay to kind of
21 compensate for the increase in overtime pay is indicative
22 of that. I'm not necessarily supportive of that, but I'm
23 just saying there is a market out there. And that's not
24 the only consideration, and maybe not the major

1 consideration, but it is something to be taken into
2 account, as well as your own suggestions.

3 COMMISSIONER CENTER: Thank you, Mr. Abrams.

4 MR. ABRAMS: Thank you very much.

5 COMMISSIONER CENTER: Any other speakers on the
6 minimum wage?

7 (No response)

8 COMMISSIONER CENTER: With that, we'll adjourn
9 until 1:15, and we'll -- it's 45 minutes.

10 (Thereupon, at 12:30, the public meeting was
11 recessed for lunch.)

12 --o0o--

13

14

15

16

17 A F T E R N O O N S E S S I O N

18 --o0o--

19 (Time noted: 1:20 p.m.)

20 COMMISSIONER CENTER: Thank you.

21 Right now I want to introduce Marcy Saunders,
22 who's the State Labor Commissioner. She's got some draft
23 language on their interpretation of AB 60, and she'd like
24 to comment on that.

1 MS. SAUNDERS: Good afternoon.

2 I have presented to you today our
3 interpretations -- Division of Labor Standards
4 Enforcement -- interpretations of AB 60. Just let me
5 explain to you that it's taken us approximately two
6 months, with the work of Counsel Miles Locker, some of my
7 other attorneys, and my senior staff. We have done a lot
8 of research, and investigation, and studying into this
9 bill to bring forward to you these interpretations.

10 These interpretations for enforcement of that
11 bill will go into effect on January 1st, and we'll
12 continue to enforce the bill based on these
13 interpretations, unless we hear something different from
14 the IWC, either changes in wage orders, amendments to
15 regulations, or new regulations.

16 And if you have any -- if you questions, I'd be
17 happy to answer them.

18 COMMISSIONER BROAD: Madame Labor Commissioner,
19 with respect to construction, mining, drilling, and
20 logging, what is your -- what is your interpretation of
21 how they will be dealt with starting on January 1?

22 MS. SAUNDERS: I included in the packet that I
23 gave you -- it is an interpretation, but unless something
24 happens otherwise, unless you address the issue

1 concerning those four industries prior to January 1st as
2 to being exempted or included, they will automatically be
3 included on January 1st, in -- for overtime, under AB 60,
4 and everything else that is involved in AB 60, not just
5 the overtime.

6 COMMISSIONER CENTER: Did you cover them on a
7 specific wage order?

8 MS. SAUNDERS: No, we did not. We just said
9 that our interpretation of the statute, AB 60, is that --
10 we felt that those four industries were covered, unless
11 somebody on the IWC -- or you voted differently prior to
12 January 1st.

13 COMMISSIONER CENTER: Thank you.

14 I've misplaced it. Could I get another copy
15 too?

16 MS. SAUNDERS: Sure.

17 COMMISSIONER CENTER: I don't know where I put
18 it.

19 COMMISSIONER BROAD: Yeah, me neither.

20 COMMISSIONER CENTER: Yeah. We need copies.

21 Go ahead.

22 COMMISSIONER DOMBROWSKI: I have -- it's a legal
23 question, maybe, for Marguerite.

1 What is our authority before January 1st on the
2 four industries?

3 MS. STRICKLIN: The statute doesn't go into
4 effect until January 1st, so the Commission can't act
5 until after that date.

6 MS. SAUNDERS: Correct.

7 COMMISSIONER MCCARTHY: Are we not in the
8 position -- do we not have legal authority to grant those
9 exemptions under prior authority today?

10 MS. STRICKLIN: No. In order to act on any
11 industry not covered -- if the position is that they are
12 not covered, and that's the position that the IWC has
13 taken in the past -- with the advent of AB 60, if you
14 believe they are covered and you want to exempt them,
15 then you have to call wage boards, get a finding from the
16 wage board, hold hearings, and then act. And there's
17 nothing in AB 60 that would allow you not to have wage
18 boards, as far as I see it.

19 COMMISSIONER CENTER: So, we could open that
20 wage board today, for those industries?

21 MS. STRICKLIN: But you'd have to have
22 recommendations for wage board members. You could ask
23 that --

1 AUDIENCE MEMBERS: (Not using microphone) Can't
2 hear you.

3 MS. STRICKLIN: You're going to have to get
4 recommendations for wage board members. In your packets,
5 there's a -- information on wage boards, with the statute
6 and the regulations, as well as a summary.

7 The Commission could vote, under 1173, if that's
8 their position, to open wage boards on all four of those
9 industries.

10 COMMISSIONER CENTER: Thank you.

11 Thank you, Ms. Saunders.

12 COMMISSIONER MCCARTHY: But -- I'm sorry. Could
13 I --

14 COMMISSIONER CENTER: I'm sorry.

15 COMMISSIONER MCCARTHY: I'm sorry, Chuck.

16 COMMISSIONER CENTER: I thought you were
17 finished.

18 COMMISSIONER MCCARTHY: Yeah. It was my fault.

19 But if we determine that they, these industries,
20 have operated, even if it weren't written, but that they
21 have operated under exemptions and were considered by the
22 Commission to have operated under exemptions, would the
23 same rulings apply, in terms of wage boards, or what?

1 MS. STRICKLIN: If the Commission takes the
2 position that AB 60, as of January 1st, includes those
3 four industries, in order to exempt them, you would have
4 to call wage boards.

5 COMMISSIONER McCARTHY: Well --

6 AUDIENCE MEMBERS: (Not using microphone) Can't
7 hear!

8 COMMISSIONER McCARTHY: But if we took the
9 position that they were not included because they were --
10 can we do that? -- that they -- in other words, that they
11 have exemptions, that they are considered exempt?

12 COMMISSIONER BROAD: I don't think that the
13 Commission has the authority to take a vote on whether
14 someone is exempt -- is excluded or included under AB 60.
15 That's for the courts to determine. They either are or
16 they are not on January 1.

17 And from my opinion, it's pretty obvious that
18 they are. As such, it seems that we can convene wage
19 boards to determine, for example, whether we want to have
20 one wage board cover all four industries, one wage order
21 cover all four of those industries, or four, or three, or
22 two, or to consider any possible exemptions within those
23 industries that we -- that we're lawfully permitted to do
24 after convening wage boards. But I don't think we can

1 vote today and, you know, with that vote, exempt those
2 industries. I don't think we have the power to do that.

3 COMMISSIONER CENTER: And I would agree with
4 that. So does our attorney.

5 MS. STRICKLIN: That's correct.

6 COMMISSIONER CENTER: Yeah. Okay.

7 What I'd like to do now -- I know we have sign-
8 up lists, but I think, in order to get out of here, we
9 need to expedite it a little bit. So, I want to go off
10 the list and bring up industries, and so maybe we won't
11 duplicate the testimony.

12 Oh, yeah. First we have our draft proposals for
13 our interim orders that we'll vote on in January. And we
14 have two drafts, and we'd like to choose one to put out
15 today.

16 So, I'd entertain a motion to adopt the draft
17 that we were provided later on in the day, since the
18 original one.

19 COMMISSIONER DOMBROWSKI: So moved.

20 COMMISSIONER BROAD: Second.

21 COMMISSIONER CENTER: All in favor?

22 COMMISSIONER BROAD: Excuse me.

23 COMMISSIONER CENTER: Okay. Go ahead.

24 COMMISSIONER BROAD: I'd like to do one thing.

1 COMMISSIONER CENTER: Okay.

2 COMMISSIONER BROAD: I'd like to add, on Page 2,
3 after it says, "No person" -- under Section 3,
4 "Administrative, Executive, and Professional Employees,"
5 in the second sentence of that paragraph, it says,

6 "No person shall be considered to be
7 employed in an administrative, executive, or
8 professional capacity unless the person is
9 primarily engaged in the duties which meet the
10 test of the exemption and earns a monthly salary
11 equivalent to no" --

12 -- it should say --

13 " -- of no less than two times the state minimum
14 wage for full-time employment."

15 I'd like to add the following sentence:

16 "Labor Code Section 515(a) mandates that the
17 Commission conduct a review of the duties which
18 meet the test of the exemption, and that any
19 hearing conducted pursuant to that subsection be
20 conducted no later than July 1, 2000."

21 So, what I'm doing is making a substitute motion
22 that we adopt the second proposal with that change.

23 COMMISSIONER CENTER: Okay. Do I have a second
24 on the substitute motion?

1 COMMISSIONER COLEMAN: I will.

2 COMMISSIONER CENTER: All in favor of the
3 substitute motion, "aye."

4 (Chorus of "ayes")

5 COMMISSIONER CENTER: Opposed?

6 (No response)

7 COMMISSIONER CENTER: All in favor of -- the
8 substitute motion passes.

9 All in favor of the first motion to adopt this
10 draft regulation to distribute at the end of this
11 hearing? All in favor, say "aye."

12 Oh, a question?

13 COMMISSIONER DOMBROWSKI: Just one comment to
14 the public, that there's a -- it is a draft interim order
15 that we had tried to work on. We don't have consensus on
16 all items in this order. And the intent, from my
17 perspective, is to get a document out there that gives
18 everyone something to look at and to comment on over the
19 next whatever it is until our next meeting. So, this is
20 very much a work in progress, and I want to emphasize
21 that to people, that we do need to hear from you after
22 you see this thing and give us some feedback.

23 COMMISSIONER CENTER: Okay. And that's -- and
24 we need to get input on these orders, but we need to have

1 this typed up. I don't know if we can get that done or
2 not, Christine, from -- and fax it down today if we can.

3 All right. We want to commend Christine. She's
4 been working very hard. Michael's here to help too.

5 So, we have a motion and a second. All in
6 favor?

7 (Chorus of "ayes")

8 COMMISSIONER CENTER: Opposed?

9 (No response)

10 COMMISSIONER CENTER: Motion passes. Thank you.

11 Yes. And if you don't get it, it'll be
12 published on the Web site, or you can write to the
13 Industrial Welfare Commission in Sacramento.

14 Now I'd like to bring up the representatives
15 from the -- oh, sorry -- from the construction industry,
16 the worker guys -- or the construction guys, not the
17 worker guys, and the mining, logging, and oil, if we can
18 all sit up here. But first we want to go to
19 construction, and in any order you guys so choose.

20 MR. STREET: My name is Terence Street, T-e-r-e-
21 n-c-e, last name Street, S-t-r-e-e-t. I'm the chief
22 executive officer and president of Roebbelen Contracting
23 in northern California. We're also a member of the
24 Construction Employers Association, which represents

1 approximately 100 building employers. Again, I'm
2 speaking to purely the construction industry.

3 We are in support of AB 60. I think our biggest
4 confusion is how it eventually is going to implement
5 itself, which I think will be through the wage boards.

6 We currently have approximately 400 employees on
7 the payroll now. We are represented by a collective
8 bargaining agreement, and we do encourage the payment of
9 overtime. One of the key reasons that we have that's
10 motivated us to encourage the payment of overtime is to
11 discourage, as much as possible, the use of overtime, and
12 that is the main reason my superintendents and project
13 managers -- purely the safety issue. I think we're in an
14 inherently dangerous industry. I think the Legislature
15 has spoken in a very definite fashion with the
16 legislation that went through this last year that safety
17 should be a major concern to anybody in any industry
18 coming up this next year.

19 We have found that prolonged periods of
20 overtime, our accidents become -- we become much more
21 susceptible to accidents from the crews being tired.
22 It's a very physical job site -- industry that we're in,
23 and it's a problem that we try to avoid and stay away
24 from. So, I think that's what I'd like to say on that.

1 That's what I would say.

2 COMMISSIONER CENTER: Any questions?

3 (No response)

4 COMMISSIONER CENTER: Thank you, Mr. Street.

5 MR. HAKEL: Good afternoon. I'm John Hakel,
6 H-a-k-e-l. I'm the executive director of Governmental
7 Relations for the AGC of California, the largest general
8 contractors trade group in the state.

9 You already have my written testimony, but I
10 just wanted to go over a few points that I'd like to
11 reconfirm and see if you have any questions about.

12 AGC of California believes that there have been
13 -- a historical precedent has been established and that
14 the Commission should continue to exempt construction
15 from its regulations. If it cannot facilitate this first
16 request, then the Commission should initiate discussions
17 with affected parties and develop a separate wage order
18 that will meet the needs of the industry and its workers.
19 If the Commission agrees with a separate wage order, then
20 the AGC is requesting a temporary delay on the
21 implementation of the regulations until the affected
22 parties can draft mutual, acceptable regulations.
23 Finally, the AGC of California is requesting that due to
24 the complexity of this act and the continuing dialogue

1 surrounding the implementation of the act, that a
2 moratorium be placed on its enforcement procedures.

3 In closing, I'm speaking on behalf of the AGC of
4 California and its 1,100 members statewide. It should be
5 acknowledged that AGC is available to the Commission as a
6 comprehensive resource to the question that's being posed
7 today.

8 Thank you.

9 COMMISSIONER CENTER: Excuse me. So, you
10 disagree with Mr. Street that -- you're still looking for
11 exemptions to overtime? Working excessive overtime is
12 safe in your industry?

13 MR. HAKEL: I think we have to go back and
14 dialogue with that. We do realize that, with the type of
15 work we do have, the most important part of any job site
16 would be safety. But I think we have to, I think, sit
17 down with the -- with the Commission and go over some of
18 those points.

19 COMMISSIONER CENTER: Thank you.

20 Any questions?

21 Yeah, go ahead.

22 COMMISSIONER DOMBROWSKI: Excuse me. Hello?

23 Did you testify on the bill when it was in the
24 hearing in the Legislature? Were you involved at all in

1 that regard?

2 MR. HAKEL: I don't believe we did. To the --
3 to the extent of actual testimony, that I'm not sure of.
4 I believe we had written testimony. Were we there
5 physically? I do not know.

6 COMMISSIONER DOMBROWSKI: And then, if I heard
7 you right, one of your requests was for a moratorium on
8 enforcement. Is that --

9 MR. HAKEL: Until we know exactly what the
10 language and how you are to enforce it. I think it would
11 be somewhat difficult until we know exactly the language,
12 for our contractors to make sure that we are on the true
13 extent of this effort.

14 COMMISSIONER DOMBROWSKI: I guess I -- you're
15 asking legal questions, aren't you? I don't -- I don't
16 know if we have any authority to do -- I mean, the law
17 becomes the law on January 1st.

18 MR. HAKEL: Right. And that we do know, but the
19 exact definition of it, the actual implementation of it,
20 I believe, from what I'm hearing, is still being -- this
21 is why you're going around the state --

22 COMMISSIONER DOMBROWSKI: Correct. Correct.

23 MR. HAKEL: -- to get the language so we, as
24 general contractors, know the full breadth of what it is.

1 And if we're -- once we know the full breadth, I think
2 the implementation of it will be much easier for general
3 contractors to follow so we will not be in any type of
4 violation.

5 COMMISSIONER DOMBROWSKI: Okay. I guess -- and
6 I do have to apologize, because I did not get to read the
7 Labor Commissioner's document yet, but maybe it's spelled
8 out in there, so -- the way it goes down.

9 COMMISSIONER CENTER: A question. Are you more
10 -- I think the Labor Commissioner will be enforcing in
11 January. I don't know if we could even request her to
12 not enforce the law. Are you speaking more to the actual
13 wage orders that cover --

14 MR. HAKEL: I would think -- right, until we
15 realize exactly if we do go to any wage order and there
16 are time limits as it relates to that enforcement part of
17 it, then we'd like to hold off until you're done going
18 down that path, and so our members have to abide by those
19 certain rules. Does that make sense to you?

20 COMMISSIONER CENTER: I don't know. Let's think
21 about that one.

22 Any more construction industry people?

23 MR. MARTENS: Good afternoon, gentlemen --
24 ladies and gentlemen.

1 Barry, I haven't seen you in a long time.

2 COMMISSIONER CENTER: Closer to the mike, if you
3 can, please.

4 MR. MARTENS: My name is James Martens. I
5 manage a trucking company that deals exclusively in
6 transportation of construction commodities. And I'm not
7 sure that the transportation exemption is going to fall
8 into my arena or not. I'm quite confused on, literally,
9 where I'm going here, without seeing these documents that
10 you drafted and now amended and made some changes,
11 because this will make a dramatic impact on the
12 California trucking construction industry, which I know
13 quite well. And there are about 8,000 small employers in
14 this business, with probably two to four or five drivers,
15 and maybe a handful of fifty companies that have in
16 excess of 25 or 30 trucks. And the impact of overtime on
17 the delivery of construction products is going to be a
18 major -- major, major impact on the -- definitely the way
19 the construction industry receives our prices, our
20 delivery contracts. Everything is going to be upside
21 down, unless I -- unless I can be assured that the
22 transportation exemptions falls to construction trucking.

23 COMMISSIONER BROAD: Well, the first question to
24 ask yourself is whether your industry was originally

1 covered by Order 9. That is to say, was it considered --
2 and I just don't know the answer, and I think you should
3 probably talk to the Labor Commissioner's office, because
4 if it's considered part of the trucking industry as
5 opposed to construction --

6 MR. MARTENS: I spoke to somebody, and he
7 believes that it is exempt, but he has not got
8 enforcement orders of what AB 60 is going to do. So, you
9 know, he's in the same dilemma as --

10 COMMISSIONER BROAD: Well, nothing in what we
11 are doing affects the trucking industry exemption that's
12 contained in any of the wage orders.

13 MR. MARTENS: Any of them?

14 COMMISSIONER BROAD: It is in all the wage
15 orders.

16 MR. MARTENS: I can take that to the bank?

17 (Laughter)

18 COMMISSIONER BROAD: Might not be much of a
19 deposit.

20 (Laughter)

21 MR. MARTENS: Well, not to belabor the dilemma
22 that we're in, because, you know, these -- the industry
23 delivers all of its commodities by the ton, not by the
24 hour. 85 percent of it is delivered by the ton. And

1 it's totally controlled by the contractor on the other
2 end as to how fast he wants it and how slow he wants it,
3 and whether he wants it after three o'clock in the
4 afternoon, so mostly we'll be on overtime hours.

5 COMMISSIONER BROAD: Well, I believe, in all
6 likelihood, that you -- that dump truck operations are
7 considered covered by Order 9, as all other trucking
8 operations. And there has always been that exemption.
9 So, if there -- which covers you if you are -- if your
10 drivers' hours of service are regulated by DOT or the
11 California Highway Patrol -- and there's nothing that
12 we're proposing that alters that.

13 COMMISSIONER CENTER: But you -- just a comment
14 -- you might want to, you know, talk with the Labor
15 Commissioner, because if you're delivering but you're in
16 the actual construction project, like you're delivering
17 asphalt, where you're actually pouring the asphalt out
18 there -- I don't know. You need to talk to the Labor
19 Commissioner on that.

20 COMMISSIONER BROAD: Right.

21 COMMISSIONER CENTER: That could be a different
22 issue.

23 MR. MARTENS: Okay. So, that would be the Labor
24 Commissioner.

1 COMMISSIONER CENTER: Yeah.

2 MR. MARTENS: Well, I will speak to them.

3 COMMISSIONER CENTER: Any more construction
4 industry?

5 (No response)

6 COMMISSIONER CENTER: How about mining?

7 AUDIENCE MEMBER: (Not using microphone) I'm
8 sorry. What?

9 COMMISSIONER CENTER: Mining.

10 MR. GLADFELTY: Mr. Chairman and members, Paul
11 Gladfelty, representing the California Mining
12 Association. Let me make a couple comments with regard
13 to mining.

14 We believe that the mining industry really
15 should be viewed on two segments, one of which is metal
16 mining, the other of which is other types of mining.
17 With respect to metal mining, we believe that the law as
18 it relates to overtime provisions and premium wage rates
19 are covered under previous legislation, which is
20 Bustamante legislation, AB 739.

21 With respect to other types of mining -- rock,
22 sand and gravel, and so on -- we certainly believe that
23 the Industrial Welfare Commission has the authority to
24 regulate this industry.

1 We look forward to working with the Industrial
2 Welfare Commission with respect to whether or not mining
3 should have a separate wage order or whether or not it
4 should be consolidated under manufacturing or some other
5 wage order. We don't have a position at this time on
6 that. But I can tell you that there have been mining
7 operations that have, in the past and currently, operated
8 under the manufacturing wage order.

9 COMMISSIONER CENTER: Thank you.

10 Any questions?

11 (No response)

12 COMMISSIONER CENTER: Next is the timber
13 industry.

14 MR. BIRENBAUM: We're still on mining.

15 COMMISSIONER CENTER: Oh, mining. I'm sorry.

16 MR. BIRENBAUM: Thank you, Mr. Chairman.

17 Charles Birenbaum, with Thelen, Reid & Priest. I was
18 asked to come before the Commission, so I thank you and
19 the other commissioners, the Labor Commissioner, chief
20 attorney of the Division of Labor Standards Enforcement
21 and other members of the public.

22 The reason the California Mining Association
23 asked me to make a brief statement before you is because
24 of my involvement in the enactment of AB 739. That goes

1 to the subject just mentioned, that companies engaged in
2 underground mining, or have plants or smelters for the
3 reduction and refining of ore, should be specially
4 treated. And to address a point made by one of the
5 commissioners earlier, you do have the jurisdiction to
6 interpret AB 60; that's clear. What we want to make sure
7 is that you interpret it in a way that is consistent with
8 another statute, AB 739. That's essential, because if
9 you create a conflict between the statutes, it will
10 create confusion and it will dash the hopes and interests
11 of many workers in plants and smelters for reduction and
12 refining of ores and metals.

13 The plain language of AB 60 gives you that
14 authority, but also, it leads to that conclusion. The
15 statute expressly addresses virtually every industry.
16 And even though the industries covered by AB 739, which
17 is in Labor Code Sections 750, 750.5, 751.8, was before
18 the Senate and the Assembly, they chose not to include it
19 in AB 60. In Sections 517 and 1182.3 through 1182.10, we
20 have mention of the ski industry, commercial fishing,
21 healthcare, horse racing, pharmacists, outside sales,
22 organized camps in agriculture, and railroad employees.
23 Other industries are mentioned by the five wage orders
24 that were the subject of the repeal of daily overtime by

1 this Commission in January of last year, Wage Orders 1,
2 4, 5, 7, and 9.

3 Even though these very specific industries and
4 wage orders were referenced, those companies and
5 employees covered by AB 739, Labor Code 750 *et seq.*, were
6 not. They were deliberately left out. And it's
7 essential that this Commission honor the statutory intent
8 there, the legislative intent there in that statute.

9 It makes a lot of sense because 750 and the
10 employees it regulates is broader than AB 60. It puts
11 greater -- greater impositions on employers in that
12 industry before those employers can enjoy the kind of
13 overtime rights the statute provides. In essence, it
14 provides for up to 12 hours of straight-time work in the
15 mining industry. Why is that important to the mining
16 industry? Employees have to travel from very far to get
17 to their places of work. If straight-time shifts up to
18 12 hours were no longer permitted because this Commission
19 decided AB 60 extended to those employees and their
20 employers, they would have to work more days per work and
21 commute more, which would affect their personal lives,
22 their income, and all the things that they sought under
23 AB 739.

24 The legislative history of AB 60 supports what

1 I'm urging you to do. The supporters of AB 60 were very
2 careful to point out that the purpose of the statute was
3 to remedy the IWC actions in repealing daily overtime in
4 the wage orders I referenced earlier. It was not
5 intended to affect Labor Code Section 750 and AB 739.

6 We submitted a statement to the Commission which
7 makes these points in greater detail, so I won't hammer
8 it any further. But I will point out one thing: the
9 Industrial Welfare Commission has "welfare" in it for a
10 good reason. It's the welfare of the working public in
11 the state. And as the next speaker will address, the
12 employees of employers in plants and smelters for the
13 reduction and refining of ore and metals in this state
14 demanded the AB 739 result. It was worked out with
15 organized labor in the legislative process and was agreed
16 to by every essential major group involved. So, we hope
17 that you interpret AB 60 in a way that is consistent with
18 AB 739 and permits the continued practice of 12-hour
19 shifts at straight time in that industry.

20 Thank you.

21 (Applause)

22 COMMISSIONER BROAD: I have a question.

23 Well, I tend to agree with you; it's a more
24 specific statute. It wasn't dealt with by AB 60, and

1 therefore, if we adopt a wage order affecting the mining
2 industry, it should include those provisions that are in
3 the statute, which are binding, I believe, on this
4 Commission.

5 My question goes to, if we do a wage order,
6 you're not saying that we don't have the jurisdiction to
7 put in that wage order other things that are normally in
8 wage orders that -- you know, like breaks, rest time,
9 meal periods, all those issues -- temperature -- there's
10 a whole series of things beyond simply overtime and the
11 amount of overtime.

12 MR. BIRENBAUM: Right.

13 COMMISSIONER BROAD: So, I want you to comment
14 on that.

15 MR. BIRENBAUM: Sure. Thank you.

16 Two points. One is that to the degree the
17 Commission decides to issue a wage order, the first
18 question will be whether the Commission has jurisdiction
19 to do it. Insofar as any wage order for the kind of
20 employees covered under Labor Code 750 is involved, I
21 think it would be *ultra vires*, meaning out of your
22 jurisdiction, to issue a wage order that conflicts with
23 that statutory scheme.

24 Whether you have jurisdiction to regulate those

1 employees in other ways that do not conflict with that
2 statute is a separate issue. I don't have the answer for
3 that right now. My hunch is that you probably do, but I
4 don't have the -- I have not studied that issue
5 sufficiently to give you a good answer on it.

6 COMMISSIONER BROAD: Thank you.

7 MR. BIRENBAUM: The only other point there
8 that's suggested by your question is whether you can
9 issue an exception for people covered by Labor Code
10 Section 750 under Section 515 of AB 60. And I believe
11 that you cannot if you don't have jurisdiction over them
12 in the first instance. And I think that's the wiser
13 interpretation to ensure that we don't have a conflict
14 between AB 60 and AB 739.

15 COMMISSIONER CENTER: Thank you.

16 MR. WITT: Mr. Birenbaum, are you finished?

17 Okay. I'm Kim Witt. I'm the manager of human
18 resources for the Viceroy Gold Corporation.

19 Again, we'd like to attest here that there is a
20 difference between metal mining and any of the other
21 aggregate operations. Our employees commute an average
22 of an hour and a half to two hours each way to work each
23 day. We were approached by the employees in the early
24 '90's, and because of the statute, 750, we were not able

1 to allow them extended work shifts.

2 In 1995, when the law passed, we saw great
3 improvement in morale, and we've seen an improvement in
4 safety. Our employees are able to spend more quality
5 time at home, as was testified in the -- in the Assembly
6 hearing earlier. They're able to work in a situation
7 where they cut one third of their commute times out.
8 Each year, our employees working the schedules permitted
9 by 750 and other sections, are able to see 14 weeks of
10 family time per year, because of the way the schedules
11 work. There isn't a problem with safety, because we've
12 seen an improved safety record.

13 In 1995, when we took the poll of the Nevada
14 operations working the 12-hour shifts used in metal
15 mining, 18 out of the 20 operations in the State of
16 Nevada were working the extended shifts.

17 Again, our employees vote each year. Since the
18 implementation of 750, each December we have conducted
19 elections, and 100 percent of our employees have voted to
20 continue this schedule.

21 We would appreciate any assurance you can give
22 to us in maintaining 750. If there are other wage orders
23 for the other mining industry companies, we would be more
24 than happy to help work through the details or provide

1 you with any information you need.

2 Thank you.

3 THE REPORTER: Your card, please.

4 COMMISSIONER CENTER: Thank you.

5 Anybody else from the mining industry?

6 (No response)

7 COMMISSIONER CENTER: Timber industry.

8 (No response)

9 COMMISSIONER CENTER: All right. How about oil
10 drilling?

11 MR. SULZER: Good afternoon, Chairman Center and
12 members of the Commission. My name is Ken Sulzer. I
13 represent the California Independent Petroleum
14 Association, the Association --

15 AUDIENCE MEMBERS: (Not using microphone) Use
16 the mike!

17 MR. SULZER: -- the Association of Energy
18 Service Companies, and the California Independent
19 Petroleum Association. With me today are Dave Lefler,
20 from Western Drilling, and Rod Eson, from Venoco.

21 As you know, our industry has historically not
22 been covered by the IWC's orders, as we've discussed.
23 The DLSE has -- I want to clarify a couple of -- a couple
24 of brief points before turning it over to Ron and to Dave

1 -- but I want to make a couple of preliminary points.

2 The DLSE has termed this, in various forms, as
3 an "exemption," an "exclusion," an "exception,"
4 "noncoverage." To clarify the position of at least our
5 industry, we are just not covered. That is our legal
6 position currently, as we sit here today.

7 It is also our position that we are not covered
8 by AB 60. This doesn't cover our industry, despite
9 comments by the commissioner. The legislative counsel's
10 digest doesn't say anywhere in it that our four
11 industries are covered, so we respectfully disagree with
12 the Labor Commissioner and Assemblyman Knox. He may have
13 understood that construction and oil and other industries
14 were included. I don't believe his colleagues
15 understood that.

16 What I'd like to do is two things today. I'd
17 like to let Mr. Eson and Mr. Lefler provide some factual
18 context on two different parts of the oil industry. And
19 there are different parts of this industry, and I think
20 it's important for the Commission to understand what
21 those are. And second, I'd like to supplement the
22 comments I made on November 15th regarding some very
23 narrow legal issues with respect to the ability of the
24 IWC to include the oil industry in an interim wage order,

1 assuming that -- for purposes of argument, that AB 60
2 covers the oil industry.

3 With that, I'll turn it over to Rod Eson.

4 COMMISSIONER MCCARTHY: Could I make -- could I
5 make just a comment -- could I just make a comment on
6 your remarks first?

7 With regard to your saying you didn't -- with
8 regard to Assemblyman Knox, I might point out he did not
9 say that he thought that -- if I heard him correctly, he
10 did not say that he thought that oil, mining, and lumber
11 were covered by AB 60. He was only addressing
12 construction. And then, when he was asked if he thought
13 construction was covered -- perhaps it's one's
14 interpretation of the English language -- he -- he -- it
15 was less than compelling -- he said, "I believe so."
16 Now, common English usage says that that is less than an
17 absolute conviction.

18 But whatever it may be, I'm sure he -- and he
19 doesn't speak for the rest of the Legislature in terms of
20 their understanding whether they were covered either.

21 COMMISSIONER CENTER: Being a lobbyist in the
22 Legislature, sometimes people vote on things they don't
23 understand too. It happens once in a while.

24 MR. ESON: Mr. Chairman, members, my name is Rod

1 Eson, E-s-o-n. I'm executive vice president and co-
2 founder of an oil company based in Santa Barbara. And
3 the company is Venoco, V-e-n-o-c-o. We're a company, one
4 of the larger independents, headquartered in the State of
5 California, with approximately 190 employees. About 100
6 of those employees work in our offshore facilities,
7 either on platforms or on on-shore facilities that are
8 specifically related to offshore platforms. We produce,
9 both within the state water, meaning within the three-
10 mile limit of the coastline, as well as on the outer
11 continental shelf or federal waters.

12 I would like to first give you a little bit of
13 an idea what kind of work these people do and why we feel
14 the implementation of AB 60 would put a hardship on our
15 employees. The type of work they do is typically a
16 seven-on, seven-off, meaning they work seven days
17 straight, 12 hours a day. This is both the people on the
18 platforms as well as on the facilities. In many cases --
19 which isn't the case for our company, but a lot of other
20 companies -- people that work on the platforms alternate
21 with people that work on-shore.

22 As you can well understand, the ability to
23 produce oil and gas safely is a tremendous concern to
24 everyone, so it's extremely important that these people

1 understand all the processes involved, from the point at
2 which the oil is extracted and the gas is extracted to
3 the point that the oil and gas go into marketable lines.
4 There's a lot of processes that go on. Any glitch along
5 the way can create a release of gas to the atmosphere or
6 an oil spill, and no one wants that. I think the
7 industry has proven over the last thirty years that it's
8 got an exceptional environmental record, from the
9 standpoint in the last thirty years total average amount
10 of oil that has been released into the ocean from any
11 spill whatsoever, from 27 operator platforms, averages 28
12 barrels a year. To put that in perspective, off the
13 coast of Santa Barbara called Oil Point, we have
14 approximately 5,000 gallons every day of oil that's
15 leaked into the ocean from natural seepage.

16 What this would do to our employees, it would
17 decrease their flexibility. Many of these employees,
18 which, I will say, on the offshore platforms and on-shore
19 facilities, are very highly paid employees -- these are
20 not minimum-wage people. These people typically make
21 between \$50,000 and \$70,000 a year. They're very highly
22 skilled. This is not a physical labor industry, it is a
23 technology -- an industry that uses some brawn, but
24 certainly requires the use of the brain.

1 If we were to implement the AB 60, it would
2 really unnecessarily burden these employees. Our
3 employees very much appreciate the compressed workweek.
4 Many of them have second jobs. A lot of them, as in
5 other industries, prefer to live as many as 150 or more
6 miles from their point of departure. And these people go
7 to platforms either via helicopter or boats, depending
8 upon the distance out and currents. In some instances,
9 in some state platforms, the people actually go home at
10 night and don't spend the night on the platform, but they
11 still work the 12-hour days.

12 These people enjoy, many of them, a second job.
13 We have employees that are in family businesses during
14 their 26 weeks of off time that they work. A lot of
15 these people do volunteer work. They enjoy the
16 opportunity to spend their quality time with their
17 families, to understand and have the ability for
18 participation in their children's school activities.

19 Safety and environment, as I mentioned, is our
20 primary concern. One of the things that we have found in
21 this industry, and a lot of companies have found the same
22 thing that we have, which is really in contrast to
23 construction: most of the accidents in our business tend
24 to happen in the first hour of shift work, primarily

1 because it's not a physical operation that we're dealing
2 with, so it's not a fact of being tired. Typically,
3 accidents occur because you have a change of operator.
4 Someone may have made a change to the status quo and did
5 not properly transfer that information to the next
6 operator. So, we've found that it typically is on the
7 first hour of work.

8 If we were to make other arrangements, as has
9 been suggested -- "Well, simply put a third shift on;
10 that'll take care of your problem" -- in a lot of the
11 platform stations, there aren't rooms for an additional
12 sixty or seventy people to be spending the night out
13 there. You obviously then have a 16 hours or so of
14 wasted down time. It's tough enough for a lot of these
15 guys and women to have 12 hours of down time between
16 working. They are very interested in getting the job
17 done, doing it right, and getting -- and getting home.

18 One of -- and I think that probably the bigger
19 reason for that, there are not enough workers if we
20 decided to add a third shift. Quite frankly, it's very
21 difficult today to get these skilled workers working in
22 the oil industry. Everybody today sees the high gasoline
23 prices and they think, "You must be doing really well."
24 I think that it's important to understand that's -- a lot

1 of that is taxes and refining, but you only have to go
2 back two years to look at the lowest oil prices of ninety
3 years. At that point in time, we lost 12,000 workers
4 from our industry, many of them from the offshore set.
5 So, if we wanted to go get those third-shift people, we
6 couldn't do it.

7 In summary, to implement this would mean,
8 basically, it's additional cost to the companies,
9 additional cost and burden to the employees. If you add
10 additional costs to these offshore operations, which you
11 need to understand are now in the hands of independent
12 companies -- with one exception, Exxon, all of these
13 platforms are held by independents. Why is that?
14 Because the majors that previously opened them found the
15 economics declining. So, these are marginal fields, and
16 these independents are much better at keeping them
17 operating.

18 So, what can happen with increased costs, you're
19 going to have premature abandonment on the fields, you'd
20 have additional costs and overhead to the oil companies,
21 and with premature abandonment of the fields, just
22 because we don't produce offshore doesn't mean it won't
23 be consumed. We produce 800,000 barrels of oil in
24 California, and we consume 2.3 million. What that means

1 is there would be increased tanker traffic. This tanker
2 traffic would be under foreign flags, with a lot less
3 control than we have over our offshore platforms today.
4 Ultimately, that could possibly mean even higher gasoline
5 prices.

6 Thank you very much for your time.

7 COMMISSIONER CENTER: Yeah. Just a comment,
8 maybe a question.

9 Right now, your industry considers itself not
10 covered by AB 60, and the Labor Commissioner would
11 possibly disagree with that -- disagree with that in
12 January. In order for the Industrial Welfare Commission
13 to discover what's going on with the industry, we have to
14 convene wage boards to interview affected workers and the
15 employers to possibly provide exemptions. Until we can
16 do that, then you're going to maybe be covered under
17 overtime. Would you support a separate order for your
18 industry? Otherwise, you possibly will be under Order 4
19 or some other order.

20 MR. ESON: I don't want to speak for the entire
21 industry. I think that Kim will be addressing that, from
22 a broad perspective. This is my own view.

23 COMMISSIONER CENTER: Well, until that position
24 is taken, then, we can't help you. That's a problem for

1 us and for you, I think.

2 Thank you.

3 Question?

4 COMMISSIONER COLEMAN: I have a question. Were
5 you surprised to learn that you were covered?

6 MR. ESON: We were surprised to hear that --
7 yes, that we were covered. We assumed we were not, which
8 is why we did not get involved in the process in the
9 Legislature.

10 COMMISSIONER COLEMAN: Okay. So, you weren't
11 involved in the AB 60 discussions?

12 MR. ESON: No. We just assumed that we were not
13 covered.

14 COMMISSIONER CENTER: Back to -- originally, I
15 was involved in the early, early drafting of the bill.
16 But once I got reappointed to the Industrial Welfare
17 Commission, I pulled out of it. In early discussions
18 with our people, we always considered all workers to be
19 covered in California. That's why the bill was drafted
20 that way. So, it surprised me a lot of people didn't
21 understand that after the bill was passed.

22 COMMISSIONER MCCARTHY: I don't know if it's
23 relevant or of any assistance, but as the one member up
24 here who served the longest on this Commission, it

1 certainly was the operating assumption -- more than
2 assumption -- it was
3 -- as far as we were concerned, it was fact -- as I say,
4 that your industry was exempt from the wage orders that
5 were existing, as were the others under discussion today.

6 COMMISSIONER BROAD: I just had a quick factual
7 question. How many employees are employed on the 27
8 offshore platforms, all together?

9 MR. ESON: It would be an estimate, but I know a
10 lot of the companies. Probably in the neighborhood of
11 400 or 500. Once again, we're talking the onshore
12 facilities that relate to the platforms, because, again,
13 they are an integral part, and you need to have
14 continuity of the -- it's very important to understand
15 these flow streams and processes. You don't want to do
16 something small in the onshore facility and end up
17 creating a problem in the offshore facility. That's why
18 I'm getting a lot of this going back and forth. So, I'm
19 adding people that are on the onshore facilities to the
20 platform. In the neighborhood of 300 to 500 people.

21 COMMISSIONER BROAD: Well, wouldn't the -- now
22 I'm a little confused. I would assume that the onshore
23 facilities are part of the manufacturing wage order and
24 always have been. You're not drilling. They're not?

1 MR. ESON: No.

2 COMMISSIONER BROAD: Thank you.

3 MR. ESON: Thank you.

4 COMMISSIONER CENTER: Thank you.

5 MR. LEFLER: Commissioners, good afternoon. And
6 I'm Dave Lefler with Western Drilling of Taft,
7 California, one of the favorite spots to stop as you
8 drive through. But we're over on the west side of the
9 valley, in Kern County. Kern County is a large producing
10 oil state in itself; we're right behind California. We
11 produce about 650,000 barrels of oil a day, a tremendous
12 amount of asset for the local community.

13 What my concern is, and our employees' concerns,
14 is that they would lose the opportunity to continue to
15 work compressed work schedules such as Rod described.
16 And I'd like to talk about also exporting jobs out of
17 California, because I think sometimes we forget what some
18 of these actions that we take end up doing. And so, what
19 I want to talk about a little bit today is that.

20 We see that the implementation of AB 60, the 8-
21 hour overtime regulation, into our industry that has been
22 basically excluded -- not exempted, but excluded -- over
23 the years would increase our drilling costs
24 significantly. Currently, we're paying about 25 percent

1 more per hour for our drilling crews than they are
2 anywhere else in the U.S. So, we're paying our people
3 well.

4 The other thing that happens in our industry in
5 the area is that we have to compete with other -- other
6 capital investments for these companies. And so, if our
7 costs go up, the number of wells will go down that are
8 drilled in California. That means that jobs will be
9 exported out of California.

10 Currently, we're paying our drillers about \$20
11 an hour. They do get some overtime at the current time,
12 and so they make \$50,000 to \$60,000 a year, on these --
13 on their first job, their daylight job, so to speak. AB
14 60 would increase our costs by another 20 percent, and
15 therefore we'd be up about 45 percent more than other
16 areas and regions within the U.S. So, definitely, we'd
17 be diluting out of the area.

18 One recent development in our local economy in
19 Taft was that one of these drilling and service companies
20 went out of business and auctioned their rigs. Their
21 rigs did not stay in California. They went to Canada,
22 Oklahoma, and Texas. Jobs left with those rigs. Each
23 rig is about 28 people. That's 28 families every time
24 one of those moves out of the state.

1 Also, our employees enjoy the 12-hour shifts
2 because it compresses their workweek. They work seven
3 on, seven off, which I think was talked about here
4 before. It provides them with more continuous time off
5 with their families to do the things that they want to
6 do. Some of them have second jobs, as Rod had indicated.
7 And some of them, of course, do a lot of volunteer work.

8 Our employees came to us at Western Drilling
9 just a little over a year ago and asked to go on 12-hour
10 shifts. We did that. We implemented that for them. The
11 morale immediately increased. Their safety record
12 increased dramatically. We're having about one half of
13 the incidences -- recordable instances we were having a
14 year ago, so significant safety improvement.

15 Also, our employees have found that they like
16 having two weekends off a month now. Previously, they
17 had one weekend a month with their families, and now it's
18 two weekends. They basically work a half a year; they're
19 on vacation the other half. It's a wonderful schedule.

20 Also, for commute, our people travel anywhere
21 from about 100 to 150 miles to a rig site, so they're
22 traveling a lot, commuting a lot. This reduces the
23 number of times they travel, instead of the traditional
24 8-hour rotating schedule.

1 Another item that was touched on by Rod is the
2 increasing fuel costs. I believe that California will
3 experience an increase in gasoline pump costs if we
4 implement this within our industry. As production drops
5 because of the number of wells drilled, so will the mix
6 of low-cost crude oil from California. And as that
7 happens, it will be displaced with higher-cost imported
8 oil. Also, increased tanker activity along our coast
9 will bring increasing imports to support California's
10 lifestyle. And that's not going to change with a slight
11 increase in cost.

12 Thank you for your time and attention. Are
13 there any questions?

14 COMMISSIONER CENTER: Yeah, I have a question,
15 or a comment. I'm still bewildered here. The way I read
16 the statute, it's my opinion you'll be covered. I guess
17 that's the way the Labor Commissioner will read the
18 statute. It will be in court, I'm sure.

19 In order for our Commission -- and again, I'll
20 reiterate that -- to investigate your industry, we have
21 to convene wage boards. And later on, you go to court
22 and you lose your court case, maybe. Then you'd have to
23 come to us and petition for wage boards. That's a long
24 process. It would -- I would think it would be better

1 for your industry to convene wage boards right away,
2 because we're not determining whether you're covered or
3 not, we're just investigating your industry, for the
4 welfare of the workers, which might mean 12-hour shifts
5 on offshore oil facilities are better for the workers.

6 You know, I just wonder what your opinion is on
7 that.

8 MR. LEFLER: I think that's an area that we'll
9 have Ken address. I think one of the real issues brought
10 up by -- in Leslee's question was that we did not believe
11 -- and we still do not believe -- that we are covered by
12 this AB 60. The legislative intent, which was given to
13 us through our Assemblyman before was that it was not
14 Knox's intent to include our industry, or mining, or the
15 on-site construction in it. And that was their
16 understanding as a Democratic caucus, but that is -- it
17 got lost somewhere in the translation.

18 COMMISSIONER CENTER: Yeah, but that's --

19 MR. LEFLER: That's just a comment, and that's
20 our opinion.

21 COMMISSIONER CENTER: Yeah, I'm not -- but
22 again, the statute trumps our regulation.

23 Just -- I'd like to have it -- maybe you can
24 explain it to me, because I think there might be some

1 issues in your industry, but we can't start the process
2 until the process is started.

3 MR. LEFLER: We understand that. Thank you for
4 the opportunity.

5 MR. SULZER: I thought I'd rest with the last
6 points. One -- you indicated at the last hearing that
7 you expected to be sued by one side or the other. It may
8 be that we've got a collateral challenge in court as to
9 the jurisdiction of AB 60. I don't think that has
10 anything to do with if there's any legal --

11 AUDIENCE MEMBERS: (Not using microphone) Can't
12 hear! Microphone!

13 MR. SULZER: -- there's any legal reason not to
14 go ahead with the investigatory process, if it's the
15 IWC's opinion that our industry is covered, and go
16 through it. I don't think they're -- I think we can do
17 them both at the same time.

18 COMMISSIONER CENTER: That we can do wage boards
19 whether we think your industry is covered or not? Can
20 we?

21 MR. SULZER: You're saying that to me or asking
22 that?

23 COMMISSIONER CENTER: Yeah. Can we? To
24 investigate your industry and prepare in case you are

1 covered. I think it's beneficial for your industry.

2 MR. SULZER: I agree.

3 COMMISSIONER CENTER: Would you support that?

4 MR. SULZER: I don't see any reason why we don't
5 -- we'll get back to you -- I don't see any reason why we
6 wouldn't go on collateral paths. And this kind of leads
7 into my next set of comments, which is really on a
8 technical legal issue which really does address the wage
9 board issue.

10 And that is, we've heard some discussions and
11 understand that we may be -- our industry may be included
12 in an interim wage order. Even if these industries are -
13 - are covered by AB 60, assuming for purposes of
14 argument, our association believes that including us in
15 an interim wage order would be unlawful because AB 60
16 does not repeal or eliminate Part Four of the Labor Code,
17 which is Sections 1171 through 1182-point-whatever of the
18 Labor Code.

19 We believe that AB 60 -- number one, we believe
20 that AB 60 did not intend for the IWC to regulate
21 previously unregulated industries, without ever convening
22 a wage board at all, ever. We don't think that's true.
23 Obviously, for every other industry, there's been a wage
24 board, and they've been exempted, regulated, and so

1 forth. But there's never been a wage board for our
2 industry.

3 One reason that's an appropriate interpretation
4 here, the wage board -- historically, the wage board
5 process has been a substitute for other process, to
6 substitute for the APA, the Administrative Procedure Act,
7 from which the IWC is exempt. We don't -- we don't have
8 -- our industry will never have either one of those
9 practices ever. We'll have an interim wage order
10 governing us without ever going through the wage board
11 process, if we are included in your interim wage orders.

12 Having said that, Section 517 of AB 60 does say
13 the IWC can more or less regulate people covered by AB 60
14 without convening wage boards. Importantly, it does not
15 say "notwithstanding all the requirements of Part Four of
16 the Labor Code." That's the only requirement of Part
17 Four of the Labor Code that AB 60 accepts.

18 In order to get the oil industry or construction
19 or mining or logging, to get them regulated in the first
20 place, because they weren't -- they haven't been
21 regulated, you have to convene the process set forth in
22 Part Four. Okay? If you believe that wage boards aren't
23 required, then you still have to do the other processes
24 set forth in Part Four of the Labor Code. And those

1 processes are proposing regulations, sending out a notice
2 of hearing, I believe preparing the reports of the
3 public, get to hold hearings on those proposed
4 regulations in at least three cities, you have to notify
5 associations and employees of those hearings. And unless
6 and until the IWC does this, it follows these processes,
7 absent -- even absent wage boards, you can't validly
8 regulate a previously unregulated industry with respect
9 to overtime.

10 The statute could have clearly said none of
11 these requirements apply, go ahead and regulate
12 everybody. It doesn't say that. The only exception to
13 Section 1171, *et seq.*, is the appointment and convening
14 of the wage boards themselves. All the other duties of
15 the IWC are still there, they're still in the Labor Code,
16 they were not repealed.

17 And it's quite clear that the Legislature
18 considered this, because it did repeal a couple of
19 sections, or at least one section of Part Four of the
20 Labor Code, specifically. So, they did grasp and
21 understood this part of the Labor Code was there. At
22 best for the IWC, there's a conflict between two
23 statutes. And I believe that it's appropriate, however,
24 that the procedures of 1171, *et seq.*, other than

1 convening wage boards, must be followed before there's
2 any valid wage order that covers the oil industry. That
3 may not be true with respect to all the other industries,
4 but with respect to those four industries, it's got to be
5 true. It's the only way you can read these two statutes
6 together, if you read the exception for convening wage
7 boards in Section 517 appropriately.

8 Importantly, there's a recent appellate decision
9 that's as yet unpublished. It's Baker v. Veico Drilling.
10 Baker v. Veico Drilling was under the current Labor Code,
11 not under AB 60, but Veico Drilling does interpret Part
12 Four of the Labor Code, 1171, *et seq.* It says those
13 provisions are mandatory. They must be followed or you
14 are not regulated. And on that basis -- on that basis,
15 Veico Drilling was -- it was determined that they were
16 not regulated, they were excluded from regulation by DLSE
17 through the failure of the IWC to go through the other
18 processes, or the processes in 1171, *et seq.*, Part Four
19 of the Labor Code.

20 That's still in the Labor Code. People kind of
21 forgot about it, didn't look at it, and maybe thought the
22 language "without convening wage boards" erased that
23 whole part of the statute. Obviously, it did not. If
24 the Legislature intended to do so, it could have said,

1 like it said in the last legislation, "Notwithstanding
2 the provisions of Part Four." It did not say that, and
3 those provisions still exist, and they prevent the IWC
4 from regulating our industry in an interim wage order, or
5 any type of wage order, without going through those
6 processes. That's a statutory interpretation point.

7 Probably the bigger point, and why this is
8 somewhat confusing, is we believe that Section 517, which
9 says you can put together wage orders without convening
10 wage boards, we don't believe it was intended to regulate
11 anybody other than the people who had their 8-hour daily
12 overtime taken away, people in the wage orders that were
13 -- that had daily overtime taken away, 1, 4, 5, 7, and 9.
14 These were previously people who lost their daily
15 overtime, and the act is the restoration of daily
16 overtime. That's the title of it. We don't believe that
17 Section 517 was meant to cover previously completely
18 unregulated industries with respect to overtime.

19 The bottom line of this argument, I think, is
20 that if these industries are going to be regulated, the
21 Legislature would have to state so. And it turns the
22 argument on its head: we have to hold wage boards to
23 hold an exemption. That argument -- to create an
24 exemption. That argument is wrong. You have to hold

1 wage boards in order to regulate the industries through
2 the scheme that's set up by AB 60, and that is wage
3 orders, wage boards, and so forth. And that's still
4 mandatory, it's still in the Labor Code. AB 60 did not
5 repeal it, and the Legislature didn't say otherwise.

6 COMMISSIONER CENTER: Thank you.

7 And the Veico decision that's unpublished,
8 everybody has. They did not address AB 60, I don't
9 think, in that decision.

10 MR. SULZER: No. Correct. They specifically
11 said, "We're not addressing AB 60." However, the part
12 that I'm talking about is Part Four of the Labor Code.
13 They did address that and said that's mandatory. If you
14 don't do that, you're not regulated, period. That's the
15 holding. You can't -- that part of the Labor Code is
16 still in there. So, at best, you could argue it
17 conflicts with AB 60, but it doesn't conflict with AB 60,
18 because all AB 60 accepts is the actual convening of the
19 wage boards themselves. Other things the IWC is supposed
20 to do before putting out a wage order, holding a hearing,
21 proposing the regulations, doing it in three cities, et
22 cetera, need to be done before we can be regulated at
23 all.

24 So, as of January 1, we are not encompassed by

1 the 8-hour day. And if you were to put in an interim
2 wage order, say, January 15th, January 20th, without
3 going through the processes in Part Four, it would be
4 invalid, and certainly as to our industry.

5 COMMISSIONER BROAD: Okay. So, if that's the
6 case, then with respect to the other parts of the bill
7 that allow us to do things without convening wage boards,
8 we need to hold hearings in three different cities and so
9 on and so forth. Is that your position?

10 MR. SULZER: Which other parts?

11 COMMISSIONER BROAD: The parts that deal with
12 hospitals, and deal with stable employees, and deal with
13 the procedures for alternative workweeks, and deal with
14 commercial fishing. It's only you guys that that amounts
15 to?

16 MR. SULZER: I don't know the answer to that.
17 I'm talking about these industries that were previously
18 unregulated. My comments are limited to those
19 industries. I don't know the answer.

20 COMMISSIONER BROAD: But the statute --

21 MR. SULZER: But it does create an issue. As
22 you say it, it does create an issue. Can you regulate
23 anyone without going through 1171, *et seq.*, procedures
24 other than the wage boards?

1 COMMISSIONER BROAD: So, then, perhaps if we
2 were to --

3 MR. SULZER: I don't know.

4 COMMISSIONER BROAD: -- decide without convening
5 wage boards that we wanted, in a final order to be issued
6 before July, to permit hospitals to have 12-hour days,
7 and we didn't do what you're saying, then our decision
8 would be unlawful and they wouldn't be able to have them.

9 MR. SULZER: I can't address the hospitals
10 specifically, but my position would be you certainly have
11 valid wage orders. Section 21 says the old wage orders
12 are still in place, so --

13 COMMISSIONER BROAD: I believe, Mr. Sulzer, you
14 may be helping your client, but you're not helping some
15 other people in this room.

16 (Laughter)

17 COMMISSIONER BROAD: Now let me ask you this
18 question.

19 MR. SULZER: The answer is I don't know the
20 answer.

21 COMMISSIONER BROAD: Okay. You and I have
22 discussed this bill --

23 MR. SULZER: Yes.

24 COMMISSIONER BROAD: -- many times. It would

1 make a very good MCLE course for attorneys. Let me just
2 say my response to what you're saying.

3 This is a remedial statute, given liberal
4 construction under the precedent of the California
5 Supreme Court in previous cases. Section 510 applies to
6 every single worker in the State of California.

7 You began by saying -- every single employee in
8 the State of California. You began by saying, "Well,
9 where is the oil industry mentioned in here?" Well,
10 where is any industry mentioned in here? They're not in
11 AB 60 because the bill covers all workers.

12 And I think, in my opinion -- and obviously, you
13 can take this to a judge who's better prepared to make a
14 definitive decision on any of this -- but once you, I
15 think, agree that this is a statute of general
16 application, it covers everybody unless you can find an
17 exemption within the bill. And the exemptions are quite
18 clear, whether there's an alternative workweek, and so on
19 and so forth. With regard to your industry, the only
20 provision of the bill that deals with these four
21 industries says that the Commission --

22 "Nothing in this section requires the
23 Commission to alter any exemption from
24 provisions regulating hours of work that was

1 contained in any valid wage order in effect in
2 1997."

3 Now, I know that the first rule of statutory
4 construction is plain meaning. And I find nowhere in any
5 wage order of this Commission that there is an exemption
6 for these industries.

7 Now, you may be right that -- and you can take
8 it to court -- you may be right that we can't, on an
9 interim basis, do what we're doing. Well, then, perhaps
10 you're just left with the Labor Commissioner's
11 interpretation that, automatically, every worker who is
12 not otherwise exempted falls under Wage Order 4 on
13 January 1. And that may be where you are.

14 So, it's a conundrum, I think, for your
15 position, that any way you look at it, I believe that
16 they're covered. And the question is whether you want to
17 -- and you're perfectly free to do this -- whether you
18 want to resist that legally and, you know, take your case
19 to court, or whether you want to accept the Labor
20 Commissioner's view that these people are covered by Wage
21 Order 4. And if the Labor Commissioner is correct, your
22 industry will be racking up huge overtime costs, starting
23 on January 1, irrespective of what this Commission does.
24 Or you can take the view, I think suggested by our

1 chairman, that perhaps you support convening wage boards
2 and understand that on a temporary basis, that the
3 workers in these industries would be covered under those
4 provisions of AB 60 that cover every single worker in the
5 state.

6 So, anyway, that's my view of it, or response, I
7 guess. Thank you.

8 MR. SULZER: Any further questions?

9 COMMISSIONER CENTER: We're here to help.

10 (Laughter)

11 COMMISSIONER CENTER: Anybody else from the
12 industry?

13 (No response)

14 COMMISSIONER CENTER: Thank you very much.

15 Labor folks, I think.

16 Scott, do you want to go first? Building trades
17 and --

18 MR. WETCH: Thank you, Mr. Chairman. Scott
19 Wetch, with the State Building and Construction Trades
20 Council, on behalf of the more than 300,000 organized men
21 and women of the construction trade in California.

22 First, I'd like to say that we -- I want to make
23 just a few simple points. I don't want to be repetitive
24 of what other people have said, but we share the view

1 that Assembly Member Knox made earlier today, that AB 60
2 clearly covers the construction industry. Moreover, we
3 feel that the legislative history and record is clear to
4 this point. Anyone who participated in the deliberations
5 with AB 60 was aware the issue of it applying to on-site
6 construction was out there. Many of the opposition
7 groups that opposed AB 60 used that very argument in
8 their propaganda to lobby against the bill.

9 Now, what I want to do is look at the -- first
10 of all, associate myself with the opinion of Commissioner
11 Broad in regard to the statutory construction and the
12 reading of
13 -- the very plain reading of AB 60. A basic tenet of
14 statutory construction is that there is no such thing as
15 an implied exemption. An exemption, by definition, must
16 be affirmative. AB 60 covers California workers not
17 expressly exempted under the bill or an existing wage
18 order prior to 1998.

19 As we all know, and as was stated here just a
20 few minutes ago, nowhere in either AB 60 or in existing
21 wage orders is there an exemption from daily overtime for
22 employees in the construction industry. The argument
23 that somehow the construction industry is exempt by
24 custom is not worthy of serious consideration.

1 In regard to testimony earlier from the
2 representative of the Associated General Contractors, we
3 also agree, simply, that the Commission does not have the
4 authority under AB 60 to provide some sort of a
5 moratorium effective January 1 from the provisions of AB
6 60. The Legislature specifically, in adopting -- in
7 their adoptive deliberations for AB 60, chose to specify
8 certain exemptions. To use the argument made by the
9 gentleman representing the drilling industry, certainly
10 in applying those specific exemptions, they considered
11 all exemptions and they chose not to explicitly exempt
12 the construction industry, and, for that matter, the
13 drilling and mining and logging industries.

14 Given the testimony from the Labor Commissioner
15 and her plans to enforce AB 60 effective January 1, and
16 given the obvious confusion and misinformation out there
17 amongst the construction sector in regards to AB 60, we
18 would urge the Commission to adopt an interim order to
19 ensure that employees, effective January 1, 2000, receive
20 daily overtime after 8 hours.

21 In addition, we would urge the Commission to
22 issue a notice to this effect, to be posted in
23 conspicuous places -- so all employers in the
24 construction industry -- we think that's vitally

1 important to clear the air on this issue as soon as
2 possible.

3 In conclusion, we would additionally urge the
4 Commission to act expeditiously to address the myriad of
5 other outstanding issues regarding working conditions in
6 the construction industry, and we will look forward in
7 the coming weeks and months to work with the Commission
8 to draft a wage order for the construction industry that
9 accomplishes that.

10 Thank you.

11 MR. HOLOBER: Good afternoon, Chairman and
12 members of the Industrial Welfare Commission. My name is
13 Richard Holober, representing the California Labor
14 Federation, AFL-CIO. We've just given you some written
15 testimony that covers various subjects regarding
16 implementation of AB 60.

17 On this question of coverage of these
18 industries, let me make it very clear that the Industrial
19 Welfare Commission and the Legislature have concurrent
20 jurisdiction over the subject matter of wages and hours
21 and conditions in California. And in the past, the IWC
22 had a fairly broad discretion in choosing coverage and
23 non-coverage. That discretion is now considerably
24 reduced as a result of AB 60.

1 So, we agree that the chairman's interpretation
2 is correct.

3 What you can do right now is quite limited in
4 terms of interim regulations that would effectuate AB 60.
5 The reason you want interim regulations, I think, is to
6 allow everybody in the state, employers as well as
7 workers, to understand as quickly and as clearly as
8 possible, what the new law is, what the responsibilities
9 are of employers, what the rights are of the workers.

10 Now, when we drafted AB 60, we tried to save the
11 Commission a little bit of the headache and some extra
12 work, knowing how much work you will be doing.

13 COMMISSIONER CENTER: Nice try.

14 MR. HOLOBER: Right.

15 (Laughter)

16 MR. HOLOBER: We think we did do that, although
17 we've got a lot of work to do. And we did that by saying
18 if an exemption was in a wage orders, which means it is
19 spelled out in English, in plain, simple English, in a
20 wage order that was in effect before January 1st of 1998,
21 that unless AB 60 specifically repealed that exemption or
22 eliminated that exemption, that was grandfathered, that
23 exemption was still in place.

24 So, for example, there is an exemption for the

1 immediate family members of the business owner. There is
2 an exemption for public employees. Those are not in
3 dispute. The IWC adopted those exemptions through a
4 process that was lawful, and they will remain in place.

5 So, we get to the question of these four
6 industries. There is no exemption in any wage order that
7 was in effect before 1998 for those four industries.
8 And, in fact, during the prior course of testimony,
9 hearings, discussions with the Director of Industrial
10 Relations, the industries that we're now talking about
11 were all discussed. In fact, opponents made a real point
12 of trying to encourage opposition by pointing out that
13 these industries will now, for the first time, be clearly
14 regulated.

15 Now, we're not making an opinion here on whether
16 DLSE and the Labor Commissioner was right or wrong in
17 their discretion that they had under the old regime not
18 to enforce wage orders. I know there's a dispute about
19 that, and we don't have a position on that. But the
20 point is, on January 1st of next year, those industries
21 are covered. We believe the chairman's correct, that if
22 they want to ask this Commission for an exemption,
23 there's a process. It's a fairly lengthy process, so if
24 they're interested in trying to move that along, they

1 would be wise to ask for you to begin a review.

2 Let me make one final comment about the
3 underground mining and smelting industry, because that is
4 somewhat unique here. And I was involved, representing
5 the California Labor Federation, when we negotiated the
6 bill, AB 739, with the California Mining Association.
7 And we would agree that that is a unique situation. That
8 situation resulted from a unique previous set of
9 circumstances. It's the only industry, private industry
10 in California, that had an 8-hour day law on the books.
11 In fact, overtime was prohibited; it wasn't a question of
12 being paid time and a half. You could not work more than
13 8 hours in the underground mining and smelting industry.

14 There was a collective bargaining exemption.
15 There was a federal court case, a Viceroy Gold case, that
16 concluded that unless there was a method for workers not
17 represented by a labor organization to also get an
18 alternative workweek, that the collective bargaining
19 exemption would no longer be valid. As a result of that
20 court case, we came up with a parallel way, through an
21 election, for workers who are not represented by a union
22 to have an alternative workweek.

23 In some ways, Section 750 is better language
24 than what we had in the wage orders because of some of

1 the procedures that guide the conduct of elections are
2 better procedures. So, in fact, we were trying, in
3 earlier drafts of AB 60, to recommend that the Commission
4 some of those election procedures. And you'll have the
5 opportunity to do that in the spring.

6 So, with that one special case of underground
7 smelting and mining, which we do believe is regulated by
8 another provision of the Labor Code, these industries are
9 covered. There's not much -- there's nothing the IWC can
10 do, short of convening wage boards to look at those
11 industries. If you don't put something out to the public
12 as a courtesy to help them comply with the law, then
13 those industries are going to proceed at their peril,
14 because the law is the law, and we trust that this Labor
15 Commissioner will enforce the law.

16 We also have other issues. I don't know if this
17 is the time to address those.

18 COMMISSIONER MCCARTHY: I had some questions.
19 With regard to whether -- with regard to whether these
20 industries were exempt, you say they were not exempt.
21 Are you saying, then, that they were acting illegally all
22 of these years in not paying the time and a half?

23 MR. HOLOBER: No. What I'm saying is, first,
24 we're not entering an opinion on what would have been

1 correct or what would have been correct before 1998. I
2 know that there's a debate about that.

3 The point is this: the Labor Commissioner, as I
4 understand it, chose in its discretion not to enforce in
5 those industries. And we believe they will not have that
6 discretion on January 1st, because the statute clearly
7 covers them. Your interpretation of wage orders becomes
8 irrelevant on January 1st.

9 COMMISSIONER McCARTHY: But you don't have any
10 opinion whether or -- I mean, if you're saying they might
11 have been acting legally, then you're saying they might
12 have been exempt. If you're saying they were not exempt,
13 then it seems, by conclusion, or --

14 MR. HOLOBER: No. No.

15 COMMISSIONER McCARTHY: What am I missing here?

16 MR. HOLOBER: Well, we're here on AB 60, and
17 not --

18 COMMISSIONER McCARTHY: Well, you made comments
19 about what you thought the status was, though, prior to
20 this.

21 MR. HOLOBER: Yeah. My -- my -- let me repeat
22 my -- if an exemption is in a wage order, spelled out,
23 clearly spelled out, like members of the immediate of a
24 business owner, public employees. There are certain

1 transportation industry exemptions, cab drivers, there
2 are certain that are very clearly stated in the text of a
3 wage order. AB 60 allows those exemptions to remain in
4 place, until the IWC chooses to convene wage boards and
5 maybe change those exemptions.

6 If you look at the wage orders, you will not
7 find any reference in those wage orders to construction,
8 logging, drilling, and mining. Therefore, as
9 Commissioner Broad pointed out, they are covered under AB
10 60.

11 If you're asking me to --

12 COMMISSIONER McCARTHY: No, but you're -- but --

13 MR. HOLOBER: -- making a legal opinion as to
14 the back --

15 COMMISSIONER McCARTHY: No, I'm not asking a
16 legal -- I'm asking your judgment.

17 MR. HOLOBER: -- back pay owed to workers, I
18 don't have an opinion right now.

19 COMMISSIONER McCARTHY: Yeah. I mean, the
20 statute doesn't say "written." It says "exemption." And
21 so, I'm asking you if you thought they were exempt or not
22 exempt.

23 MR. HOLOBER: I think I've answered the
24 question.

1 COMMISSIONER CENTER: Yeah. It's my
2 understanding there's never been formal action by the IWC
3 to exempt those industries, and it's not mentioned in the
4 orders.

5 MR. HOLOBER: Well, let me -- I know there's
6 been verification in an unpublished opinion that just
7 came out. And if you look at Wage Order 4, the logical
8 conclusion there would be, if you look at who is covered,
9 for example, bundlers and bill-posters, whatever they
10 are, I would like you to show me when a wage board was
11 convened that set -- that dealt with conditions in the
12 bundling industry and the bill-posting industry, in the
13 copy-holding industry. There's a very lengthy list of
14 specific industries and occupations named. And then
15 there's a general statement that says, basically,
16 everybody else.

17 So, I think that decision is -- it was wise that
18 it was not published, because it's simply logical.

19 COMMISSIONER McCARTHY: Well, I would just add -
20 - say, with regard to whether or not they had a prior
21 exemption -- and I think your wording that -- well, that
22 the Labor Commissioner chose not to exercise their
23 discretion, I think the Labor Commissioner concluded they
24 were exempt, as did the IWC conclude that they were

1 exempt, whether it was
2 -- whether it was written or not.

3 And I'm not -- now, did the Labor Federation
4 file complaints, either with the Labor Commissioner in
5 years gone by or with the IWC, that you had a group here
6 that was not exempt that was actually illegally?

7 MR. HOLOBER: Okay. First, the -- you've got
8 two agencies. There's the Labor Commissioner and the
9 IWC. To my knowledge, the IWC has not addressed this
10 issue. The Labor Commissioner had addressed it by
11 choosing not to take cases that were filed, even though
12 cases have been filed in those industries.

13 So, I think this is really more of an issue for
14 the Labor Commissioner. We agree with what we heard
15 today, which is that AB 60 will cover those industries.
16 Now, there's a process to go through if those industries
17 want to seek an exemption. But AB 60 is going to be the
18 law on the 1st. It is a very broad question in terms of
19 coverage: you're covered unless there is a specific,
20 stated either in the bill or written in plain English in
21 a wage order, saying you're not covered. It's not an
22 interpretation question, whether the Labor Commissioner
23 made a right or wrong decision. We're talking about
24 January 1st, there are new rules. And I think those

1 industries need to be very careful that -- you know, they
2 could very well be racking up a very large judgment if
3 they don't comply.

4 COMMISSIONER CENTER: The reason I'm doing these
5 industries is I think they're holding a gun to their head
6 by not putting out wage boards, which I think we could
7 probably do if we had the votes -- and I don't think we
8 do right now. But I think it's to their benefit to open
9 up wage boards right now. Let's not argue whether
10 they're covered or not, but -- you know, but that's my
11 opinion.

12 And patient -- the nurses are next, so --

13 (Applause)

14 MR. MCKINNON: My name is Matt McKinnon. I'm
15 the executive secretary for the Machinists Union in the
16 State of California through the California Conference of
17 Machinists. And our organization represents
18 approximately 100,000 working and retired members in the
19 state, working in virtually every industry, including the
20 four industries that have been discussed today.

21 Where I'd like to start out is almost where the
22 last testimony left off. It is very clear to our
23 organization from the very beginning of supporting AB 60
24 that we wanted no more loopholes, no more holes, and let

1 the IWC work out where the exceptions should be -- no
2 exemptions. Now, what happened during the process of the
3 legislation was that there were exemptions made, and
4 there were debates and there were negotiations about
5 exemptions. These four industries discussed today did
6 not get exemptions, and we think AB 60 is very, very
7 clear on that point.

8 Now, with respect to the question of having wage
9 boards and wage orders, we do, however, favor going
10 through that process. We think that's the right thing to
11 do. We think that's the fair thing to do. Maybe in the
12 past in this process, some folks in labor didn't feel
13 that they were treated fairly. That doesn't mean we're
14 going to go stand away. We think that there are reasons
15 to have wage boards discuss the conditions in the
16 industry protected and make the rules, instead of having
17 checkerboard rules that were built up over sixty years,
18 with holes and exemptions and all kinds of things. AB 60
19 drew a line that's very, very clear. And from this point
20 forward, we need to have wage boards determine where we
21 go on that.

22 Of the four industries that are mentioned, the
23 one that we have the largest amount of members and other
24 workers that work with those members that would be

1 affected is in the lumber industry, in the logging
2 industry. And in the logging industry, I deal primarily
3 with two different companies. Neither of those companies
4 came to testify today. I talked to both of those
5 companies, and neither of them had major objections to
6 what I was doing. And, in fact, one of them said, "We
7 work people 8 hours a day because it's safer that way.
8 The only thing we want to talk to you about is lunch
9 breaks, because we have people working out in the cold
10 and the rain for hours. And can they work through their
11 lunch breaks? Is there a way of working that out?"
12 That's an appropriate place for a wage board to convene
13 and work out a wage order to figure out what the best
14 course is in that specific industry.

15 So, again, clearly, from the Machinists Union,
16 we think AB 60 is clear. We think it drew a line. We
17 think the exemptions that are in it are in it because
18 they were negotiated and put in it. Otherwise, it seems
19 to us that there ought to be wage boards and wage orders
20 issued.

21 Thank you.

22 MS. GATES: Good afternoon, commissioners and
23 staff. I think I'm probably going to make the nurses
24 very happy to hear that I believe I'm the last person to

1 testify on the construction industry.

2 (Applause)

3 MS. GATES: They deserve a commendation for how
4 long they have waited today to be heard.

5 I guess I'm the -- the construction group was
6 the second longest people to forbear, and I will go very
7 quickly. I have submitted to all the commissioners and
8 to the staff attorney a copy of oral testimony, which I
9 promise the chairperson here today that I will not read
10 into the record. And, in fact, I will make my testimony
11 very brief. The people who've already testified here
12 today involving the construction industry have most of
13 the ground that I thought I would need to cover, and now
14 I don't.

15 I need to introduce myself. My name is Patricia
16 Gates. I'm an attorney with the Law Offices of Van
17 Bourg, Weinberg, Rosenfeld, and Roger, and I'm here today
18 at the request of the Northern California District
19 Council of Laborers, and I'm here to speak in support of
20 daily overtime for all California construction employees.

21 I have to say that it was incredibly gratifying
22 to hear one construction industry employer actually raise
23 and testify that he was -- he encourages payment of time
24 and a half in the construction industry in order to

1 increase safety and decrease accidents on the job.
2 That's the kind of employer cooperation which is
3 incredibly gratifying, I would think, for a board like
4 this to hear.

5 I've heard other employer representatives
6 testifying today, and I was amazed at maybe their naiveté
7 to think that this board is supposed to do what's good
8 for business. This board has a very specific statutory
9 mandate, and that's to look after the welfare of working
10 people in the state. It is a partisan board.

11 I'd like to also say that as to the unpublished
12 opinion, the Veico decision that people from the oil
13 drilling industry have raised. I think that that
14 rebuttal is fairly and, actually, very adequately,
15 handled by one of the commissioners, Commissioner Broad.
16 I would say that in addition to what Commissioner Broad
17 said and, I think, what was implied in what he said, was
18 that this board not only has had broad statutory
19 authority that goes all the way back to 1913; the
20 legislative mandate and the legislative delegation of
21 power to this board, to the Commission, has grown over
22 time, culminating in 1998 -- or 1999, with the passage of
23 AB 60. So, I think what is implied is that whatever the
24 court reviewed, the court did not review the authority of

1 this Commission to act since AB 60. And that authority
2 was made even more broad.

3 There's -- I'd also like to say that AB 60 is a
4 -- is considered a remedial type of legislation. And I
5 think that this was already stated, but the particular
6 case that addresses this is a case known as Industrial
7 Welfare Commission v. Superior Court, and I briefed that
8 in the testimony that I gave to you. That decision was
9 made after employer groups managed to hijack the wage
10 orders issued by this Commission for a period of almost
11 ten years during the 1970's. Finally, in 1980, the
12 California Supreme Court in a unanimous decision said
13 that employer groups going into Superior Court to get an
14 injunction -- and these were injunctions that held up
15 enforcement of wage orders for every worker in California
16 -- they said those days were finished.

17 This is the last thing I will say. The Supreme
18 Court actually did an extraordinary thing; it exercised
19 original jurisdiction, at the request of then-Attorney
20 General George Deukmejian, and heard the case only three
21 months after the employers who were attempting to hold up
22 the enforcement of these wage orders, they -- the Supreme
23 Court heard that case three months after the first cases
24 were in Superior Court, and they took the case in the

1 next term and issued a truly extraordinary opinion, which
2 I hope every member of the Commission will read, because
3 it really constructs, almost like a -- almost like a law
4 school course, an MCLE course in itself -- about the
5 legislative history, the powers of this board, and also
6 the kind of authority that's given to interpret
7 legislation in a -- not in a narrow way, as the oil
8 industry would have us interpret it, but in a very broad
9 way, as is appropriate for remedial legislation.

10 And with that, I will end, unless there's any
11 questions.

12 COMMISSIONER CENTER: Getting back to the issue
13 of the wage boards, don't you think it's a benefit for
14 the industries to open up the boards if they want any
15 relief under AB 60?

16 MS. GATES: I think it would be a benefit to
17 industry to tailor their orders, their wage orders, to
18 the needs of their individual industries. That's the
19 idea of -- I think that's why there are, right now,
20 twelve industry orders and only three occupational
21 orders. The occupational orders are much more broadly
22 drawn.

23 COMMISSIONER BROAD: Mr. Chairman, I would be
24 prepared to make a motion at this time that we move

1 forward to convene -- and before I do this, I need to ask
2 our legal counsel a question.

3 Do we -- would the proper motion be four wage
4 orders, because there are four industries, or four wage
5 boards because there are four industries, or one wage
6 board that can make recommendations as to how many wage
7 orders there should be?

8 Sorry.

9 MS. STRICKLIN: That's really, I think, the
10 Commission's choice. I mean, if you are asking for a
11 suggestion for me, I would say it's going to be four wage
12 boards.

13 COMMISSIONER CENTER: I'm sorry. Could you
14 repeat that, please? To convene the four wage boards.

15 MS. STRICKLIN: Four wage boards.

16 COMMISSIONER BROAD: I guess the question I have
17 goes to the issue of -- there may be some issue where
18 construction is in one, and the other three industries
19 are in another one, or another two, or another three.
20 And what I want to make sure is that we would be
21 proceeding lawfully so that we would give ourselves the
22 maximum flexibility, based on what these wage boards or
23 wage board members recommend in making that kind of a
24 decision.

1 MS. STRICKLIN: I would think you would want
2 four different wage boards, because you would want people
3 who were somewhat familiar with those particular
4 industries. The differences between the two rather than
5 one, or deciding if they should all go into one, because
6 the wage orders are going to have more information than
7 just what, say, AB 60 does, in terms of overtime. There
8 are going to be things that are specific to that
9 industry, just as the person testified that the timber
10 industry one has a concern about being able to have lunch
11 time -- work through their lunch time. So, that may not
12 be a concern, necessarily, in construction, oil, mining.

13 COMMISSIONER BROAD: Yeah, although my concern
14 would be that you have the construction industry, which
15 clearly has probably several million employees working in
16 it, and the oil drilling industry, which may have several
17 thousand. And I don't know whether a separate wage order
18 is appropriate for 2,000 people or 1,500 people. It may
19 be that they should be in with these other resource-based
20 industries like timber.

21 MS. STRICKLIN: That might be a question for the
22 wage board.

23 COMMISSIONER BROAD: In other words, we would do
24 four wage boards and charge them with the issue of

1 whether they should be included?

2 MS. STRICKLIN: Yes.

3 COMMISSIONER BROAD: Would we then have the
4 power, if they came back, to create one for all of them,
5 or two or three or four? Would we --

6 MS. STRICKLIN: The Commission's duty with the
7 wage board report is to take -- once you get a two-thirds
8 vote of in the wage board, it would have to be included
9 in any regulation, if there is one put out, unless the
10 Commission finds that it would be detrimental to the
11 health and welfare of the employees.

12 So, it would depend on what the report of that
13 wage board was.

14 COMMISSIONER CENTER: Barry, let me -- before
15 you finish your motion -- and hoping that some of the
16 arguments some other commissioners, I would hope for a
17 second so the other commissioners are -- I wouldn't want
18 to second it and have the motion die, really.

19 COMMISSIONER McCARTHY: Well, in that case,
20 could I make a comment before you finish?

21 COMMISSIONER CENTER: Yes.

22 COMMISSIONER McCARTHY: Certainly the Commission
23 has every right to convene wage boards. That's not in
24 question. And it may very well wish to do so. And as

1 the chair has said, it may be in the advantage of some of
2 the industries where the dispute's taking place to
3 participate in it.

4 I would -- I would just suggest that you may --
5 there's not an immediate urgency. I think one may want
6 to wait perhaps a month, to the next meeting anyway,
7 simply to see if we can have the industries cooperatively
8 come on board.

9 For example, the mining industry, when you
10 raised the issue, Chuck, they said that it sounded good
11 but they'd like to get back to you.

12 So, rather than sort of coming across as
13 stuffing it down people's throat, perhaps I think maybe
14 the -- this can be discussed or we can get a response
15 back in the interim, and then, in any event, as the
16 Commission wishes, simply act next month.

17 So, I'm not arguing against the motion as much
18 as raising the point here that maybe -- the timing --
19 maybe one wants to wait till the next meeting.

20 COMMISSIONER COLEMAN: Yeah. I'm somewhat
21 inclined to agree with that. I know we've asked a couple
22 of the folks testifying their opinion about the wage
23 boards, but I just wonder, procedurally, whether we want
24 to give them the opportunity to think about that and then

1 petition the Commission to do that.

2 COMMISSIONER CENTER: Have them petition us,
3 rather than losing the vote.

4 COMMISSIONER BROAD: Well, I think, given those
5 statements, let's -- why don't we just wait till January?

6 (Laughter)

7 COMMISSIONER CENTER: And we might wait for
8 these industries to petition us, which might be way down
9 the road somewhere.

10 With that, we want to -- thanks for the
11 patience. I know people came in early and signed up, and
12 you've been here for a long time. One individual -- and
13 I hate to wait -- well, he was first on the list, I
14 think, and he's driven 145 miles. Is he still here?

15 AUDIENCE MEMBER: (Not using microphone) He's
16 third.

17 COMMISSIONER CENTER: He's third? Okay.

18 Okay. So, the nurses were first, then, right?

19 DR. SNELL: But he can go before us.

20 COMMISSIONER CENTER: Okay. Okay. Well, you
21 ladies are used to working 12 hours a day anyway.

22 (Laughter)

23 COMMISSIONER CENTER: Excuse me. Nurses -- I'm
24 sorry.

1 And you said you'd be brief too, Mr. Shadwick.

2 MR. SHADWICK: Well, first off, I have to make a
3 couple of comments. I'd very much like to thank
4 Christine Morse and Mike Moreno and your staff up there
5 in Sacramento. All phone calls, all faxes were received
6 in great courtesy, and I want that so noted for those
7 people.

8 COMMISSIONER CENTER: Thank you.

9 MR. SHADWICK: The reason why I'm here is I need
10 clarification, and I'm not an attorney. But I work for a
11 company called Time Clock Sales and Service. We have
12 seven offices in the state and over 100 employees. We
13 sell and service time clock equipment and software
14 throughout the whole state. So, I think, personally, we
15 have a liability factor in making sure that what we sell,
16 we know what we're telling our customers. Even though
17 we're not attorneys, on the back of our contracts it says
18 you tell us.

19 So, let me ask my first very important question,
20 is how do you recognize the 24-hour cycle? There is what
21 the company has their date change time each and every
22 day, and some companies may choose midnight, some
23 companies 3:00 a.m., some at 6:00 a.m. And they'll use
24 that as their guideline for their 24-hour cycle. I have

1 heard that your policy is that it's going to be the
2 employee, when they first punch in the first payday of
3 the workweek, as my interpretation.

4 COMMISSIONER CENTER: I think that's probably a
5 -- should be referred to the Labor Commissioner's office.
6 Would you like to -- or maybe even you could meet with
7 Miles.

8 MS. SAUNDERS: (Not using microphone) We have
9 it.

10 COMMISSIONER CENTER: Pardon?

11 MS. SAUNDERS: (Not using microphone) We have
12 it in that thing that we gave you, that unless they
13 designate what it's going to be, we're going to say that
14 it's midnight to midnight.

15 COMMISSIONER CENTER: That's how the Labor
16 Commissioner will enforce.

17 MR. SHADWICK: Okay. So, the companies cannot
18 take the rule of saying, "Our date change is six o'clock
19 in the morning."

20 MS. SAUNDERS: (Not using microphone) Yes, they
21 can.

22 MR. SHADWICK: Oh. Oh, yes, they can?

23 COMMISSIONER DOMBROWSKI: And if they don't do
24 that, then the Labor Commissioner's interpretation says

1 that they will be in default, for those employers who
2 don't pick a separate starting time. That's in the
3 document.

4 COMMISSIONER CENTER: Okay. And I haven't read
5 it yet.

6 MR. SHADWICK: All right. My next question is
7 the -- on the 24 hours, in order for companies here in
8 California to operate, you have companies that you
9 interface, and they have their own time payroll systems
10 outside of the state. And it helps me -- it may seem
11 strange -- but I would like to see put in the law for the
12 employees here in California that all time is set per
13 Pacific Standard Time, and not -- 24-hour Pacific
14 Standard Time, not Eastern Standard Time and Midwest
15 Standard Time, as far as designating their times. The
16 basic reason is that it's the Internet, other ways of
17 pulling in time and regulating what's going on in our
18 state outside of the state.

19 And then they'll stand there and say, "Well, we
20 do all of our payroll on the East Coast." And that's the
21 end of it. They won't talk any further than that.

22 So, we think, in California, it would help our
23 employees throughout the state. And that's basically my
24 area.

1 COMMISSIONER BROAD: Just so I understand this,
2 what you're saying is it should be the time -- employers,
3 wherever they're located, who are paying employees in the
4 State of California, use the time --

5 MR. SHADWICK: Pacific Standard Time.

6 COMMISSIONER BROAD: -- or whatever the time it
7 is in California at that time.

8 MR. SHADWICK: That's right.

9 (Laughter)

10 COMMISSIONER BROAD: And that makes sense to me.
11 I certainly wouldn't want to use Texas time here if we're
12 all on California time.

13 COMMISSIONER CENTER: Or in Asia.

14 COMMISSIONER BROAD: Or -- yeah.

15 MR. SHADWICK: Well, it may seem strange, but
16 you just told me earlier it's midnight, correct? It's
17 00:00, here in California, unless they establish their
18 time. But if they're in Texas, they're two hours behind
19 us -- or ahead of us, I should say. So, the two hours
20 that they're ahead of us, they're using that as their
21 guideline, which could be interpreted as Texas time and
22 not Pacific time, and you have to figure in the time.

23 COMMISSIONER BROAD: Well, I guess I'm confused.
24 I mean, the worker gets to work at eight o'clock in the

1 morning California time, right?

2 MR. SHADWICK: That's right. I agree with that.

3 COMMISSIONER BROAD: If the person works for
4 nine hours, they're going to get an hour of overtime, no
5 matter what time it is in Texas, right?

6 MR. SHADWICK: Well, I've seen differently.

7 The main thing I'm looking at, where a company
8 says, "These are my rules and this is how it's going
9 about," you know.

10 COMMISSIONER BROAD: Okay.

11 MR. SHADWICK: It may seem strange, but --

12 COMMISSIONER BROAD: It does.

13 MR. SHADWICK: As time goes on, I've seen it
14 many times.

15 The next thing is when you count your time. My
16 next question is when someone comes to work, are you
17 going to be counting -- are you allowed to count the time
18 in 24 hours or the quarter of an hour? Are you saying
19 when they come in five minutes late that they're allowed
20 to round the time back to eight or round forward to 8:15?

21 COMMISSIONER CENTER: All this stuff should be
22 referred to Miles Locker and the Labor Commissioner.

23 MR. SHADWICK: Okay. Then I'm done.

24 COMMISSIONER CENTER: And you might be able to

1 do that outside. He's the chief counsel for the Labor
2 Commissioner.

3 MR. SHADWICK: Okay. Thank you.

4 COMMISSIONER CENTER: Thank you. That's all a
5 Labor Commissioner interpretation. Thank you.

6 Yeah. I want to thank them for their patience
7 and hear the nursing industry now.

8 DR. SNELL: Chairman Center and commissioners, I
9 appreciate the opportunity to talk with you today. My
10 name is Dr. B. J. Snell. I'm the representative of the
11 California Nurse-Midwives Association and a practicing
12 certified nurse-midwife here in the State of California.
13 I've submitted to you written testimony that will speak
14 to a lot of what I'm going to talk about today, but
15 wanted to give you some of the information that will
16 preface many of those that will come after me.

17 It's come to our attention that the Industrial
18 Relations Department and attorneys that represent the
19 California employers are planning to implement AB 60 in
20 the realm of the certified nurse-midwife here in the
21 State of California. Many of us are employees. We work,
22 certainly, longer than 8 hours. If you review the
23 literature or know of anyone who has had a baby or been
24 in a family that has had a baby, they don't read the

1 Industrial Relations information on the wall, and they
2 certainly take longer than 8 hours to get here.

3 Continuity of care is certainly a premise that
4 is very important to our profession and certainly the
5 families that we serve. And the continuity of care has
6 been shown to reduce both problems that occur during
7 labor, birth, and pregnancy as well as improve our
8 outcome. And so, by taking away our ability to provide
9 longer than an 8-hour period of time with a family will
10 certainly compromise not only us as employees, but will
11 compromise the families that we serve.

12 We are primary care providers for women and
13 newborns, and from that have extensive background and
14 education in healthcare of women and newborns. We are
15 certified through the State Board of Registered Nursing
16 and have had to have completed an accredited program of
17 study at a post-baccalaureate level. Many nurse-midwives
18 are certainly prepared at the master's level as well.

19 The Nurse Practice Act, the regulations that
20 establish distinct requirements for the practice of a
21 certified nurse-midwife, would make it clear that we are
22 responsible for providing a different scope of practice
23 and a different scope of care than would be permitted by
24 a registered nurse. This is because of the care that we

1 do provide at the professional level for our clients.

2 According to the national standards as well as
3 state standards that are upheld here in the State of
4 California by the California Nurse-Midwives Association,
5 nurse-midwifery practice is the independent management of
6 women's healthcare, and nurse-midwives are committed to
7 maintaining a high standard of professional care. We
8 collect and assess client data, develop and implement our
9 plans of management, and evaluate the outcomes of our
10 care. And the practice of nurse-midwifery is -- a
11 hallmark of nurse-midwifery practice is the continuity of
12 patient care.

13 Clearly, the Nurse Practice Act and regulations
14 and the national state standards that -- national and
15 state standards provide documentation that nurse-midwives
16 function as professional who engage in work that is
17 primarily managerial, intellectual, and creative, and
18 requires the exercise of discretion and independent
19 judgment. Even though the Act specifically named
20 registered nurses, employees who engage in the practice
21 of nurses, for being exempted unless they meet certain
22 criteria, it is clear that nurse-midwives who provide
23 this care have not been employed to function only at the
24 level of the registered nurse. They have been employed

1 to improve the care of the patients and decrease costs of
2 the facilities that employ them. That is why the
3 additional post-graduate education is necessary and
4 required for us to be able to practice.

5 In the past, the vast majority of nurse-midwives
6 are either salaried employees, contract employees, or
7 have independent practices and businesses. And one of
8 our midwives that are here today will talk a little about
9 the independent practices.

10 Few CNMs -- certified nurse-midwives -- are paid
11 an hourly wage with overtime. They are -- they are
12 considered salaried employees, and therefore, overtime
13 does not apply to their wages. Salaries are commensurate
14 with their additional responsibility and the type of work
15 that requires the continuity of care that we need to
16 provide. Again, these responsibilities are above and
17 beyond those of the registered nurse at the staff level.

18 In summary, a large portion of the practice of
19 nurse-midwifery is caring for women and their newborns
20 that require longer than 8 hours at a time. If it occurs
21 that this Commission -- or the implementation of AB 60
22 does take effect January 1, many of the nurse-midwives
23 that are now practicing and providing care for women
24 throughout California will not be able to provide the

1 care that they've been providing in the past.

2 It may also impact the women in the state
3 because nurse-midwifery services are a mandated service
4 available to women under the rules and regulations of the
5 Health Care Financing Administration, and therefore both
6 Medicare and Medicaid or MediCal regulations require that
7 women have access to nurse-midwifery services. And those
8 services have been defined as not just providing
9 outpatient or ambulatory care services, but do provide
10 that continuity of care.

11 On a personal level, I am part of a group of
12 nurse-midwives that practice in Orange County. These
13 nurse-midwives are salaried within the organization and
14 therefore not impeded from the provision of continuity of
15 care. The group of midwives that I work with are
16 concerned about this change and the impact it will have
17 on their personal lives and their professional care.

18 In response to Assemblyman Knox's comments
19 earlier today, I agree that it is deplorable that there
20 may be a reduction of base pay in anticipation of the
21 implementation of this -- these regulations, and I
22 certainly would not support that practice. However, I
23 would appeal to the Commission to please review the work
24 of advanced practice nurse -- obviously, I'm specifically

1 speaking to nurse-midwives -- of those of us that do
2 practice in the continuity fashion and need to be able to
3 be there longer than 8 hours at a day. It would put us
4 at great stress to not be able to provide that care.

5 I would welcome any comments from the
6 Commission.

7 (Applause)

8 COMMISSIONER BROAD: I just have a question for
9 you. The statute's quite explicit, as you pointed out.
10 And your argument, if I understand it, is that you're not
11 employed to practice registered nursing, you're employed
12 to practice something else beyond registered nursing.

13 DR. SNELL: Beyond registered -- we are all
14 licensed as registered nurses.

15 COMMISSIONER BROAD: Okay. Okay. That was my
16 question.

17 DR. SNELL: We're certified as advanced
18 practice.

19 COMMISSIONER BROAD: And who certifies you?

20 DR. SNELL: The Board of Registered Nurses.

21 COMMISSIONER BROAD: So, in other words, you --
22 in effect, you're a registered nurse with a certified
23 specialty? Is that how --

24 DR. SNELL: That's correct. If I can draw an

1 analogy, physicians are licensed as medical doctors.
2 They then subspecialize in either obstetrics and
3 gynecology, family medicine, anesthesiology, and they
4 have additional certification, and therefore they
5 practice in that specialty. Nurse-midwives are in the --
6 have a similar parallel, in that we are licensed -- our
7 base license is as a registered nurse. However, we are
8 hired and practice as nurse-midwives, as our specialty
9 and our education allows us to do.

10 COMMISSIONER BROAD: Thank you.

11 COMMISSIONER CENTER: Thank you.

12 DR. SNELL: Thank you.

13 THE REPORTER: Commissioner Center, could -- I'd
14 like to get names before people start speaking.

15 COMMISSIONER CENTER: Okay.

16 THE REPORTER: Is that possible?

17 COMMISSIONER CENTER: Yes.

18 DR. SNELL: I'm sorry. I thought I just said
19 that. My name is Dr. B. J. Snell, S-n-e-l-l.

20 MS. MIELKE: Hi. My name is Ruth Mielke. I'm
21 also a certified nurse-midwife, and I actually also, in
22 addition to Dr. Snell, submitted written testimony, which
23 I will summarize at this time.

24 I'm a certified nurse-midwife, CNW, with a

1 practice downtown in Los Angeles. My actual practice is
2 at California Hospital Medical Center, probably a mile
3 from here. Since 1991 when we started the practice, we
4 have attended over 10,000 births of women in Los Angeles,
5 and the practice provided excellent care, shown in our
6 excellent outcomes.

7 And again, as Dr. Snell very well described, we
8 don't just practice in an 8-hour day. When we started
9 the practice, it was clear that we'd deliver a full scope
10 of women's health services that were needed to provide
11 care in a variety of settings. To date, the settings
12 include two different clinics, a third clinic which we
13 will starting as well, in addition to our in-patient or
14 the hospital work. As you are aware, it's a 24-hour-a-
15 day, seven-day-a-week commitment to provide that care.

16 And again, all of us familiar with childbirth do
17 know that the birth tends to occur when it needs to
18 occur, not when the time clock seems to telling us. I
19 work in a clinic that works a 10-hour day, and I work at
20 one that works an 8-hour day. I take calls in the
21 hospital -- that can be 12 hours or it can be 24 hours.
22 In my clinic last night, I saw patients that were
23 scheduled to see me in the afternoon. Many of them do
24 have dates within the next couple of weeks. At five

1 o'clock my second week, my day was over. A patient came
2 in with twins who needed to be seen. I would not give a
3 second thought, ever, due to the fact that patient needed
4 care, but I feel that if I'm compelled to be thinking
5 about an 8-hour or 12-hour, whatever hour day, that
6 patient care could be impacted.

7 I want to mention a little bit more -- and I
8 know we're referred to as nurses -- many of us here have
9 been practicing midwifery for many years. I've been
10 practicing as a midwife for fifteen years. I am
11 licensed, as mentioned before, as a registered nurse.
12 I'm also licensed as a nurse-midwife in the State of
13 California. Midwifery practice is much different than
14 the practice of a registered nurse.

15 I just want to spell out, very quickly, in
16 summary, those -- the differences. We do convey written
17 and verbal orders for medications, treatments, procedures
18 which must be carried out by nursing personnel, as would
19 a doctor. We do make independent decisions for
20 treatments, restrictions, or medication as needed. We do
21 independently manage normal women and their babies for
22 both outpatient services, birth, and post-partum care.
23 We are entitled to carry malpractice insurance, as would
24 a physician, you know, like a specialty. We're

1 credentialed by various provider groups. We are members
2 of independent physician associations, IPAs. Insurers
3 pay us for our service; we are reimbursed by third-party
4 payers, as would a provider physician be.

5 In summary, the profession of midwifery meets
6 the intellectual and independent decision-making criteria
7 required of exempt employees who are not, technically, in
8 a supervisory capacity. To implement AB 60 as this
9 language is currently written, by which we're seen as
10 registered nurses, prohibits the practice of midwifery
11 and will ultimately affect our ability to provide
12 excellent, cost-effective care to uninsured and under-
13 insured women, who comprise the bulk of our clients.

14 Thank you.

15 (Applause)

16 MS. BOGAR: Hello. My name is Susan Bogar, and
17 I'm a certified nurse-midwife as well. And I've
18 submitted written testimony to the committee, so I won't
19 repeat my testimony. But I just want to make a couple of
20 points.

21 I've been a nurse-midwife for seventeen years,
22 for ten in California. I've worked in several states,
23 always in my career as a nurse-midwife as a salaried,
24 exempt employee.

1 When I first heard about AB 60 and the fact that
2 attorneys were interpreting that nurse-midwives would now
3 be treated as nonexempt employees under this law, I was
4 astounded, because I don't quite understand how we are
5 supposed to perform our scope of practice, which the
6 state has enabled us to do by law, and be a nonexempt
7 employee. So, the assumption that sort of one-size-fits-
8 all, if you're not a manager you're a nonexempt employee,
9 you know, doesn't apply to my profession.

10 I hope that the intent of this law was not to
11 put nurse-midwives out of business. I fear that it
12 might. I have already spoken to midwives in this state
13 who've been told that as of January 1st, they're only to
14 work 8-hour days. And their employees, who are
15 physicians in small group practices, are starting to
16 conclude, "Why should we hire a midwife? You know, she's
17 not going to be able to deliver any babies, I'm going to
18 have to do all that extra work at night, she's just going
19 to work in the office." They're extremely threatened and
20 distressed by this. My employer has also concluded, on
21 advice of an attorney, that this should apply to nurse-
22 midwives. And I've had hours of argument with people in
23 the administration at my employer about this, that it
24 makes no sense. Like you say, it makes absolutely no

1 sense. We can't do our jobs under this law.

2 My concern, as I've heard you talking to people
3 from other industries, is that apparently, as of January
4 1, this is the law, and that we must make a request -- we
5 request that -- for a wage -- I think that's what I'd
6 want to know. I mean, what is our course of action here?
7 And it's going to take a year? Because you're going to
8 put people out of business.

9 COMMISSIONER DOMBROWSKI: The process is that
10 any commissioner can make a motion to call a wage board.
11 So, what you've presented is very useful to that ultimate
12 decision.

13 MS. BOGAR: So -- and my concern, though -- I
14 know how things tend to happen -- is that this could take
15 a really long period of time, and that -- and that people
16 are actually going to be prevented from practicing,
17 either by their employers, who are going to decide it's
18 not worth it to employ them any more, or they're too
19 expensive.

20 You know, we -- we function -- as you're
21 probably getting the drift of -- more similarly to a
22 physician provider than a registered nurse. And, in
23 fact, we compete in some -- in some ways. We compete in
24 the marketplace with them.

1 So, I -- you know, my -- I'm concerned for my
2 profession. I happen to work in a situation where
3 there's a number of us. You know, some of us may be able
4 to work under this law, but there are lots of midwives
5 out there in small practices, two or three people in the
6 practices. You know, there's no way you can comply with
7 this law in a situation like that.

8 COMMISSIONER CENTER: Thank you.

9 COMMISSIONER MCCARTHY: Let me -- pardon me,
10 ma'am.

11 MS. BOGAR: Yeah.

12 COMMISSIONER MCCARTHY: As I say, maybe -- this
13 is addressed to the other commissioners and to our
14 attorney as well. I think the case is -- you know, I
15 think the case is pretty compelling. Can we not
16 establish an exemption? I mean, as I read it, the copy
17 of AB 60, we may establish exemptions from the
18 requirement of overtime that the thing
19 -- provided that the employee is primarily engaged in the
20 duties which meet the test of the exemption. Employees -
21 - you know, this is sort of the professional exemption.

22 MS. BOGAR: Yes.

23 COMMISSIONER MCCARTHY: And here it says we do
24 not -- all we have to do is conduct a review, and then we

1 do have to convene a public hearing, but we don't have to
2 convene a wage board to enact this. And, you know, I
3 think the case that's been made by the midwives is pretty
4 compelling, that -- I mean, if -- it seems to me, but I
5 can only speak for myself -- if, really, what we're
6 talking about is destroying a whole profession here, that
7 there is a means available for us to act in a very quick
8 fashion, as I say, so as to avoid that from happening.
9 Is that not correct?

10 COMMISSIONER CENTER: But we can't act until the
11 statute comes into effect.

12 COMMISSIONER MCCARTHY: That's correct. But, I
13 mean -- so, I mean, there will obviously -- we can't do
14 that today, and --

15 MS. BOGAR: January 2nd, perhaps?

16 COMMISSIONER MCCARTHY: I don't know.

17 (Laughter)

18 COMMISSIONER MCCARTHY: But, you know, it
19 doesn't require the whole lengthy process of a wage
20 board.

21 COMMISSIONER CENTER: And I wouldn't hire the
22 attorney from the oil companies to help you there.

23 (Laughter)

24 MS. BOGAR: No problem. We don't have the money

1 for that.

2 COMMISSIONER MCCARTHY: But, no, I just -- but I
3 want to appraise (sic) you of that, and that's something
4 you might want to keep before the board, the possibility,
5 given the -- given the kind of dire situation which you
6 face, of
7 -- you might want to keep that before the board, the
8 notion -- if the board is willing to have its own quick
9 review and then to call, as soon as possible, a public
10 meeting so as to be able, if the Commission chooses, to
11 go forward and grant the exemption so that it can be done
12 quickly.

13 MS. BOGAR: Can we request that of you?

14 COMMISSIONER MCCARTHY: What's the process,
15 actually, on that?

16 MS. STRICKLIN: There are several. You could
17 petition the Commission, which is one of the things
18 Commissioner Center mentioned.

19 AUDIENCE MEMBERS: (Not using microphone) Talk
20 louder. Louder!

21 MS. STRICKLIN: -- which is one of the things
22 Commissioner Center mentioned before. You can petition.
23 There's a procedure where the Commission has 120 days
24 within which to decide to deny the petition or have a

1 wage board.

2 But it seems to me, under AB 60, the healthcare
3 industry in general does have an exemption until July 1st
4 of 2000, for the 12-hour shifts. So --

5 MS. BOGAR: Yeah, but we sometimes exceed 12
6 hours. I mean, there's one thing in midwifery here,
7 dealing with women in labor, but we're not -- we don't
8 work in shifts. We're not shift workers. That's why
9 this is a big problem for us.

10 MS. STRICKLIN: So, it seems to me that you
11 would want to go -- either a commissioner could propose
12 that an exemption should be made for registered certified
13 midwives, or you could petition --

14 MS. BOGAR: Advanced practice nurses.

15 MS. STRICKLIN: Advanced -- whatever the title
16 is -- I'm sorry -- or you could petition the Commission
17 for an exemption. Those are your two routes.

18 COMMISSIONER McCARTHY: Well, but we don't need
19 a wage board, do we? I mean, can't we -- if we were --
20 as I read this, if we -- this states --

21 MS. STRICKLIN: What are you reading from?

22 COMMISSIONER McCARTHY: Pages 8 and 9, Section
23 9, Article 515 -- that if we -- we have within our
24 authority, basically, to, as I understand it, give them

1 an exemption on the basis of professional qualifications,
2 which would avoid the necessity to hold a wage board, if
3 we chose -- if the Commission chose to do that.

4 MS. STRICKLIN: If the Commission chose to do
5 that. I'm not sure where you're reading from, if that's
6 Section 515.

7 COMMISSIONER McCARTHY: It says, "The Industrial
8 Wage (sic) Commission may" --

9 MS. STRICKLIN: What section of 515?

10 COMMISSIONER McCARTHY: Section (a). Section
11 (a).

12 COMMISSIONER CENTER: You'd better look at
13 Section (f).

14 COMMISSIONER McCARTHY: (f)?

15 Well, I'm not saying we do that. I'm just
16 saying that if there is a possibility of doing this, that
17 these midwives should be at least appraised (sic) of that
18 so that there's -- you know, as I say, it's up to the
19 Commission to decide whether to --

20 COMMISSIONER CENTER: The thing to do would be
21 to file a petition.

22 COMMISSIONER McCARTHY: Right. All right. And
23 get a copy of the bill.

24 COMMISSIONER COLEMAN: I have a question. If

1 this profession already meets the professional exemption
2 test, though, then wouldn't they be exempt under the
3 current statute?

4 COMMISSIONER CENTER: Up to 12 hours.

5 MS. STRICKLIN: No. If you --

6 COMMISSIONER COLEMAN: No, the professional
7 exemption.

8 COMMISSIONER CENTER: Oh, professional
9 exemption.

10 MS. STRICKLIN: The only thing in AB 60 that's -
11 - they're registered nurses --

12 COMMISSIONER COLEMAN: Right.

13 MS. STRICKLIN: -- an exemption, are
14 administrative or executive -- I believe that's -- that's
15 the problem.

16 MS. BOGAR: That's the problem.

17 MS. STRICKLIN: And now if you're talking about
18 a registered nurse, I think that's why Commissioner Broad
19 asked you the question if you were hired to do something
20 other than a registered nurse. If there's something more
21 or above that, then perhaps this doesn't apply to you.

22 But that's -- that's why I think probably a
23 petition to show the differences between what a
24 registered nurse does and a certified midwife would be

1 helpful, or for a commissioner to make that motion, that
2 perhaps that be looked into. Those are the two routes
3 that I see.

4 COMMISSIONER COLEMAN: And you can make a motion
5 for that?

6 COMMISSIONER CENTER: Yes. Well, let's -- it
7 doesn't go into effect until January 1st.

8 MS. BOGAR: So, state your motion! Come on,
9 folks! You all appear to have unanimity on there.

10 (Applause)

11 MS. BOGAR: Do it!

12 COMMISSIONER MCCARTHY: Well, I guess the
13 question is whether we have the legal authority to make -
14 - to implement an appeal process within a bill that
15 doesn't take place till January 1st.

16 COMMISSIONER CENTER: It doesn't exist till
17 January.

18 COMMISSIONER MCCARTHY: Legally, that's the
19 problem. I'm with you, but I don't know if we can do it.

20 MS. BOGAR: Okay.

21 MS. GLATLEIDER: Good afternoon. Thank you for
22 this opportunity to speak before you. My name is Pauline
23 Glatleider. I'm a certified nurse-midwife practicing at
24 California Hospital, also here in downtown Los Angeles.

1 I am also a member of the medical staff at California
2 Hospital, and I'm an employee in the hospital.

3 Currently, there have already been changes made
4 in the way that I can practice midwifery, so that my
5 ability to be able to be with a woman throughout her
6 whole labor is not possible. If you would calculate out
7 what it would cost if we were hourly wage earners, it
8 would be prohibitive to pay someone time and a half or
9 double time when a woman's labor exceeds 12 hours, 18
10 hours. Further, I think it's already been commented on,
11 and I will second that, that we do meet the criteria for
12 a professional exemption, based on the scope of our
13 practice.

14 I'd like you to know that California has the
15 most nurse-midwives in the United States. If, in fact,
16 we are found to be nonexempt employees, this can have
17 consequences for our profession across the country. The
18 American College of Nurse-Midwives totally supports our
19 position that we are professional exempt employees, if we
20 are employees or if we're in our own practice.

21 Finally, I just want to also reiterate that
22 research has shown that continuity of care by the same
23 care provider has -- has implications on the outcomes for
24 mothers and babies, both in their pregnancies -- in a

1 study that was done in the early '60s and most recently,
2 it has been shown that the care of nurse-midwives through
3 the labor and birth process can significantly reduce the
4 morbidity of women and babies, significantly reduce
5 Caesarean section rates. We have, as was said, cared for
6 over 10,000 women in our practice at California Hospital,
7 and consistently our Caesarean section rate has been
8 between 3 and 4 percent, an excellent outcome for babies.
9 And that has been consistent over almost a ten-year
10 period.

11 So, I would urge you to perhaps make a motion
12 today that, in fact, as soon as you meet in January, that
13 this will be one of the first things on the table so that
14 it will not interrupt our ability to care for women --
15 for women and babies.

16 And currently, things have changed in our
17 practice, and unless there's some immediate relief, we
18 will
19 come -- it may affect how we care for women -- it will
20 affect how we care for women and outcomes for moms and
21 babies.

22 COMMISSIONER MCCARTHY: Well, I'd like to -- you
23 know, are there -- are there witnesses against taking a
24 contrary view with regard to this?

1 (Show of hands)

2 COMMISSIONER MCCARTHY: Well, then I think we'll
3 withhold any possible motion till we hear both sides. I
4 think that's only fair and reasonable.

5 COMMISSIONER CENTER: Yeah.

6 COMMISSIONER MCCARTHY: Don't you?

7 MS. EVERETT: I just want to say quickly that I
8 work 12-hour shifts. I want to keep my 12-hour shifts.
9 Hospitals can't afford to pay us time and a half, and our
10 wages are already --

11 COMMISSIONER CENTER: State your name and --

12 MS. EVERETT: Oh, I'm sorry. Hi. My name is
13 Cindy Everett, E-v-e-r-e-t-t.

14 They're already trying to cut down on --

15 COMMISSIONER CENTER: What are you, a registered
16 nurse?

17 MS. EVERETT: Registered nurse.

18 AUDIENCE MEMBER: (Not using microphone) Can't
19 hear.

20 MS. EVERETT: They're already cutting down our
21 wages for the time and a half, already taken away 12-hour
22 shifts. We all want to work our 12-hour shifts, and
23 we're all very upset --

24 AUDIENCE MEMBERS: (Not using microphone) Can't

1 hear you! Can't hear you!

2 MS. EVERETT: Sorry. I just want to say I'm a
3 registered nurse. We want to keep our 12-hour shifts.
4 We want to work our 12-hour shifts. We work three days a
5 week. We have time for our family, we have time for
6 school that we won't have with 8-hour shifts. We have
7 long drives to work. And I have up here, if the
8 Commission wants it, a copy of the proposed plan --
9 whatever you call it -- where the wage goes down.

10 COMMISSIONER CENTER: How, originally, you guys
11 established a 12-hour shift was by election.

12 MS. EVERETT: Yes.

13 COMMISSIONER CENTER: I mean, when you
14 established the 12-hour shifts?

15 MS. EVERETT: Originally -- I started working
16 there over -- about ten years ago, mainly because of the
17 12-hour shift.

18 COMMISSIONER CENTER: So, you're okay until July
19 1st.

20 MS. EVERETT: No. They say, as of January 1st,
21 they're putting us on 8-hour shifts. Most of the nurses
22 are leaving.

23 COMMISSIONER BROAD: I guess I'm a little
24 confused. There's nothing -- AB 60 does not alter any

1 12-hour shifts for nurses. It couldn't conceivably be
2 changed until July 1.

3 MS. EVERETT: Well, that's not what's happening
4 in my hospital.

5 COMMISSIONER BROAD: Well, is it possible that
6 your employers are just taking this opportunity to lower
7 your wages, and that's what this is really about?

8 (Audience murmuring)

9 MS. EVERETT: It's just that my nurse supervisor
10 isn't here, and I would love for you to talk to them, and
11 you can ask them those questions. But I thought we need
12 to know.

13 COMMISSIONER BROAD: Well, I mean, there's a
14 real difference here. You know, what offends me here is
15 it may be -- it may be, or it may not be, that there's a
16 legal problem with what they're doing. What offends me
17 greatly is that these employers would lower your wages
18 and change your shifts and do all this stuff, and then
19 blame AB 60, blame the Legislature, blame the Governor,
20 and blame us!

21 (Applause)

22 MS. EVERETT: Well, if you want to say -- I've
23 given you the plans, a copy of the plans, for you.
24 They'd probably say that -- for the overtime is what

1 they're done, is told us that we will not get time and a
2 half. When it comes through, we will still get -- our
3 base rate's been decreased -- we would still come home
4 with the same paycheck. We would still come home with
5 the same paycheck, due to the time and a half. Do you
6 understand that?

7 COMMISSIONER CENTER: Not really, but I don't
8 understand what your employer is doing to you either.

9 MS. FURILLO: Well, we do. We can clarify. We
10 understand exactly what the employer is doing. We can
11 clarify that.

12 MS. MARSHUTZ: Excuse me. I was number two on
13 the list.

14 MS. FURILLO: Yes. My name is Jill Furillo. I
15 am a registered nurse and representative of the
16 California Nurses Association. We represent 30,000
17 registered nurses in California, and we represent over
18 100 nurses in hospitals and healthcare facilities in the
19 State of California.

20 And actually, I have to say that we're currently
21 engaged in an unprecedented campaign to organize
22 thousands more nurses in facilities up and down the
23 state. We've actually -- we haven't seen anything like
24 this in the State of California, ever, the requests for

1 representation by unions. And I guess we have to ask why
2 is this happening? Why is this happening now?

3 The biggest factor out there right now has to do
4 with this issue. The nurses and families fell victim
5 again to the hospital industry's drive for maximum
6 profits at the expense of caregivers who keep these
7 hospitals afloat. Since December 1st, we have received
8 over 250 phone calls, letters, and e-mail messages from
9 nurses who are frightened, hysterical, and extremely
10 confused about what's going on with AB 60. With little
11 more than maybe three days' notice, they have been told
12 that they must vote to lower their own pay or lose their
13 12-hour shifts. And they're saying this is because of AB
14 60.

15 These are pseudo-elections, and they're bogus,
16 phony, and completely unnecessary under the provisions of
17 AB 60, as we all know. Hospitals have an exemption till
18 July 1st, 2000, at which time the Industrial Welfare
19 Commission will be convening wage boards and wage orders
20 to -- to consider what this issue is going to be. But
21 yet the hospitals have decided to act, even though they
22 were one of the few industries that were given an
23 exemption under this law. They have decided to act
24 against the nurses.

1 Thousands of nurses will be taking significant
2 losses in pay, benefits, and their retirement
3 compensation. And I have to tell, I believe the nurses
4 already do not have the best retirement compensation, for
5 many, many reasons. All of us know this is unnecessary.
6 I have in my hand a document that was circulated by the
7 California Healthcare Association. That is the industry
8 association representing most of the hospitals in the
9 state. And it's very interesting what the document says,
10 because what it says is that if you -- if you were
11 compliant with the law prior to 1998, then you do not
12 have to go through this process, meaning if you had -- if
13 you were on 12-hour shifts and you had had an employee
14 vote, then you're fine until July 1st, 2000. So, then we
15 start hearing from thousands of nurses that, well,
16 they're being told they're not fine, according to their
17 hospital attorneys, which then makes us believe that
18 they're out -- they were out of compliance with the law
19 prior to 1998.

20 And actually, what we want --

21 THE REPORTER: Ms. Furillo --

22 MS. FURILLO: Okay, okay.

23 COMMISSIONER CENTER: Okay. Are you ready now?

24 MS. FURILLO: Yeah. Okay. So, we've been

1 somewhat -- we find that it's very possible that many,
2 many hospitals in the state were out of compliance with
3 the law prior to 1998 and are now having these bogus
4 elections, which really are not even required under the
5 current law, up until January 1st, because we all know
6 that those wage orders were eliminated by the previous
7 IWC.

8 I think the real facts -- those are the real
9 facts that they're not telling the nurses. They don't
10 know -- hospitals already decided to eliminate the
11 previous wage order that they never requested and
12 repeatedly violated -- that they never respected. Now
13 they are here with -- you know, crying about their
14 problem, but the reality is, is that they were violating
15 the law before.

16 They have engaged in abusive practice against
17 the nursing staffs with these, quote, "bogus" elections
18 and lowering the pay of the nurses. And this is
19 abominable.

20 We are witnessing the kind -- they're going
21 after nurses, whipping up all kinds of untrue statements
22 about AB 60, they're not -- they're not really playing up
23 the fact that they, in fact, do have this exemption, and
24 so the nurses are very confused.

1 The fact remains that in our facilities and
2 under our contracts, thousands of nursing staff, nurses
3 and nurse practitioners that we represent, will continue
4 to work 12-hour shifts and will continue to do so with
5 the exemption that they have. We have always supported
6 the previous wage order that did allow the nurses to have
7 12-hour shifts with an employee vote. It was the
8 hospitals that came before this body to argue that that
9 be eliminated, and that's why we are on them. It was the
10 greed of the hospital industry.

11 I think that what we really need to do there is
12 to look at -- the IWC should investigate the recent
13 abusive practices of the hospital industry in cutting
14 nurses' salaries, benefits, and pension. I think there
15 needs to be an investigation. And I think that what need
16 to do, and the CAN is calling upon the IWC to
17 investigate, fully investigate those hospitals that may
18 have been out of compliance with the law, because, in
19 fact, there may be thousands and thousands of nurses in
20 the state that could potentially be due back wages and
21 back wages for the time and a half after 8 hours, if
22 their -- if their employers did not have the employee
23 vote.

24 We know that this Commission is going to be

1 considering wage orders in the future. Our position has
2 always been that nurses need to have protection, whether
3 it's a 10-hour shift, an 8-hour shift, a 12-hour shift.
4 Protections need to be in place for the nurses so that
5 they're not abusing -- and the hospital industry is again
6 showing their true colors, that they're really out for
7 greed and they're not out to protect the nurses.

8 So, we look forward to working with you on
9 crafting those wage orders that will take into account
10 the work that all of our nurses do in the practice of
11 nursing. And I would contend that registered nurse-
12 midwives, or nurse practitioners, they are engaged in the
13 practice of nursing, and I think we need to craft the
14 wage order so that we can look at what everybody's doing
15 and the work that's done in the future.

16 COMMISSIONER CENTER: Thank you.

17 Let me get back on -- was there Pauline -- there
18 was no -- all right.

19 COMMISSIONER BROAD: Settle down, now.

20 MS. MARSHUTZ: My name is Nancy Marshutz, and
21 I'm a certified nurse-midwife. And I'm not mad at
22 anyone.

23 (Laughter and applause)

24 MS. MARSHUTZ: I feel that that I am an advanced

1 practice nurse and have received additional education and
2 licensure to practice differently than someone who does
3 shift work. That's what does make a difference between
4 an advanced practice nurse and a nurse who does punch in
5 on the clock.

6 I not only have worked as a nurse since 1960 to
7 1983, but then I became a nurse practitioner from
8 California State and also became a nurse-midwife with
9 USC. My responsibilities have been both with private
10 practice since 1984, and also I've worked as a staff
11 nurse-midwife at a local hospitals. Both positions have
12 responsibilities of a nurse-midwife, caring for -- for a
13 full-scope care of well women interdependently with the
14 physician. Our care does not rely upon a time clock, as
15 has been said before. The California Legislature even
16 recognized this when they amended the Nurse Practice Act
17 to require special certification and licensure for nurse-
18 midwives to practice as an advanced practice nurse.

19 Although we have "nurse" in our title, it just
20 means that we have a foundation of knowledge of nursing.
21 Our scope of practice includes ambulatory care in ante
22 partum and partum and post-partum periods, and knowledge
23 of caring for well women from puberty to menopause. In
24 hospitals, some nurse-midwives are on hourly and per-diem

1 status. I have experienced both, and our care for the
2 well women does not limit itself by a time clock.

3 Limiting such a flexible position would affect
4 our ability to compete with other professions, but most
5 importantly in loss of services to our clients.

6 COMMISSIONER CENTER: Excuse me. Could I do a
7 time out?

8 We're going to be here all night. If you have
9 written testimony --

10 MS. MARSHUTZ: It's very short.

11 COMMISSIONER CENTER: Okay. Just -- and anybody
12 else, if you have written testimony, just submit it and
13 summarize.

14 And how many more midwives want to talk?

15 MS. MARSHUTZ: One more.

16 COMMISSIONER CENTER: Okay.

17 MS. MARSHUTZ: So, we think that it's going to
18 be cost-prohibitive for a person to measure what we do to
19 individualize and personalize this care.

20 And I would like to ask for an amendment or an
21 exemption for nurse-midwives and other advanced practice
22 nurses from the bill limitations and ask that we not be
23 lumped together with nursing. We have been exempt for
24 overtime within our profession for many years and feel

1 that it would restrict our practice and the value to our
2 community.

3 Thank you.

4 COMMISSIONER CENTER: Thank you.

5 MS. JENKINS: Hello. My name is Betsy Jenkins,
6 also a certified nurse-midwife. I have submitted written
7 testimony, so I won't repeat it, except to reiterate what
8 has already been said.

9 I think the passage of AB 60 is a threat to
10 midwifery practice by not making us exempt from the
11 overtime laws. I think one of the hallmarks of midwifery
12 care is support and comfort to women during labor, which
13 cannot be done in an 8-hour shift. Midwives are
14 independent and collaborative professionals, which
15 includes knowledge, judgment, authority, and
16 accountability required to manage patient care. We are
17 requested that we retain our professional exempt status
18 and not be subject to the overtime regulations that are
19 in AB 60.

20 Thank you.

21 COMMISSIONER CENTER: Thank you.

22 Okay. Now I've got to get back on the list.

23 I have Pauline -- yeah, she's already spoken,

24 Pauline --

1 MS. GLATLEIDER: (Not using microphone) I've
2 already spoken.

3 COMMISSIONER CENTER: Okay, sorry.
4 Charlet Rogers.

5 We're only doing nursing still, though.

6 MS. ROGERS: My name is Charlet Rogers, and I'm
7 work in intensive care at Holy Cross -- Providence Holy
8 Cross in Mission Hills, which is in the northeast San
9 Fernando Valley, a very busy trauma center.

10 Two issues here. Continuity of care is relevant
11 to all areas of practice. Even though --

12 (Applause)

13 MS. ROGERS: Even though in-hospital nurses work
14 at an hourly rate, when I get a trauma admission, it does
15 not wait for me to have lunch. The trauma patient who's
16 bleeding or in respiratory distress, or any other patient
17 who is not having a baby, does not wait to -- is not
18 stabilized while we're changing shifts and giving reports
19 to the oncoming shifts. So, continuity of care is, as I
20 said, an issue for all areas of patient care.

21 Number two, I can only speak for the hospital
22 that I work at. We also took a reduction in our hourly
23 rates of pay unless we worked nine hours or less, and
24 then we'd go back up to premium pay. Premium pay is also

1 paid for PTO and for, quote-unquote, "nonproductive"
2 time, which means meetings, things like that, that are
3 not directly patient care-related.

4 I am not privy to -- to the hospital
5 administration, so I really have no idea if they're
6 telling us lies or giving us a fish story or not. I just
7 -- I'm not in a position to know that. However, at my
8 hospital, based upon the -- how I've been treated, which
9 has been very well in the years that I've been there --
10 I've been at Holy Cross for eighteen years. They were
11 bought by Providence about three or four years ago. And
12 again, these past three or four years have also been
13 happy.

14 I do believe -- what we were told -- let me just
15 backtrack a little bit. What we were told is not that
16 we're going -- they're reducing our rates of pay because
17 of AB 60, but because the hospital cannot afford to pay
18 overtime at what was our straight-time rates, that the
19 amount that was given to us for the two sister hospitals
20 in our regional area was something like \$5 million.
21 Again, is that a true number? I have no way of knowing.

22 But anyway, AB 60 was not blamed by our
23 administration, simply that they just, pure and simple,
24 didn't have the money to pay us the overtime at our

1 present straight-time rate. So, what they did was they
2 factored -- they -- I'm not going to go through all the
3 math, but they factored that our net pay is the same.
4 When we voiced our concerns about PTO and if we get sent
5 home early if the census drops, we get our premium pay.

6 Holy Cross is in a low-income area. Most of our
7 -- well, I won't say "most" -- that's an exaggeration --
8 many of our patients do not have insurance. But I know
9 that the hospital does struggle for money. We have three
10 units, 24-bed units, eight beds each. We have monitor
11 equipment that -- other kinds of equipment that we have
12 to wait to be replaced because I do believe that they
13 don't have the funds.

14 Anyway, basically, that's what I wanted to say.
15 The continuity of care is not just a midwife issue; it's
16 for all patients, all nursing areas. I do not believe
17 that my hospital is pulling a fast one on us. I'm no
18 dummy. It may perhaps -- if I'm naïve about this -- but
19 I'm no dummy, believe me. I -- I just don't believe it.

20 The other issues regarding 12-hour shifts, you
21 have a whole generation of nurses who know nothing but
22 12-hour shifts. I've been a nurse since 1979, and 12
23 hours have been in place throughout many hospitals,
24 probably since 1981, 1982. You have a whole generation

1 of nurses who have based a lifestyle on the 12-hour
2 shifts. It would be a definite hardship to take that
3 away from us, for all the reasons that have been repeated
4 before -- the extra time, the increased education, for
5 our families, to work extra jobs for extra income.

6 Thank you.

7 (Applause)

8 COMMISSIONER BROAD: I have a question for you.
9 Is it common for nurses on 12-hour shifts, say working
10 three 12-hour shifts in a row, to work more than one job?

11 MS. ROGERS: Yes.

12 COMMISSIONER BROAD: So, you actually may be
13 working two or three jobs.

14 MS. ROGERS: No. What many of us do is we will
15 work overtime at our home hospital. But it varies. I
16 don't -- I would have no idea what percentage it was.
17 But I can make -- and if I work an extra day, one extra
18 day a week, that's 48 hours a week -- I can increase my
19 income by \$1,000 per month. That isn't a lot.

20 COMMISSIONER BROAD: Let me just recount a small
21 conversation I had with a nurse who's a friend of mine.
22 She came over to my house. I asked her, "What about the
23 12-hour shifts?" She said, "Yeah, nurses really want to
24 keep those 12-hour shifts." And I said, "Well, you know,

1 there's this argument about continuity of care." And she
2 -- so, I said, "Tell me about continuity of care and all
3 this."

4 And I want you to react to this, because I'm
5 telling you the honest truth, what she told me.

6 She said, "Well, it's great -- it may be
7 wonderful for certain lifestyle choices, but after you're
8 -- it's four o'clock in the morning and you've worked
9 eight hours already, those last four hours, you're not
10 doing any favor for your patients. You're tired, you
11 make mistakes."

12 (Audience murmuring)

13 COMMISSIONER BROAD: That's what she said.

14 MS. ROGERS: Could I comment on that?

15 COMMISSIONER BROAD: Okay.

16 MS. ROGERS: Every -- every article that I have
17 read has not borne that out, at all. There is one
18 article that I read relative to that was on, quote-
19 unquote, "middle-aged" nurses getting tired. But they
20 saw no --

21 (Laughter)

22 MS. ROGERS: -- no evidence of a threat to
23 patient safety, in any literature that I've read. And I
24 was at the library doing research on it, and I couldn't

1 find it. This goes back to research from the early
2 1980's.

3 COMMISSIONER BROAD: God bless the young, huh?
4 (Laughter)

5 COMMISSIONER CENTER: Well, we're no spring
6 chickens either, Barry.

7 COMMISSIONER BROAD: Yeah, I know.

8 COMMISSIONER CENTER: Thank you.

9 Like I said, any other nurses that want to
10 comment on the reduction of their wage rates?

11 (Show of hands)

12 COMMISSIONER CENTER: Would -- you guys are all
13 saying the same thing? Would you -- who --

14 AUDIENCE MEMBER: (Not using microphone) We
15 willingly -- we work a lot of 12-hour shifts, and we
16 willingly agreed to work those same 12-hour shifts for
17 straight time. We've had to -- agreed to that
18 (inaudible). We love 12-hour shifts.

19 COMMISSIONER CENTER: But everybody's aware that
20 AB 60 allows you to do that until July.

21 (Audience shouting)

22 AUDIENCE MEMBER: (Not using microphone) It
23 says that you can work that 12 hours, but you have to get
24 time and a half for the last four. Hospitals -- our

1 hospitals (inaudible).

2 (Audience murmuring)

3 COMMISSIONER CENTER: Well, why don't we --
4 yeah, why don't you come up, Richard? Give them
5 something to react to.

6 COMMISSIONER BROAD: Yeah.

7 (Applause)

8 MR. SIMMONS: I actually have -- my name is
9 Richard Simmons, by the way, for the record. I'm an
10 attorney with the law firm of Sheppard, Mullin, Richter &
11 Hampton. I'm here today to represent the California
12 Healthcare Association.

13 I actually have some comments that I think would
14 be of benefit to the IWC to hear. I would like to enter
15 them into the record. We do not have any written
16 statements that embellish this or reflective statements -
17 - I would like to talk to them -- but I would also like
18 to offer some responses to the IWC based on questions and
19 issues that have been raised.

20 I will tell you that I think that 95 percent --
21 literally, 95 percent of what Ms. Furillo said, although
22 perhaps well intended, was absolutely wrong. It did an
23 injustice to the healthcare industry, it did an injustice
24 to the intellect of nurses who choose not to be

1 represented in the healthcare industry, it does an
2 injustice to the patients in the industry, and it is,
3 frankly, offensive. And I would be happy to talk to her
4 intelligently and show her how she's wrong later.

5 I also disagree with some of the statements that
6 the --

7 (Applause)

8 MR. SIMMONS: -- and suggestions that any
9 hospital that wishes to can simply ride the flow and keep
10 what is currently in effect until July 1st, 2000, is
11 incredibly overly simplistic, and it is not the option
12 that hospitals that intelligently consider the options
13 that are available will choose. And I'll be happy to
14 explain that to you so you understand why people of good
15 faith and good intentions can reach different conclusions
16 and, apparently, those that have not yet surfaced before
17 this Commission.

18 I have -- I'll be happy to respond to your
19 questions, no matter how technical they are, at the
20 outset or at the end. But there are some points that I
21 think the Commission should hear generally, about the
22 issues that are truly significant in the healthcare
23 industry. And if it pleases you, I will start with those
24 and then respond to your technical questions, or I'll

1 deal with your technical questions first.

2 COMMISSIONER CENTER: Make your statement first.

3 MR. SIMMONS: Thank you.

4 I would -- I would begin by saying that
5 historically, the California Healthcare Association has
6 worked as closely with this Commission as any trade
7 association that represents employers. I've known Mr.
8 Broad for years. We have not always agreed; in fact,
9 we've occasionally even had wagers on wage boards years
10 ago. But we have been here and we have acted in good
11 faith. We have sought out the assistance of the Division
12 of Labor Standards Enforcement for years and years and
13 years. We've done everything we could to seek the advice
14 of the government, the enforcement officials, and the IWC
15 to make sure the members of CHA were fully apprised of
16 the law, their rights, their obligations. And I think it
17 is an industry that is as compliant as any in the state.
18 And I think the records of the enforcement history will
19 reinforce that point.

20 In any event, we're here in good faith today.
21 And the fact of the matter is the California Healthcare
22 Association, CHA, represents many, many members who
23 collectively employ over 350,000 employees in the
24 healthcare industry in California. Many of the members

1 of CHA, of course, operate hospitals that operate 24
2 hours per day, 365 days per week (sic). They have unique
3 staffing needs, special requirements that are recognized
4 -- have been recognized by this Commission since 1974
5 when it first proposed a 10-hour shift just for
6 healthcare, and have been recognized by Congress as well.
7 Congress, the state Legislature, and this Commission have
8 historically recognized the special staffing needs that
9 exist in this organization.

10 Without getting into all of the issues in great
11 detail, I think, due to time constraints and in deference
12 to the fact that other people, obviously, need to speak
13 and are entitled to speak, I want to focus on four issues
14 this afternoon: first of all, 12-hour shifts, without
15 question the most important, dynamic, challenging issue
16 before the Commission as far as healthcare is concerned;
17 secondly, the 8-in-80 overtime standards, which are
18 critically significant and are not receiving attention as
19 warranted; thirdly, the meal period issues -- and I will
20 submit now that I've provided a petition signed by 90
21 nurses of one hospital, passed to me last night, not
22 solicited, just when they heard I was going to be here
23 today -- each of the 90 nurses indicated her or his own
24 reasons for wanting to have amendments to the meal period

1 rules -- that is submitted to you -- and finally, the
2 exemption that is provided in AB 60 for certain union
3 employees. Those are the four things that I'd like to
4 talk about.

5 And I would like to commence by talking about
6 12-hour shifts, the first and the foremost issue before
7 you, from the healthcare industry's perspective. I think
8 we have to start off with the acknowledgment that no one
9 disputes that nurses want 12-hour shifts. California
10 Nurses Association was not here today saying it does not
11 want 12-hour shifts or its members don't want 12-hour
12 shifts. I think they would submit -- at least if, you
13 know, put under oath -- that every collective bargaining
14 agreement they negotiate for nurses contains 12-hour
15 shifts, and indeed, 12-hour shifts at straight time.
16 They know they cannot succeed without giving nurses 12-
17 hour shifts.

18 Hospitals will tell you the very same thing.
19 Hospitals need to give 12-hour shifts to nurses and other
20 employees. It has become an incredible retention tool to
21 retain qualified, skilled, professional nurses. And by
22 the way, besides anything that this Commission or the
23 Legislature could say, let's make it real clear, nurses
24 are professionals. You call them what you want; they're

1 professionals. No doubt about it.

2 (Applause and cheering)

3 MR. SIMMONS: (Inaudible). Beyond that, if you
4 take a look at what the unions say and what management
5 says, the nurses are fully capable to speak for
6 themselves. They're more articulate than I could ever
7 hope to be. They'll tell you they want 12-hour shifts.
8 There's no question about that.

9 The question is whether you're going to give
10 them the right to do that, whether the Legislature is
11 going to give them the right to do that. And we have to
12 look historically at what this Commission has recognized.
13 It has heard hundreds of registered nurses and other
14 healthcare employees testify since 1980 about the need
15 for flexibility. What is going on right now, with what
16 we you would describe as a reduced rate, what Mr. Knox
17 described as a slashed rate in order to use a pejorative
18 term to reach a conclusion, what I'd like to call an
19 adjusted rate -- but that's all semantics, that's all
20 words.

21 What it is, is exactly what had to happen in
22 1980, before the Industrial Welfare Commission first
23 recognized that 12-hour shifts should be allowed at
24 straight time. And what had to happen back then was you

1 paid a straight-time rate for the first 8 hours, you paid
2 time and a half that straight-time rate for hours over 8,
3 so you could give to nurses essentially the same pay that
4 they received for 40 hours for 36 hours of work. That
5 was the goal. It was not to take advantage to anybody.
6 It wasn't because hospitals are devils. It's not because
7 they were the devil incarnate. They were not balls of
8 fire (inaudible), you know, oppress employees. They
9 tried to do the right thing. That's exactly what they're
10 trying to do right now.

11 In 1993, finally, the Industrial Welfare
12 Commission, after a series of years and after a series of
13 amendments, expanded the wage order provisions in 4 and 5
14 to allow hospitals to give nurses and other healthcare
15 employees the opportunity to work 12-hour shifts at
16 straight time with a 12 and 40 standard. It truly was
17 perfection in terms of the employees and employers. It
18 benefited thousands of employees, thousands of patients,
19 and many, many hospitals. It benefited everybody. It
20 was a win-win situation. But, of course, it ended, or
21 things changed, on January 1st, 1998. And we all know
22 what happened on that date.

23 But setting that aside, we have to realize that
24 healthcare is plagued with critical labor shortages.

1 We're not talking about business here; we're talking
2 about lives, we're talking about patients, we're talking
3 about your parents, your spouses, your children, your
4 family members; we're talking about labor shortages that
5 healthcare organizations must address in order for people
6 to save lives, what nurses are really there to do. They
7 want to make a fair, honorable wage, clearly. Hospitals
8 want to pay that. But they're there to save lives. If
9 you really ask them what nurses are there for, they care
10 about patients. That's why they got into the profession,
11 that's why they've elected to stay in the profession, not
12 because of all the legal gobbledy-gook they were talking
13 about today. We need to provide them the opportunity to
14 do what they want to do, which is to practice their
15 profession.

16 Now, what we ask and what we urge the Industrial
17 Welfare Commission to do is to provide opportunity, not a
18 grace period that's going to expire on July 1st that
19 really is meaningless when you really examine it
20 carefully, but to provide hospitals the opportunity to
21 provide healthcare employees, nurses and other healthcare
22 employees, the opportunity to maintain existing 12-hour
23 shifts. Lord knows, if AB 60 had not occurred, 12-hour
24 shifts at straight time would still be in effect. There

1 would not have been any bump in the road.

2 AB 60 is, in fact, what has caused people to
3 have to make changes. There's no doubt it. It's
4 intellectually dishonest to suggest that anything else
5 has occurred here. What has happened? AB 60 has
6 happened. We want to be able to preserve 12-hour shifts
7 as they exist. And number two, we want the opportunity
8 to create new 12-hour shift programs. As new hospitals
9 open, as new units open, as employees realize that they
10 prefer 12-hour shifts, we want the right to accommodate
11 them. And you know what? We want the same right to
12 accommodate the nurses that are not represented the
13 unions than the small minority of the nurses who choose
14 to be represented by the unions, because nonunion nurses
15 have the same rights. They have the same rights --

16 (Applause)

17 MR. SIMMONS: (Inaudible).

18 In any event, the proposed language that has
19 surfaced through the Industrial Welfare Commission,
20 frankly, is inadequate to accomplish our goals. It is
21 inadequate for several reasons.

22 First, of course, it would be designed to --

23 COMMISSIONER CENTER: What proposed language is
24 that?

1 MR. SIMMONS: The language that deals with
2 healthcare. It's some of the language that has floated
3 up before the IWC.

4 COMMISSIONER CENTER: We haven't provided
5 anything yet, have we?

6 MR. SIMMONS: No. I don't think it's been
7 released publicly, but it's been floated around. People
8 have seen it.

9 COMMISSIONER CENTER: Where did you hear that?

10 MR. SIMMONS: What difference does it make?

11 COMMISSIONER CENTER: Because it's not a public
12 document. That's what difference it makes.

13 MR. SIMMONS: How exactly does that -- well, if
14 you've seen it or not, let me talk about language
15 theoretically, from a concept, if I may, because if there
16 is language out there -- and I'm just going to
17 hallucinate some language -- I'll talk about and I'll
18 tell you why it's inadequate. And if I'm wrong, then
19 please excuse me.

20 If there is language in effect that refers to
21 12-hour shift arrangements being limited to licensed
22 employees who are engaged directly in patient care
23 activities, that language is, unfortunately, inadequate,
24 however well intended it may be. The language that may

1 exist also would narrow, in fact, shrink the grace period
2 provided in AB 60 so it will expire either on July 1,
3 2000, or, if earlier, the date that the IWC issues new
4 rules. So, that will even contract the exemption so it's
5 more narrow than the statute itself authorizes.

6 Furthermore, the statute doesn't confine the
7 grace period that AB 60 offers to licensed employees or
8 employees directly engaged in patient care. In short, if
9 that language exists -- and I hope that I'm wrong -- I
10 hope it doesn't exist --

11 COMMISSIONER BROAD: You are wrong.

12 MR. SIMMONS: But if it does exist -- great --
13 then it should not confine the duration of the grace
14 period, it should not confine it to licensed employees,
15 and it should not confine it to employees engaged in
16 patient care positions.

17 So, if the IWC does consider language for 12-
18 hour shifts, we would ask that it be made available to
19 all healthcare employees.

20 It should also be remembered that you have
21 departments that consist of both patient care and non-
22 patient care employees who work the same schedules. For
23 example, if a housekeeping employee works in a patient
24 care area, that employee may work a 12-hour shift along

1 with the RN. There are many other examples I could give
2 you.

3 COMMISSIONER BROAD: Excuse me. So, your
4 position is that this is about nurses who are engaged in
5 continuity of care, but janitors should work 12-hour
6 shifts without overtime in hospitals?

7 MR. SIMMONS: No. I didn't --

8 COMMISSIONER BROAD: What's the rationale for
9 that?

10 MR. SIMMONS: Well, Mr. Broad, I didn't mention
11 continuity of care. I do intend to mention it, but not
12 in the context in which you've raised it. So, if you
13 allow me to state my view --

14 COMMISSIONER BROAD: Please.

15 MR. SIMMONS: -- you can criticize it, once it's
16 been stated. But until I do, I'd just as soon have the
17 opportunity to speak for myself.

18 The bottom line is that we have healthcare
19 employees, both nursing and other employees, who work 12-
20 hour shifts. While continuity of care may, in fact, be a
21 justification for 12-hour shifts, and it may, in fact, be
22 a reason why 12-hour shifts make eminent sense in the
23 healthcare industry, it is not the only reason. The
24 reason the IWC authorized 12-hour shifts for all

1 healthcare employees in the past is because employees
2 liked it. They can work a compressed schedule of longer
3 but a fewer number of days, which gives them more days
4 off for other things.

5 It is true, as you said, that some people may
6 choose other things that include other employment. Other
7 people may choose other things that involve caring for
8 their family or spending time with their family, or
9 pursuing educational interests or travel interests or
10 recreational interests. There are all sorts of things
11 you can do with four days off.

12 COMMISSIONER CENTER: Can you wrap it up in
13 about two minutes, do you think?

14 MR. SIMMONS: Okay. Thank you.

15 Well, the bottom line is that 12-hour shifts
16 promote flexibility. They promote the interests of
17 employees, their families, their patients, and they do
18 promote continuity of care. But that shouldn't result in
19 overlooking the other things that they provide.

20 Now, your charge, of course, as has been -- as
21 you have been reminded about, includes protecting the
22 welfare of employees. Let's talk about the healthcare
23 employees and their welfare.

24 Given the critical labor shortages that exist in

1 California, if you remove the authority for flexible
2 scheduling that already exists, then it's going to
3 exacerbate staffing problems that already exist due to
4 labor shortages. If you exacerbate staffing problems,
5 that's going to increase the stress for the employees,
6 that's going to compromise the care of employees --
7 excuse me -- the care of patients and the nurturing of
8 employees, and it's going to lead to even greater
9 attrition, which will be a cycle that will undermine the
10 welfare of employees. It will disrupt the lives of
11 nurses who, as has already been said, in some cases have
12 worked 12-hour shifts their entire career, twenty years.

13 So much for 12-hour shifts, an important issue.
14 Let me talk about the other issues that are important as
15 well.

16 The second issue I need to address is 8-in-80's.
17 California employers have been allowed to use an 8-in-80
18 overtime system under Section 7(j) of the Fair Labor
19 Standards Act, and formerly Section 3(c), now Section
20 3(b), of Wage Order 5, for many, many years. That
21 recognizes the unique staffing issues in the healthcare
22 industry. It is allowed in every state of which I am
23 aware in the nation. If California abandons or
24 diminishes the authority for 8-in-80 overtime systems, it

1 would be a tragedy. And they are used by the vast
2 majority of hospitals in California and in the entire
3 nation.

4 So, what we urge the Industrial Welfare
5 Commission to do with respect to 8-80 -- 8-in-80
6 arrangements is to preserve the existing rules. And I
7 know there's some debate as to whether you may do so. I
8 believe, based on my reading of the statute, that you
9 absolutely can. You're allowed to preserve exemptions,
10 and it is an exemption from a normal 40-hour standard.

11 Third area: meal periods. There are three
12 issues associated with meal periods that are of critical
13 concern in the healthcare industry. The first is that
14 current law allows an employee to waive their meal period
15 if the nature of their work prevents them from taking 30
16 minutes off.

17 COMMISSIONER CENTER: Excuse me. We need to
18 kind of wrap it up, because we're going to start losing
19 commissioners here pretty quick.

20 MR. SIMMONS: Okay. I appreciate that. I
21 suppose the best thing I can do is note that the meal
22 period issues are truly of great significance. And if I
23 may, I would submit further documentation --

24 COMMISSIONER CENTER: In writing to us, please.

1 MR. SIMMONS: -- that addresses that issue for
2 you.

3 And finally, the collective bargaining proviso -
4 - and I can say that in 30 seconds. I lectured recently
5 with the general counsel of the Labor Commissioner, in
6 whom I have great respect -- I think he is truly a
7 scholar in the labor area -- and while we both lectured
8 to the State Bar Association, I thought he made the
9 astute point that unless overtime is paid for all
10 overtime hours -- meaning all overtime zones, hours over
11 8 in a day, unless premiums are paid for all overtime
12 zones, including hours over 8 in a day and hours over 12
13 in a day and 40 in a week -- then the overtime exemption
14 for collective bargaining agreements would be
15 unavailable.

16 I understand the Labor Commissioner may have re-
17 evaluated that issue. I understand that there's room for
18 debate, but I would ask the IWC to clarify its position
19 on that point so we have clarity and we know what the
20 rules are.

21 Beyond that, I'll be happy to entertain any
22 questions you may have.

23 COMMISSIONER CENTER: Just a question. Now,
24 January 1, AB 60 goes into effect. There's an exemption

1 for nurses up until July, if they had a legal election
2 and then two-thirds vote.

3 MR. SIMMONS: There's some (inaudible) in that.
4 May I explain it?

5 (Audience murmuring)

6 COMMISSIONER BROAD: Quickly.

7 COMMISSIONER CENTER: Yeah, quickly, if you
8 could.

9 COMMISSIONER BROAD: Well, in a nutshell, it's
10 not an exemption, it's a grace period.

11 COMMISSIONER CENTER: Right.

12 MR. SIMMONS: AB 60 has both grace periods and
13 grandfather provisions. That provision is a grace period
14 that says, "If you can demonstrate that you complied with
15 all of the pre-1998 standards, then you can continue what
16 you have until July 1st, 2000." That's true. But you
17 also have other options. And the problem is, as of July
18 1, 2000, if you don't -- if you ride that grace period
19 out, you'll have far fewer options available to you then,
20 if the IWC or the Legislature doesn't act, than are
21 available to you right now, which is why so many
22 hospitals are reacting to the options now.

23 COMMISSIONER CENTER: Okay. And just a
24 question. Okay. Now, you're reducing wage rates to

1 comply with the overtime, and not knowing what IWC will
2 do. If, by chance, IWC does act and does an exemption,
3 will you reinstate the wage rates?

4 AUDIENCE MEMBERS: (Not using microphone) Yes.
5 Yes.

6 MR. SIMMONS: Absolutely. Obviously, it's a
7 hospital-by-hospital basis, and hospitals try to do what
8 employees want them to do, which is why they're going
9 through voting procedures now, even though they don't
10 have to, by the way.

11 Can I give you some insight? The statistics I'm
12 hearing on the adjusted rate system is that upwards of 70
13 or 80 or 90 percent of the employees who have voted,
14 through a process that isn't even required, have said,
15 "We want 12-hour shifts. We're happy to go through the
16 adjustment in the rates in order to maintain 12-hour
17 shifts under the limitations that exist in AB 60." It's
18 done with full disclosures, group meetings, things that
19 aren't even mandated by the law, because employers want
20 to do the right thing.

21 COMMISSIONER CENTER: Well, let me continue on.
22 So, let's talk about the IWC on 12-hour shifts.

23 MR. SIMMONS: Well, here's the dilemma there.
24 And, by the way, there are some open legal questions, and

1 I don't want to say that there are clear answers to all
2 of these questions.

3 The Statement of Basis to the wage orders right
4 now specifically talks about the ability to go to a
5 reduced rate system, systems that, as I said earlier,
6 were allowed back in 1980. But the Statement of Basis
7 actually authorizes it. So, to suggest here it may be
8 legal, it may be not be legal, it's clearly legal and the
9 IWC has said so explicitly in its Statement of Intent and
10 Statement of Basis.

11 Now, you have language in AB 60 that talks about
12 reduced rates being impermissible after January 1st of
13 the year 2000. I don't know, frankly, whether that
14 simply would outlaw reduced rates in connection with 10-
15 hour shift programs that were rejected, or whether or not
16 you were going to interpret that to outlaw any type of
17 rate reduction. But if, in fact, you do construe it
18 broadly to outlaw any type of rate reduction -- and I
19 refer to the opposite interpretation, of course -- but if
20 you did construe it that way, then hospitals that wait
21 until July 1 will have no option other than basically to
22 go out of business or to offer only 8-hour shifts, where
23 employees won't even have the option to work 12 hours.
24 That's the dilemma that AB 60 creates.

1 Hospitals didn't create it. Hospitals didn't
2 want it. I don't think you saw a lot of hospitals
3 supporting AB 60. So, there you have it. We didn't
4 draft it. Nobody called me and asked me.

5 (Laughter)

6 MR. SIMMONS: Wally Knox didn't call me and say,
7 "Richard, I understand you" --

8 COMMISSIONER CENTER: The Chamber didn't support
9 it either, I don't think.

10 MR. SIMMONS: Yeah. " -- and what do you think
11 about this legislation? Do you have insight to the
12 healthcare industry?" I didn't get that call. My phone
13 did not ring.

14 Any other questions?

15 COMMISSIONER BROAD: Yeah. I have some
16 questions.

17 I think you're probably right that there's
18 nothing that prevents people from lowering base wage
19 rates before January 1. The concern is -- the concern is
20 what the chairman said, which is, then, you lower the
21 base wage rate, then, to go to a 12-hour shift, if we
22 indeed vote to continue 12-hour shifts for nurses, and
23 then you leave people at the same rate of pay. Now,
24 you're saying that you wouldn't do that because you just

1 want to make people --

2 MR. SIMMONS: Whole.

3 COMMISSIONER BROAD: -- you just want to make
4 it whole and stay even. So, you wouldn't oppose, then, a
5 provision in the wage order, then, that would require
6 that they be kept whole, that the former base wage rate
7 be reinstated as a condition precedent to having a 12-
8 hour shift like that?

9 MR. SIMMONS: Well, I can go beyond that. I
10 agree with your point, by the way, the theme of your
11 point. And I don't have any problem with that. I know
12 of no hospital that would be unwilling to do that. I
13 think I'd like to see the language, by the way. I'd like
14 to see my version of that language drafted rather than
15 yours. But in concept, I do agree with you.

16 But let me tell you one other thing. I think
17 employees can be disadvantaged from a benefit
18 perspective. I'd like to see them made whole there too,
19 as would hospitals, because some disability programs,
20 some life insurance programs, pay benefits based on
21 straight-time earnings without regard to overtime. And
22 we would like them to get full benefits, completely. So
23 -- and I think hospitals would be fully supportive of
24 that.

1 COMMISSIONER BROAD: Well, I think the hospital
2 industry could take a lot of the -- of the stress of what
3 it's done here out of the whole process by formally
4 taking that position and writing to the Commission and
5 saying that it would propose to do that.

6 MR. SIMMONS: Well, can I get a reading from the
7 commissioners right now? Can I ask you -- I know you
8 can't vote because it's before January 1st -- would each
9 of you vote in favor of that, were it submitted?

10 COMMISSIONER BROAD: I don't think it's
11 appropriate to ask us to commit to something that we
12 haven't seen.

13 MR. SIMMONS: Well, you asked me to commit to
14 something. You wanted the industry to commit to
15 something.

16 COMMISSIONER BROAD: You don't have to -- you
17 don't have to --

18 (Applause and cheering)

19 COMMISSIONER BROAD: The industry -- the
20 industry doesn't have to do anything. I haven't noticed
21 that the industry has done anything affirmative,
22 generally, in this area at all. So, you know, you don't
23 support increases in the minimum wage --

24 MR. SIMMONS: Well, do you want --

1 COMMISSIONER BROAD: You don't have to do
2 anything.

3 MR. SIMMONS: Okay. Let's say we do it. Let's
4 say we do what you asked. Will you give us your
5 indication right now -- obviously, you reserve the right
6 to change your mind -- but would you support it, Mr.
7 Broad?

8 COMMISSIONER BROAD: Support what?

9 MR. SIMMONS: If there were a proposal to allow
10 12-hour shifts at straight time, where people were --

11 COMMISSIONER BROAD: I would certainly be more
12 receptive to it, I'll tell you that much.

13 MR. SIMMONS: Well, let's face it. That's what
14 would have happened had AB 60 never come along. It would
15 have just been status quo.

16 COMMISSIONER BROAD: Well, AB 60 would have
17 never come along if what preceded AB 60 had never come
18 along. So, that's -- but let me ask you this question.

19 I still -- the nurses that have come before us,
20 we've only really heard from nurses. We haven't heard
21 from anybody who works -- and midwives -- but a lot of
22 people work in hospitals, you know, I mean, janitors and
23 food service people, and parking lot attendants and
24 security guards, and secretaries, and all kinds of people

1 work in hospitals. And what's different about the good
2 old days with the last IWC and the last administration,
3 what's different is the fact -- the passage of AB 60.
4 And AB 60, I believe, instructs this Commission to be
5 very wary about deviating from the basic 8-hour-day
6 standard.

7 Now, what is the rationale for making a parking
8 lot attendant at a hospital be able to be required to
9 work 12-hour shifts, and a parking lot attendant at a
10 movie theater who could not? What's the difference?

11 MR. SIMMONS: Well, first of all, I don't -- I
12 don't agree with the premise, that -- the premise is that
13 parking lot attendants don't want to work it and they'd
14 be forced to work it. My view is that thousands of
15 employees in the state have voted in favor of 12-hour
16 shifts on a voluntary basis by two thirds of their
17 number. And it's not just nurses. It is parking lot
18 attendants, if the employer and employees agree to it.

19 And let's face it, you guys recognized it -- you
20 didn't, but AB 60 recognized it, because the eleventh-
21 hour amendment added the authority for 4-10 arrangements
22 or other flexible arrangements that were in effect on
23 July 1, 1999, on individual -- on an individual basis. A
24 lot of employees want it.

1 My reason for justifying it is that employees
2 want flexibility. Congress recognized it when they
3 repealed the 8-hour standard in the Walsh-Healey Act,
4 back in 1986. The Industrial Welfare Commission has
5 recognized it. Thousands of people throughout the state
6 have recognized it. You've had hundreds of people
7 testifying over this process of hearings, and you'd had
8 hundreds more testify in 1980, 1986, 1989, and 1993, all
9 of which resulted in the expansion of flexibility.
10 People want it. They're knocking at your door. They're
11 beating down your door. They say, "We want flexibility."
12 That's why it should be allowed.

13 (Applause)

14 AUDIENCE MEMBER: Can I ask a question? I would
15 like to know why nurses, who are college-educated
16 professionals, are being considered in the same category
17 as parking lot attendants.

18 COMMISSIONER BROAD: Actually, the issue is
19 whether parking lot attendants should be treated
20 differently from other parking lot attendants.

21 AUDIENCE MEMBER: No, no, that is not the issue.

22 COMMISSIONER BROAD: Yeah, I think it is.

23 AUDIENCE MEMBER: The issue is, why are nurses
24 being in the same category as other workers who are not

1 considered to be professionals, as far as a college-
2 educated type of profession. It is blue-collar work and
3 white-collar, if you will, or whatever.

4 COMMISSIONER BROAD: Well, if you want my
5 opinion, my opinion is that there are many people who are
6 -- who are white-collar that have always been permitted
7 or required to be paid overtime. It's not -- it's not --
8 this is not a distinction people who use their brains and
9 use their hands. It is -- it is the law of the land that
10 people get overtime.

11 AUDIENCE MEMBER: (Inaudible).

12 COMMISSIONER BROAD: Yes, it is.

13 COMMISSIONER CENTER: No more questions from the
14 floor. We've got a speaker up here.

15 Maybe you can come up and address the
16 Commission.

17 I was on the Commission when the 8-hour day was
18 repealed, along with Mr. McCarthy, and the other labor
19 vote thought he was voting for a study to repeal the 8-
20 hour day. That's how much the populace spoke on that,
21 and I don't think he ever did get what he was doing. But
22 that's old history on that, so --

23 COMMISSIONER McCARTHY: Mr. Chair, if I could
24 make one -- the issues before the -- that the nurses have

1 brought forward today are really two distinct issues. I
2 -- you know, I mean, we have the issue that's under
3 consideration, which is a very serious issue. The other
4 issue, also serious, which is different, was the
5 situation with the midwives. So, before -- I know some -
6 - I think some of the commissioners have to catch a
7 plane, so I would just like to introduce a quick motion,
8 if I may, before we continue with the testimony here,
9 that -- that one of the first items of business in the
10 next meeting is consideration of the exemption on
11 professional grounds for midwives.

12 AUDIENCE MEMBER: (Not using microphone)
13 Advanced practice nurse is a term, is an umbrella term,
14 for midwives, some of whom are specialists, nurse
15 practitioners, nurse anesthetists, who have not yet had
16 the opportunity to talk.

17 COMMISSIONER McCARTHY: Well, I -- we can
18 broaden that if we wish. I guess, at the moment, since
19 we've
20 heard --

21 MR. SIMMONS: Is it who shouts the loudest, or
22 are we going to just let people comment out of the
23 audience?

24 COMMISSIONER McCARTHY: Well, I introduced a

1 motion, and we can introduce other ones if somebody
2 wishes. But I'll stick with that motion with regard to
3 the issue that was brought up with the midwives, that we
4 at least consider it at the next meeting, given the
5 seriousness of charges there.

6 Second to it?

7 (No response)

8 COMMISSIONER McCARTHY: Well, this is very --
9 this is different. I mean, some of the others, we will
10 have a hearing before July 1st. On the basis of what the
11 midwives said, as I said, this is a little -- this is of
12 greater urgency and immediacy in terms of their
13 professional survival, from what I can tell. So,
14 considering one at the next meeting doesn't preclude
15 considering anything else at a later meeting.

16 COMMISSIONER COLEMAN: Can I ask, procedurally?
17 What we can do is agendize that for the next meeting as
18 one of the first acts of business.

19 COMMISSIONER CENTER: Well, if you want to make
20 a resolution to do that, that's fine, but I don't think
21 we can make motions on the statute until it comes into
22 effect in January.

23 COMMISSIONER McCARTHY: No, I'm not making a
24 motion on the statute. I just made -- my motion was to

1 consider, to put on the agenda consideration of this at
2 that point. That's all my motion was, not prejudging how
3 the Commission will decide or vote on it, just to
4 consider at least at the time.

5 Well, that's the motion.

6 COMMISSIONER COLEMAN: I second.

7 COMMISSIONER CENTER: Call the roll.

8 COMMISSIONER COLEMAN: Aye.

9 COMMISSIONER DOMBROWSKI: Aye.

10 COMMISSIONER MCCARTHY: Aye.

11 Barry?

12 COMMISSIONER BROAD: Aye.

13 COMMISSIONER CENTER: Aye.

14 You guys should have helped Barry on his motion,
15 too, you know.

16 Okay. I guess --

17 (Pause)

18 MS. CONNOLLY: Hello?

19 COMMISSIONER CENTER: Hello. Excuse me.
20 Please.

21 MS. CONNOLLY: My name is Kathleen Connolly,
22 C-o-n-n-o-l-l-y. I'm a registered nurse at Providence
23 Hospital in Burbank.

24 COMMISSIONER CENTER: Excuse me.

1 Could you pass those outside, please?

2 All right.

3 MS. CONNOLLY: I've only been a (inaudible)
4 nurse for (inaudible). The actual facility that I am
5 employed by has 12-hour shifts since the mid-1980's. But
6 I'm one of the nurses that Mr. Knox talked about that has
7 taken a big cut in pay. It ended up to be 16.66 percent.
8 No matter how you dress it up, it's a still a big -- big,
9 big cut in pay.

10 I do not want to work as a nurse five days a
11 week taking care of sick, dying patients working eleven
12 to seven p.m., the shift that I would have to work
13 (inaudible), apparently. I feel that the hospitals did
14 try to do what they could, but what they're telling us is
15 that we don't matter. How do you run a hospital without
16 nurses? It's decreasing our morale and will be a big cut
17 in pay. (Inaudible) the correct pay for the time worked.
18 With the new pay scale, there are different rates that
19 need to be paid out, making it easier for mistakes to be
20 made. Some of us have two jobs to maintain our
21 lifestyle.

22 On a selfish note, healthcare is not --
23 healthcare (inaudible). My hospital will lose me and
24 some experienced and valuable nurses. I will not be

1 practicing in a field that does not also promote employee
2 satisfaction.

3 I have submitted 31 letters from 12-hour
4 employees in favor of 12 hours who like an assurance of
5 their base pay premium (inaudible). (Inaudible) and we
6 have to take our pay, but if we are exempt, we will go
7 back to the base pay that we are now, base pay for 12
8 hours straight.

9 AB 60 needs to be clear as far as healthcare is
10 concerned. I urge you to reinstate Wage Order 4 and 5 so
11 we can continue to give quality care and maintain a 12-
12 hour, flexible work schedule in return for our previous
13 base pay.

14 (Applause)

15 COMMISSIONER CENTER: Bill Hoffman.

16 (No response)

17 COMMISSIONER CENTER: Charles Long.

18 Did Kathleen Connolly already speak?

19 COMMISSIONER BROAD: That was her.

20 AUDIENCE MEMBER: (Not using microphone) She
21 just spoke.

22 COMMISSIONER CENTER: Gee, I'm doing good here.
23 It's getting late.

24 Oh, which one are you?

1 MR. LONG: Charles Long.

2 COMMISSIONER CENTER: Okay, Charles.

3 MR. LONG: Do we still have the front row open
4 to us?

5 COMMISSIONER CENTER: Why don't you -- yeah,
6 people who've already spoken. I guess everybody's
7 waiting
8 -- we're going to go through the list now. We've got --
9 these are all with you?

10 MR. LONG: Yes.

11 COMMISSIONER CENTER: All right. Go ahead.
12 If you have written, if you could submit it to
13 us, maybe, and summarize.

14 MR. LONG: I've done it already.

15 COMMISSIONER CENTER: Pardon?

16 MR. LONG: I've done it already.

17 COMMISSIONER CENTER: Okay. And you're just
18 going to summarize your written testimony?

19 MR. LONG: I'm not even going to summarize my
20 written testimony. I am open to specific questions.

21 COMMISSIONER CENTER: Okay.

22 MR. LONG: We consider it here that you are here
23 to help us, and I would like to understand, or gain some
24 understanding. After being here all day, I'm more

1 confused than ever.

2 AUDIENCE MEMBER: (Not using microphone) Can't
3 hear you.

4 MR. LONG: I understand -- or I think I
5 understand that we are covered, we have been covered,
6 under Wage Order Number 4. After hearing testimony
7 today, I'm not sure if that wage order is still in effect
8 after January 1st, 2000.

9 COMMISSIONER CENTER: Yeah. Order 4 will be --
10 is -- will be in effect in January.

11 MR. LONG: Not AB 60, but Wage Order Number 4.

12 COMMISSIONER CENTER: Yeah. Wage Order 4 will
13 still be in effect in January.

14 MR. LONG: It still will be in effect.

15 COMMISSIONER CENTER: What kind -- what kind of
16 industry are you involved in?

17 MR. LONG: Well, it's oil -- our -- the
18 customers we serve are the oil industry. We store and
19 transfer -- and transport oil for the refineries in the
20 L.A. area.

21 COMMISSIONER CENTER: Were you covered under
22 overtime -- by the daily overtime law?

23 MR. LONG: I'm sorry.

24 COMMISSIONER CENTER: Are you covered -- are you

1 working -- what are your hours?

2 MR. LONG: We work in 12-hour shifts.

3 COMMISSIONER CENTER: 12-hour shifts. And you
4 were doing that prior to the repeal of the 8-hour day?

5 MR. LONG: We've been on 12-hour shifts for
6 seven years.

7 COMMISSIONER CENTER: Because of the exemption
8 for the oil industry?

9 MR. LONG: That's -- Wage Order Number 4 covers
10 (inaudible) professionals. We fall into that, machine
11 operators.

12 COMMISSIONER CENTER: How were you working 12-
13 hour shifts without overtime?

14 MR. LONG: Equipment operators. This is in Wage
15 Order 4.

16 COMMISSIONER CENTER: Okay. Go ahead and I'll
17 try to figure out where it is. Go on.

18 MR. LONG: Well, my question is, if Wage Order
19 Number 4 is still in effect after January 1st, then we
20 should be able to continue working on 12-hour shifts.

21 COMMISSIONER CENTER: You were -- what happened
22 was -- a couple years ago was a repeal of the 8-hour day.
23 Were you working 12-hour shifts then at straight time,
24 prior to that?

1 MR. LONG: Yes. For the last seven years, we've
2 been working 12-hour shifts, actually, and were being
3 paid overtime after 40 hours a week.

4 AUDIENCE MEMBER: (Not using microphone) Well,
5 that's what it says in the wage order, is after 40 hours
6 a week.

7 COMMISSIONER CENTER: That was not prior to the
8 elimination of the 8-hour day. Prior to that, it was
9 overtime after 8 hours. But you were paying -- you were
10 paying 12-hour days prior to that repeal of the wage
11 order?

12 MR. LONG: Yes. At least I -- I thought we
13 spoke to you, I believe to you, in 1989 and '90, in
14 Sacramento. And about a year after that -- well, about
15 two years after that, we began working 12-hour shifts.

16 COMMISSIONER CENTER: I wasn't on the IWC in
17 '89.

18 MR. LONG: Okay. Well, the Commission.

19 COMMISSIONER CENTER: Maybe we should have --
20 because I'm not sure if you were exempt going in there or
21 not. Maybe Marcy should go talk to you.

22 But overtime will be in effect in January.

23 MR. LONG: Overtime after 8 hours a day?

24 COMMISSIONER CENTER: Yes. Yes. Unless you

1 have a specific exemption in your industry.

2 MR. LONG: Well, that's my understanding. Well,
3 we don't -- you say industry, and we're not part of the
4 oil industry. The oil industry is our customer.

5 COMMISSIONER CENTER: Then I would think you
6 should have been covered under the 8-hour day prior to
7 the repeal.

8 MR. LONG: So, we shouldn't have been -- we
9 should not have been allowed to work the 12-hour shift
10 for the last seven years?

11 COMMISSIONER CENTER: I think -- yeah, we can't
12 -- you should talk to the Labor Commissioner on that.
13 That's a Labor Commissioner issue, not one of our issues.
14 Yeah.

15 Yeah.

16 MR. LUSSI: I think what we're trying to do is
17 we're trying to see if we are an exemption. And I know
18 we have heard about that. I want to know how we can go
19 and get an exemption. People are -- I heard you guys
20 refer to healthcare workers and janitors in the same
21 sentence. I don't see why if a group of people,
22 employees, want to work an 8-hour day or a 10-hour day or
23 a 12-hour day, why can't we let them? I mean, why are
24 you guys -- you guys have the ability to grant

1 exemptions.

2 COMMISSIONER CENTER: No, we don't.

3 MR. LUSSI: Through a process.

4 COMMISSIONER CENTER: Through a process for
5 specific industries. But the law changed in January.
6 That order changed, how we do that. I don't think we can
7 grant you an exemption just --

8 MR. LUSSI: Well, in AB 60, you guys have a
9 provision to grant exemptions. That's what it says,
10 doesn't it?

11 COMMISSIONER CENTER: For -- for industries.

12 MR. LUSSI: For industries.

13 COMMISSIONER CENTER: And what's your --

14 MR. LUSSI: My question is, why --

15 COMMISSIONER CENTER: Explain your industry to
16 me first.

17 MR. LUSSI: I'm an operator for Edison, a
18 pipeline operator for Edison. We transport and store oil
19 for refineries. We work at a rotating 12-hour shift, 24
20 hours a day. Without a 12-hour shift, it goes back to 8;
21 there's no 9's or 10's or anything else.

22 My question is, if a working group wants to stay
23 on the 12-hour shift, why are we not allowed to do that?

24 COMMISSIONER CENTER: You could go to 10's, but

1 the law changed --

2 MR. LUSSI: There's no provision for us to go to
3 10's because there's 24 hours in a day. This is our
4 problem, and the same with the nurses and the janitors
5 and the parking lot attendants. We want it, not our
6 companies. We want it. It's better for us. So, I don't
7 understand why we cannot get an exemption as an industry.

8 COMMISSIONER CENTER: Because the law was passed
9 by the Legislature. We cannot change the law.

10 MR. LUSSI: But you do have a provision --

11 COMMISSIONER CENTER: Not to change the law.

12 MR. LUSSI: -- for an exemption to industries.
13 That's my only question. My concern is --

14 COMMISSIONER CENTER: Certain industries.

15 MR. LUSSI: -- we want to vote to take this, and
16 I don't understand that -- it says in the bill that
17 you're available or allowed to give provisions to
18 industries. And I wanted to know, why can't that happen,
19 because I heard you say before that you're not allowed --
20 it goes through a long process.

21 COMMISSIONER CENTER: We can do certain things,
22 but once the law goes into effect, we cannot supersede
23 the law. And the law changes in January, which really
24 limits the exemptions we can grant. There are specific

1 industries named in the law.

2 MR. LUSSI: But we cannot grant exemptions above
3 and beyond those certain industries?

4 COMMISSIONER CENTER: We can institute wage
5 boards for industries. And you need to get your industry
6 people to gather and petition that.

7 MR. LUSSI: We have. I think we've presented
8 that to you.

9 COMMISSIONER CENTER: That's a process. Then
10 we'll have to investigate your industry and do it that
11 way. We just can't grant an exemption without
12 investigating your industry.

13 MR. LUSSI: Yeah. I realize you can't do that
14 on the spot. But there is a process.

15 COMMISSIONER CENTER: Yeah. Yeah, a process.

16 MR. LUSSI: Okay. Thank you.

17 COMMISSIONER CENTER: Matthew Bartosiak.

18 AUDIENCE MEMBER: (Not using microphone) He's
19 here. He just stepped out.

20 AUDIENCE MEMBER: (Not using microphone) Next.
21 Go on to the next name.

22 COMMISSIONER CENTER: Rita McGuire.

23 (No response)

24 COMMISSIONER CENTER: Denise Smith? Has she

1 spoken yet?

2 (No response)

3 AUDIENCE MEMBER: (Not using microphone) Here's
4 Matt.

5 COMMISSIONER CENTER: Oh, there's Matt.

6 AUDIENCE MEMBER: (Not using microphone) Hurry
7 up! Make it quick!

8 AUDIENCE MEMBER: (Not using microphone) May I
9 make a comment?

10 COMMISSIONER CENTER: Yes.

11 AUDIENCE MEMBER: (Not using microphone) Can
12 you limit the speakers to maybe five minutes?

13 AUDIENCE MEMBER: (Not using microphone) Or
14 two!

15 COMMISSIONER CENTER: I think we'll limit it to
16 two minutes so we can get out of here.

17 MR. BARTOSIAK: I can do it.

18 COMMISSIONER CENTER: Okay.

19 MR. BARTOSIAK: Thank you very much. My name is
20 Matt Bartosiak, with the Employers Group. We're a
21 nonprofit human resources association. We help 5,000
22 member companies statewide, representing 2.1 million
23 employees. We help those companies manage human
24 resources. One of our main activities is advocacy, and

1 I'm here today to -- and I was here with some employer-
2 members with us, and they had to leave.

3 I'm here today to talk about, of course, AB 60
4 and flesh out some of the rules. Before I go into the
5 comments, I'd like to make just a comment. I know you
6 have a lot of people who want to testify all the time,
7 and you try to do it in a cohesive, efficient fashion.
8 But, again, one of these rooms, if one gets up earlier,
9 like two production employees I had that are going to be
10 taking (inaudible) two people here, employees, production
11 workers who came here, unpaid all day, and wanted to talk
12 about their desire to work 12-hour shifts. But I can
13 have written testimony submitted.

14 Allow me, in the next three and a half minutes,
15 to quickly go over our comments and questions regarding
16 AB 60.

17 AUDIENCE MEMBER: (Not using microphone) Quiet!

18 MR. BARTOSIAK: Thank you.

19 My first set of comments will revolve -- and I
20 have not seen the drafted regulations, so you'll have to
21 pardon me if these have been addressed.

22 Still, my first comment addresses -- revolves
23 around alternative workweek issues. The bill does call -
24 -

1 COMMISSIONER CENTER: Are these written comments
2 you're going to submit to us?

3 MR. BARTOSIAK: You already have these comments.
4 I submitted them in advance.

5 COMMISSIONER CENTER: So, briefly summarizing
6 them is what we're going to do.

7 MR. BARTOSIAK: I'm just briefly summarizing
8 them.

9 Regarding the -- AB 60 calls for the Commission
10 to address a designation of work units. And I -- we ask
11 the Commission to be as loose and broad, if you will, as
12 it has been in the past. It's been an enforcement policy
13 in the past that work units were broadly defined and were
14 left up to the objective business criteria. We ask that
15 that remain, because if it's too cumbersome or if there's
16 too many classification rules, they will be less useful
17 in the work environment, for both employers and
18 employees.

19 Menu of options. I just did take a brief peek
20 at the menu of options draft rules, and I do see that
21 there is some employer control of those so you don't have
22 everybody signing up for one menu and then the rest
23 remain unstaffed, the other options. If indeed the draft
24 says that, we applaud that.

1 The disclosure requirement rule for AWS's -- for
2 alternative workweek schedules -- where they're supposed
3 to give complete disclosure, I -- again, I have not read
4 the draft, but we think it's prudent that the disclosure
5 requirements be in a comprehensive fashion, yet in an
6 efficient fashion, one or two weeks, perhaps, and
7 conducted in a process that allow the interest and the
8 momentum of interest in (inaudible) and they keep the
9 process moving. For company employees who can't work the
10 alternative workweek schedules, we suggest that, again,
11 we leave it up to the employer's discretion as to what
12 reasonable accommodation means. I know, in terms of
13 employees who are eligible to vote, that reasonable
14 accommodation must be attempted, and it may be attempted
15 for people who join the unit later. And again, we ask
16 that the Commission consider giving employers, who know
17 the needs of their business, true flexibility in defining
18 what is reasonable accommodation -- accommodation.

19 There are some other issues, like can an
20 alternative workweek schedule be rescinded? Like
21 previous law, after twelve months in practice, the
22 employees may petition to have the vote repealed upon a
23 two thirds vote -- a two thirds petition. They have a
24 process. The Commission is called to stipulate or lay

1 out conditions under which employers may dissolve the
2 alternative workweek schedule. Such a concept was not in
3 the previous law, and we strongly encourage the
4 Commission to, again, give broad flexibility for an
5 employer to disband an alternative workweek arrangement
6 when it realizes it doesn't work, and not have to jump
7 through a thousand hoops to do so. If the schedule
8 doesn't work, let's not wait till we can't get product
9 out of the door until we're ready to disband a schedule
10 that clearly doesn't work.

11 My remaining two comments revolve around other
12 issues that AB 60 addressed. We may very well be calling
13 on you for exemption issues. I'd just like to --

14 COMMISSIONER DOMBROWSKI: Please. We're really
15 out of time. And if you have written testimony, we will
16 read it.

17 MR. BARTOSIAK: Okay. In closing, then, I'll
18 make just one closing comment regarding the outside
19 salespeople and the exemption issues and the meal periods
20 and all these things that you may review. When one does
21 review these elements and these constructs of yours, we
22 ask for broad rules, flexible rules, and concise rules so
23 that the personal needs of employees and the business
24 needs of employers may be met.

1 Thank you.

2 COMMISSIONER DOMBROWSKI: Rita McGuire?

3 COMMISSIONER BROAD: She left.

4 COMMISSIONER DOMBROWSKI: Denise Smith.

5 (No response)

6 COMMISSIONER DOMBROWSKI: I'm going to go
7 through this thing -- Gabo Briones, Children's Hospital.

8 MS. WILSON: I'll take it.

9 COMMISSIONER DOMBROWSKI: Okay.

10 MS. WILSON: My name is Karla Wilson. I'm an
11 advanced practice nurse in pediatric oncology at
12 Children's Hospital, and I'm here with several of my
13 colleagues, and we are representing over 100 advanced
14 practice nurses at Children's Hospital.

15 From what has been said earlier today, it's very
16 clear that the members of the Commission do not really
17 understand what nurses do, let alone what advanced
18 practice nurses do.

19 AUDIENCE MEMBER: (Not using microphone) Can't
20 hear you.

21 MS. WILSON: Oh, sorry.

22 Advanced practice nurses, as the midwives so
23 well expressed earlier, are nurses who have advanced
24 degrees, or they have extensive experience and training

1 in specialized areas. Many of us are certified in our
2 area of specialization, just as I'm certified in
3 pediatric oncology nursing. Advanced practice nurses
4 include nurse practitioners, clinic nurse specialists,
5 case managers, and there are a whole list of other types
6 of titles of nurses, et cetera.

7 We have 24-hour accountability for our patients.
8 We do not work in shifts. We care for patients across a
9 continuum of areas. We're the ones who are involved
10 doing things such as procedures in oncology like bone
11 marrow (inaudible) and biopsies, lumbar punctures. We do
12 physical exams. We do education to patients. We are the
13 source of contact for patients when there are problems.
14 Patients are followed by us whether they are in the
15 hospital or whether they're at home or in the clinics.
16 We are the --

17 COMMISSIONER DOMBROWSKI: Is there -- because
18 we've heard from your industry, and I think the best
19 resolution -- is there anything that hasn't been said
20 that you need to say?

21 MS. WILSON: I think one of the major issues
22 that has not been said is that AB 60 impedes
23 professionalizing nurses. And with this, we will have an
24 exit of nurses from the State of California. We are

1 already in a nursing shortage. It is going to get worse.
2 And you will not have anyone to assist you with your
3 healthcare in the future.

4 And I think that nurses need to be exempt from
5 this bill because we are professionals. And we work in
6 creative ways. We are using our intellect, we are
7 working with patients, and the only nurses that are
8 exempt in this bill are nurses who do administration of
9 staff. And there is a whole category of nurses, from the
10 bedside nurses to administrators that are nurses, and
11 nurses as a profession should be exempt from this bill so
12 that we can practice nursing.

13 Thank you.

14 (Applause)

15 COMMISSIONER BROAD: I understand your
16 perspective, but we cannot exempt nurses. That is clear
17 in the statute. We can agree, for example, to permit
18 nurses to work 12-hour shifts. We can do that. But we
19 cannot repeal a statute passed by the Legislature and
20 signed by the Governor that is very clear on its face.

21 So, while I understand your frustration, that
22 message is something that you have to take to the
23 Legislature. If you want to take something to us that we
24 can act on, it really is over the question of whether we

1 should approve shifts for nurses longer than 10 hours a
2 day. That's the issue.

3 MS. WILSON: I don't work shifts. I've never
4 worked shifts in the thirty-two I've been an advanced
5 practice nurse. And there is no other state in the
6 country that advanced practice nurses work shifts. Other
7 professionals, lawyers, educators, scientists, et cetera,
8 they do not work shifts.

9 COMMISSIONER BROAD: I know. But, look, you
10 have to understand that there are limits of what
11 administrative agencies can do and what the Legislature
12 can do.

13 This is what the bill says:

14 "Registered nurses employed to engage in
15 the practice of nursing shall not be exempted
16 from coverage under any part of the orders of
17 the Industrial Welfare Commission unless they
18 individually meet the criteria for exemptions
19 established for executive or administrative
20 employees."

21 That is the final word. We cannot change that. We
22 cannot

23 -- you may be right, but we cannot change that.

24 The message that you're bringing, "We don't want

1 to be covered by any rules involving overtime, any wage
2 and hour rules; we want to be exempt like doctors are
3 exempt now, we want to be exempt like" --

4 MS. WILSON: I want to be exempt like any other
5 professionals.

6 COMMISSIONER BROAD: Okay. You want to be
7 exempt like doctors or lawyers. That is specifically not
8 permitted by this statute. Therefore, to change that,
9 you have to change the law. We can't change the law.

10 And I think you're going to have to respect that
11 that is a fact.

12 MS. WILSON: And then can you give us the
13 information of how we go about changing the law and how
14 we identify the exemption?

15 AUDIENCE MEMBER: (Not using microphone) Or
16 amending.

17 MS. WILSON: Or amending the law, or amending AB
18 60, or the criteria or the definitions.

19 COMMISSIONER DOMBROWSKI: There is
20 representation, which I'm sure you have some affiliation
21 with, that handles that for you. I mean, it's --

22 MS. WILSON: I am not a member of CNA, if that
23 is who you are referring to.

24 COMMISSIONER DOMBROWSKI: I don't know -- I

1 don't know who you're -- who you're represented by.

2 MS. WILSON: I have written my legislators.

3 COMMISSIONER DOMBROWSKI: Pamela Melton.

4 AUDIENCE MEMBER: (Not using microphone) Are
5 you going out of order? Is there a list? I don't
6 understand.

7 COMMISSIONER DOMBROWSKI: I'm still on the first
8 page.

9 COMMISSIONER CENTER: The first page.

10 MS. MELTON: Thank you very much.

11 COMMISSIONER CENTER: Which list, this one or
12 the other one?

13 AUDIENCE MEMBER: (Not using microphone) What
14 happened to this morning's?

15 AUDIENCE MEMBER: (Not using microphone) What
16 happened to this morning's list?

17 AUDIENCE MEMBER: (Not using microphone) The
18 one that was out there.

19 COMMISSIONER CENTER: That's the one, the first
20 page, this morning.

21 AUDIENCE MEMBER: (Not using microphone) No, I
22 don't think so.

23 AUDIENCE MEMBER: (Not using microphone) No, I
24 don't think so.

1 COMMISSIONER CENTER: That's it. This is AB 60,
2 first page, that we had this morning.

3 MS. MELTON: It's spelled M-e-l-t-o-n.

4 COMMISSIONER CENTER: You can take the chair
5 again. You did a good job moving it along.

6 MS. MELTON: Mr. Chairman, commissioners, thank
7 you. I would like to ask for an exemption for 12 hours
8 for the particular industry I'm representing here today.
9 I work for a nonprofit group in northern California, and
10 we serve children and adults with developmental
11 disabilities. Often they're dual-diagnosed. We're
12 mandated by the Department of Social Services and other
13 agencies to provide 24-hour care and respite care.

14 And the flexibility in the schedule we have now
15 works very well. Employees have come to us and said,
16 "How are we going to handle AB 60?" Again, they do what
17 they do out of passion for bringing these consumers the
18 highest -- to more independence in their lives.

19 We also provide a three-to-one ratio, which,
20 again, in San Mateo County, we have an unemployment rate
21 of 1.9 percent. We're struggling with that also.

22 And I think that's all I have to say. We're
23 reimbursed by the hour by the state, and reimbursable at
24 \$7.59 an hour. In March of this year, we took a check

1 and we decided we just couldn't pay our employees that
2 wage, and we increased it to \$10.00 an hour, which is the
3 bottom. But we're still working to try and increase that
4 wage. And if this goes through, we're not able to have
5 the flexibility, then it's going to be difficult for us
6 to continue to raise -- have a livable wage.

7 COMMISSIONER DOMBROWSKI: Nancy Payne?

8 (No response)

9 COMMISSIONER DOMBROWSKI: Mike Murrey.

10 MR. MURREY: Good afternoon, commissioners.

11 I'll try to be brief so that you can on with our day.

12 My issue deals with alternate work schedules.

13 I'm Mike Murrey. I work for Staples'

14 Distribution Center in Rialto, California. Our employees
15 currently are on 10-hour work schedules.

16 In the law, Policy 1980, "Alternative
17 Workweeks," it consisted of hours and days agreed upon.
18 This resulted in overtime for days not part of the
19 regular schedule. Now, in AB 60, there is no mention of
20 overtime for work in excess of the days scheduled. And
21 you have talked about the time and a half situation, but
22 when it gets to the double time, it gets rather
23 confusing, by saying that double time on those days
24 worked beyond the regularly scheduled workday.

1 I guess my question for you -- I notice that you
2 put out a new, revised version -- and I had a couple of
3 quick questions. One would be, are the days to be
4 stipulated in the alternative workweek schedule? It
5 appears so when you read the double-time provisions. If
6 the days are stipulated, when does overtime become
7 mandated on days not part of the schedule?

8 Let me give you an example of one of our work
9 schedules, and maybe this will help clarify. Our
10 employees -- or we call them associates -- will work
11 Monday and Tuesday, be off Wednesday, Thursday, work
12 Friday and Saturday. Now, usually Wednesday is
13 designated by us as an overtime day; they would be
14 scheduled overtime. But there are occasions when an
15 employee will call in sick on Monday. Should I have to
16 pay the double time -- time and a half and then double
17 time on Wednesday? I would hope we wouldn't, because
18 that's -- you know, that's rewarding someone for not
19 coming in to work. We would prefer looking at it after
20 they work 40 hours in a week.

21 Do you have any comment on that?

22 If you could look at, I'd thank you.

23 COMMISSIONER CENTER: Yeah. You could send us a
24 letter, if you want.

1 MR. MURREY: I already -- you have it.

2 COMMISSIONER CENTER: Okay. Thank you.

3 MR. HOLOBER: Thank you. Richard Holober,
4 California Labor Federation.

5 COMMISSIONER DOMBROWSKI: It's not three minutes
6 five. We're going to cut it off at six o'clock. So,
7 let's try to accelerate, for everybody.

8 MR. HOLOBER: I will try to be brief. But, you
9 know, I just want to make a preliminary comment.
10 Last -- this prior year, up until whenever the
11 day was in July that the bill was signed by the Governor
12 --

13 COMMISSIONER CENTER: Could you speak into the
14 microphone?

15 MR. HOLOBER: Yes.

16 This bill, this new law, went through exhaustive
17 hearings, meetings, testimony, discussions with various
18 parties on every conceivable side of the issue. I don't
19 think there is another piece of legislation that has been
20 vetted as thoroughly as this bill. And I'm disturbed
21 that on the strength of the testimony of two witnesses
22 who started raising an issue, which we believe is very
23 dubious jurisdiction here for the IWC, that commissioners
24 were making motions and setting things for hearing. We

1 spent an enormous amount of time working on this
2 legislation, and we hope that the Commission will allow
3 for the proper process here for testimony, for proper
4 notice, so that it's not just a question of who grabs the
5 mike and makes the most noise.

6 On the question of the hospital industry, I want
7 to make a couple of comments. First, while I think
8 you've heard from the attorney half of the story -- the
9 attorney for the Hospital Association -- there's a whole
10 other half of the story that you have not heard, and that
11 has to do with the economics of this industry and the
12 amazing cost savings that the hospitals achieve when they
13 go from an 8- to a 12-hour shift. And this was discussed
14 at length over a period of about twenty years on this
15 subject. And the final word was the voters voted, and
16 elected a Governor and a Legislature that believe in the
17 8-hour day as a standard. So, it's not a question of did
18 they bring 500 people to one hearing. We brought 500 or
19 1,000 or 2,000 people to hearings as well.

20 The hospital industry has been the most
21 aggressive industry for twenty years in getting
22 exemptions that nobody else in the State of California
23 ever had. First they got the 12-hour, 36-hour week.
24 That wasn't good enough. They got the 12-hour day, 40-

1 hour week. That wasn't good enough. They got the 80-
2 hour biweekly payroll period. That wasn't good enough.
3 They also got exemptions from who can be designated as an
4 administrator, an executive, or a manager that no other
5 industry in California ever got. And that wasn't good
6 enough.

7 So, finally, they came to this Commission and
8 said, "We don't want our folks voting on this; we would
9 like to impose it. Please get rid of the voting
10 procedure. We don't want to have any regulations at
11 all." And really, part of what you're seeing today is
12 the product of the greed of the employers in that
13 industry.

14 Regarding the questions of nurse midwives and
15 other advanced practice nurses, I think there is a real
16 question before the Commission of whether the so-called
17 advanced practice nurses are covered by the registered
18 nurse language. Now, we rewrote that language. The old
19 language said registered nurses are professionals;
20 however, they are not exempt unless they meet certain
21 criteria that would qualify them either as an executive,
22 administrator, or professional. Well, that's redundant
23 language -- that's confusing language: they're not
24 professionals unless they meet the definition of a

1 professional.

2 We removed that last phrase. So, now they are
3 not exempt unless they meet the standard definition for
4 an administrative, like someone who supervises a nursing
5 department, or an executive. They can no longer be
6 exempted as professionals. We recognize that they are
7 professionals. We also recognize that they are protected
8 by overtime. The same is true with licensed pharmacists.
9 So, those are two professions that are now given
10 different standards than other professions.

11 Just a couple of quick points here. On some
12 procedural matters, I don't know -- I haven't read your
13 interim regs, but I think there's a real issue here about
14 who could continue to work a 10-hour day on an individual
15 basis if they were working that 10-hour day on July 3rd,
16 1999. The issue here is whether that was a voluntary
17 arrangement or not. And our -- we would argue that if an
18 employer imposed a longer than 8-hour day without a vote
19 under the old rules, and if that was a condition of
20 employment, that is not voluntarily working. So, in that
21 case, we don't believe that an employee would voluntarily
22 continue working -- because their only choice here is to
23 quit their job -- most workers are reluctant to do that.

24 So, we hope you will pass some very tight

1 definitions on who could continue to be considered
2 voluntarily working a 10-hour day.

3 The other point I wanted to make was that I
4 think we need to adopt procedures to repeal alternative
5 workweeks. AB 60 requires you to do that during the
6 spring. But the question is, what happens after January
7 1st until you adopt final wage orders? Under the old
8 wage orders, there was a process to petition and have a
9 vote to repeal an alternative workweek. And we want to
10 make sure that those kinds of procedures are back in
11 force before you come up with your final procedures.

12 I think there is a huge issue here regarding the
13 healthcare industry, regarding what the hospitals are
14 doing to workers. You know, you're seeing an expression
15 of anger, concern, and fear. This is something that the
16 hospitals, I think, have brought on themselves. There's
17 absolutely no reason that they need to act until summer.
18 And I think what they're doing is really hurting their
19 standing here.

20 And I realize there's probably little, if
21 anything, you can do about it. But I think any
22 expressions you could make would be -- would be helpful
23 to, you know, admonish them from continuing that.

24 COMMISSIONER MCCARTHY: I'd like to just make a

1 couple comments.

2 You know, you made the point, you said, well,
3 when you drafted the bill, you said you spoke to everyone
4 so we don't have to consider this. It's certainly my
5 impression you didn't speak to the midwives as a group.
6 That was pretty clear to them here, and maybe the
7 advanced practice nurses. Maybe they just don't count.

8 MR. HOLOBER: They testified at the hearings.

9 COMMISSIONER MCCARTHY: The midwives did?

10 MR. HOLOBER: Yeah. Representatives testified
11 at the hearings before the Legislature made its decision.

12 COMMISSIONER MCCARTHY: Okay. That was -- well,
13 apparently they did. Well, I stand corrected in that
14 case.

15 So, a lot of them seem not to have been aware of
16 it and don't seem to have their input. But whatever the
17 case may be, leave it at that.

18 Go ahead. That's fine.

19 MR. HOLOBER: Well, you know, just one other
20 comment. I realize you're not bound here by NLRB
21 standards, but the NLRB would consider those kinds of
22 advanced practice nurses to be -- share a common
23 community of interests with other registered nurses and
24 would be in the same bargaining unit. I think that's

1 just a point you should look at when you make your
2 decision.

3 COMMISSIONER DOMBROWSKI: Thank you.

4 COMMISSIONER CENTER: Sonia Moseley.

5 And again, in deference to time, if you'd bring
6 something new forward so -- we've got one hour.

7 MS. MOSELEY: Good afternoon. I gave you my
8 statement --

9 COMMISSIONER CENTER: Thank you.

10 MS. MOSELEY: -- so I won't go over that. But I
11 do have to address the issue. I'm currently -- I'm here
12 -- Sonia Moseley, Executive Vice President of the United
13 Nurses Associations of California, AFSCME. I represent
14 some 10,000 registered nurses, and among them are 300
15 advanced practice nurses, which include registered nurse
16 practitioners. I represent 100 physicians assistants,
17 pharmacists, et cetera. I have a group of nurse-midwives
18 that are asking to come into our union. And I can tell
19 you, the reason they want to join the union is they do
20 want to be covered with overtime.

21 I know there's a group who don't want to be
22 covered, but I ask you to look at this issue. You need
23 to know it's not necessarily universal, and it's not just
24 nurses, or advanced practice nurses, that are already

1 represented. The ones that belong to my union are very
2 happy that the overtime will be working, and they know
3 they're working and should be paid appropriately. So, I
4 would just ask, before you act upon anything, you need to
5 be talking to a broad group of this classification.

6 And it's absolutely true what Richard said,
7 nurse anesthetists and nurse practitioners have been put
8 into our bargaining units; it's the same occupation that
9 registered nurses are. But they are considered employees
10 under the National Labor Relations Act and would be
11 covered as such.

12 The only thing that I would ask -- and I have it
13 written -- is I concur with the position that's been
14 presented to you by the California Labor Federation. And
15 it appears that there need to be some interim regulations
16 --

17 COMMISSIONER CENTER: Grab the mike.

18 MS. MOSELEY: -- some interim regulations with
19 respect to -- it seems like there's a dispute over
20 whether we're covered in the interim if we have a
21 collective bargaining agreement which calls out for
22 straight-time 12-hour shifts. Some of the employers are
23 questioning that. And for the nonunion -- for the
24 nonunion nurses, again, I really sympathize with their

1 wages having been cut 14 to 16 percent. If there's
2 anything that can happen to give them some relief in that
3 area, it would be kindly appreciated.

4 Thank you.

5 COMMISSIONER CENTER: Thank you.

6 Bob McCloskey.

7 MS. ROWE: (Not using microphone) He's not
8 here.

9 COMMISSIONER CENTER: Ethel Rowe.

10 MS. ROWE: (Not using microphone) She's here.

11 COMMISSIONER CENTER: All right. You're the one
12 that had to stay, then.

13 MS. ROWE: My name is Ethel Rowe, spelled
14 E-t-h-e-l, R-o-w-e. I'm a representative from SEIU Local
15 399. I submitted my testimony to you. And being here as
16 long as everybody else, I've heard a lot of testimony, so
17 I'm going to cut this short.

18 And I just want to ask the IWC to please quickly
19 help resolve some of the misunderstanding that some of
20 the employers have. We have a collective bargaining
21 agreement. We're now -- with different employers cutting
22 wages, it's an open season for them. We've told them
23 that they are exempt. They continue to say that they
24 have to do this, and we don't think that they should be

1 doing it, so we ask you to act properly to help us
2 address these employers.

3 Thank you.

4 COMMISSIONER CENTER: Thank you.

5 Susan Mye (sic).

6 MS. NYE: (Not using microphone) Nye.

7 COMMISSIONER CENTER: Nye. Sorry.

8 MS. NYE: (Not using microphone) Ethel and
9 Richard more than covered it.

10 COMMISSIONER CENTER: Okay.

11 Mary McCulley.

12 MS. McCULLEY: My name is Mary McCulley, and I'm
13 a nurse practitioner employed in Los Angeles. And I'll
14 keep it very brief. I've submitted written testimony
15 also.

16 One thing I just would really to make clear, I
17 think that my colleagues, the certified nurse midwives,
18 presented very eloquently about the importance of
19 advanced practice nurses being considered separately. I
20 currently support professional nurses, and I wish they
21 were all exempt, but I'm not going to address that issue.

22 Nurse practitioners, nurse anesthetists,
23 certified nurse-midwives, and clinical nurse specialists
24 are all designated by the Board of Registered Nursing in

1 California as advanced practice nurses. Most of us hold
2 graduate degrees and have had to go through training and
3 extra education to be able to provide patient care as a
4 provider.

5 We do not work at the bedside, we do not work
6 shifts. We work in physician extender roles. In my
7 position, I work in an intensive care unit with a medical
8 team to provide care to patients. And for us to be
9 restricted to 8 hours would definitely take away from
10 patient care and quality that we are able to provide as
11 providers.

12 I think you have before you so many issues
13 because nursing is such a diverse profession, even in the
14 advanced practice group. But I think that if you can
15 just keep in mind that what we do is a different type of
16 role, as professionals in the advanced practice role.
17 And to restrict does definitely make a difference in what
18 we're able to do in our profession. And it definitely
19 will impact our hiring in California. I certainly would
20 consider working in another state if I'm not able to
21 practice and provide the care as a nurse practitioner
22 that I'm able to do now.

23 I'm not going to prolong this because I know
24 we've all been here a long time. I just would like to

1 ask that if you do look at the nurse-midwife or if you
2 look at the advanced practice group as a whole, because
3 we all operate under similar statutes that they were
4 talking about.

5 COMMISSIONER CENTER: Thank you.

6 Robert Cantone.

7 (No response)

8 COMMISSIONER CENTER: No?

9 Bob Tollen.

10 MR. TOLLEN: (Not using microphone) I'm here,
11 and in view of the hour and what we've submitted to you
12 in writing, we'll take a pass.

13 COMMISSIONER CENTER: Very good.

14 MR. TOLLEN: From the California Ambulance
15 Association. Thank you.

16 COMMISSIONER CENTER: Right. We'll review your
17 written testimony.

18 Francine Alba.

19 MS. ALBA: Hi. I'm Francine Alba, A-l-b-a. I'm
20 here representing -- from the board of -- I'm on the
21 board of directors of the Sherman Oaks Chamber of
22 Commerce, and we have fifty restaurants, over 4,500
23 people. I run four restaurants, and another owner, whose
24 letter you have -- she had to leave -- she has seven

1 restaurants. And together we sat and formulated what we
2 wanted to send to you.

3 The first thing that I have learned, after being
4 here all day, that I think is evident for everybody, is
5 that one suit does not fit all. It seems to me that the
6 thing that wasn't considered when this measure was put
7 out is that there are a myriad of people that want
8 choices. I'm a little bit confused, quite honestly, as
9 to who thought it was their right to take choices away.

10 (Applause)

11 MS. ALBA: Last time I looked, that's what I
12 meant -- we still live in America, which means freedom of
13 choice. That means an employer has the freedom to run
14 their business within the Department of Labor standards,
15 and if it wasn't good enough for an employee, they could
16 go down the block to work with somebody else. As an
17 employee, I certainly had the choice when I was working;
18 if I didn't like the employer that I was working for, I
19 could leave.

20 The restaurant industry in particular has far
21 too much competition to force hours on anyone. We barely
22 can get waiters and waitresses to comply with sanitary
23 and uniform standards that we need in the industry. We
24 certainly cannot force hours on anybody.

1 I feel that in our time, it is no longer
2 necessary for these kinds of measures to be taken to
3 protect the worker. The Department of Labor does a fine
4 job of that. To their credit, the workforce is
5 enormously sophisticated in their labor rights. Even
6 those who do not speak fluent English can teach you a
7 thing or two about the labor laws.

8 (Laughter)

9 MS. ALBA: I have found the Department of Labor
10 to be fair, to uphold the laws that need to be done, and
11 I have found the workforce, in ten years of running
12 restaurants, that it's very clear that if there anything
13 they feel is unfair, that they will go and seek counsel
14 from the Department of Labor. So, I am totally confused
15 as to why choice is being taken away from everyone
16 involved.

17 Now, my last round with Wally Knox, who, by the
18 way, is my -- my representative and his constituency.
19 Through our Chamber, we had many meetings with him at the
20 eleventh hour of this measure going through, and I'm here
21 to tell you that Wally told us, myself included, that you
22 were the hope for those who were not exempted.

23 I have sat here for eight hours today hearing
24 you tell people that you cannot do anything about

1 exempting them. There's a bit of confusion there,
2 wouldn't you say?

3 COMMISSIONER McCARTHY: You're right.

4 MS. ALBA: Technically, a lot of the restaurants
5 that I came with this morning, a lot of the restaurant
6 runners and owners, we are competitors, but we stand
7 together in this.

8 I want you to know that AB 60 will be thwarted,
9 and I'm going to tell you how -- not by the employers.
10 We're going to comply, because we have turned into
11 dutiful little labor keepers. We keep the labor laws to
12 the letter of the law because we cannot afford to do
13 anything else. And I'm going to tell you how it's going
14 to be thwarted. It's going to be thwarted by the very
15 people that were meant to be helped by this law.

16 Our people who work in the restaurant industry
17 will do the following: they will be -- we will have to
18 cut the shifts at 8 hours. You've already heard
19 testimony today from a very fine restaurateur on how
20 market is way too small to be able to absorb this.

21 However, these very people that you are
22 attempting to help will then take -- and they will then
23 drive, causing more congestion and more traffic, to the
24 next job. Instead of working the 10 or 12 hours that

1 they wanted to work by their choice, they're now going to
2 work 16 because they are going to get a second job.

3 When we put notices up -- because we like to
4 warn everybody way in advance of everything that's going
5 to happen -- we were inundated. I have a package for all
6 of you to read of those letters.

7 There's a faction of the workforce in the
8 restaurant that's being very overlooked. First of you,
9 you have to remember there's two kinds of restaurant
10 industry: there's the big, huge, corporate industry with
11 bigger margins, and then there's the smaller groups that
12 I'm here to speak for. Within that group, there is a
13 huge workforce that is growing daily, that I'm sure is
14 not new to you -- not just in our industry -- it's
15 everywhere -- it's the single mother. They have a
16 particular problem, in that they have to both be a mother
17 and they have to work. We have a huge number of these
18 gals. And they make their own schedules.

19 We pride ourselves, in our company, and most of
20 the people that I know, in letting our employees make
21 their own schedules. We feel, "Happy schedules, happy
22 employees, happy campers result in happy customers."

23 They make their own schedules. They want to go
24 to school. They have visitation from the dad, or not.

1 They have difficulty in childcare. So, they all make
2 their own schedule, and we let them do that.

3 When we put this notification up, they were the
4 first people we heard from, because they're going to be
5 cut at 8 hours. What's worse is they can't make the
6 money that they were used to making, and they can't
7 extend their daycare situation to now continue to work
8 for the amount of hours that they were used to working in
9 a few days over a whole week.

10 The other group that we heard from was students,
11 because they work their school schedule around. They
12 work a couple of long days for that money that they need.
13 They are being supported by parents, but they need extra
14 money, and they have to work in school, at their
15 schoolwork. We're going to lose most of that workforce
16 because they cannot work 8 hours. Many of them work
17 split shifts, or they'll come for a couple of days with
18 long hours, and we won't see them again till the next
19 week.

20 COMMISSIONER CENTER: A question. But, first,
21 what do you propose we do to resolve this?

22 MS. ALBA: Well, my question to Wally Knox was
23 why wasn't the restaurant industry being exempt, because
24 we have so many problems in this state that are

1 indigenous to only California -- such as tip credit and
2 other things that we haven't -- have not been given to
3 this industry. But he said it was too late for that
4 because he had heard from enough of us. He told me we
5 needed to come to you, that you were the guys that
6 anybody that got messed over or glossed over, glossed
7 over for exemption, it would be handled with the IWC.

8 We need flexible schedules, is what we need.

9 COMMISSIONER CENTER: It's our opinion that we
10 don't have the authority to exempt now because of the
11 statute. I think your resolution is going back to the
12 Legislature, if that's your problem. But I don't know
13 what we can do for you.

14 MS. ALBA: You don't know -- you don't know what
15 you'll do for me.

16 COMMISSIONER CENTER: I don't know what we could
17 -- what we could do for you.

18 MS. ALBA: I'm glad I got up at six o'clock in
19 the morning to come and hear that!

20 COMMISSIONER MCCARTHY: Well, I'm confused. I
21 mean, as I say, this is all new and it's understandable
22 there's confusion. But the bill, which I have in front
23 of me -- and maybe, as I say -- I'm not saying I'm not in
24 error -- but to read you the exact language, the bill,

1 you know, that we're talking about, would,
2 " -- authorize the Industrial Welfare Commission
3 to review, retain, or eliminate exemptions from
4 the hours requirements that were contained in a
5 valid wage order in effect in 1997, and would
6 authorize the Commission to establish additional
7 exemptions therefrom for the health or welfare
8 of employees in any occupation, trade, or
9 industry, until January 1st, 2005."

10 That sounds to me like we can make exemptions. And as I
11 say, I know -- I know there's honest disagreement.
12 Nobody here, none of us, is trying to sell you a bill.
13 But that's my interpretation. And --

14 MS. ALBA: Well, the author of the bill himself
15 told me at Art's Deli in Studio City, with the rest of my
16 Chamber, please come to the IWC hearings if we were left
17 out of the exemptions, and he does see that the
18 restaurant industry does have some unique problems
19 indigenous only to the restaurant industry.

20 COMMISSIONER BROAD: Okay. Let me ask you this
21 question. Basically, from 1913 to January of 1998, you
22 were under the system that we're going back to on January
23 1 of 2000. So, this is my question to you. You had this
24 thing, whatever it is, all this flexibility, for exactly

1 two years, but in the previous years -- and I know
2 there's been restaurants in the State of California in
3 all that time, including yours, presumably -- you
4 functioned under the system that we're going -- how did
5 you manage to function with single mothers and students
6 and so forth in the period for that industry from January
7 -- from 1913 to January of 1998?

8 MS. ALBA: Well, I can't speak for 1913, but
9 there was a big, huge, riotous celebration when it went
10 back to the 40-hour week for the staff. As I said, the
11 restaurant employers themselves will just have to employ
12 more people and have strict standards of the 8-hour day.
13 And that's how we did it.

14 However, we do have employees that are crying
15 out -- and I promised I would cry out with them and for
16 them -- that they want to be able to have the choice.
17 And really, that's what I'm here about, is choices. I
18 don't understand why the choices have been taken away. I
19 don't understand why free enterprise is no longer free
20 enterprise. I don't understand why the government -- I
21 don't understand why your staff are not being subjected
22 to AB 60.

23 (Applause)

24 MS. ALBA: When Wally -- when we met with

1 Senator Alarcon and Wally and the rest of our guys who
2 represent us, we asked them if their staff was going to
3 be held under this measure, and they said no. Clearly,
4 it must be -- there must be some people besides the
5 unions that need to be thought about -- besides union
6 people, there must be other people that need to be
7 consider when you consider implementing this measure.

8 COMMISSIONER DOMBROWSKI: Ma'am, you have an
9 effective association, the Restaurant Association, that's
10 involved with us. Jon Ross spoke here this morning. I
11 mean, the question, I don't think, is that -- we do have
12 the authority to establish exemptions. The question is
13 how you get three votes.

14 So, I would suggest you work on the process
15 through your association.

16 COMMISSIONER CENTER: Put your guys to work.

17 MS. ALBA: Well, I'm here because I don't want
18 to sit back and let somebody else do the work that hasn't
19 been accomplished fully. And I want you to know that
20 there are real, living, breathing people out there who
21 are going to be affected by this, that there are gals who
22 have problems, that have a child and need to work. We
23 employ all these people, they're all our employees. And
24 they want the freedom of choice, because I think that's

1 what we're about.

2 And, yes, we have talked to CRA about this.

3 Thank you.

4 COMMISSIONER CENTER: Okay. Thank you.

5 James Martens.

6 COMMISSIONER BROAD: He spoke.

7 COMMISSIONER CENTER: He already spoke.

8 MR. SIMMONS: If I can make a point, I was in a
9 -- yeah -- I was listed as a group, and these people came
10 at in at a quarter to nine this morning, and they have
11 not --

12 COMMISSIONER CENTER: I'm going through the
13 list.

14 MR. SIMMONS: But they're just not on the list,
15 because they were listed as a group. That's my point.

16 COMMISSIONER CENTER: Well, when we get done
17 with the list, they can speak, if we're still here at
18 six.

19 AUDIENCE MEMBER: (Not using microphone) We've
20 also been here early. We've all been here early.

21 COMMISSIONER CENTER: Is there James Martens
22 here, please?

23 COMMISSIONER BROAD: He spoke.

24 COMMISSIONER CENTER: Okay.

1 Debbie Harns (sic). Debbie Harns (sic).

2 AUDIENCE MEMBER: Harris.

3 COMMISSIONER CENTER: Harris, sorry. Okay.

4 MS. NOWICKI: I'm last on the list, I think.

5 I'm Donna Nowicki, N-o-w-i-c-k-i, Children's Hospital of
6 Los Angeles. I'm a nurse practitioner and family
7 practice nurse.

8 And the only thing I'm going to add to what's
9 been said already is just, one, I want advanced practice
10 to be looked at again, because I think there's some
11 misunderstanding of what advanced practice does. And
12 number two, then, if jobs really are being threatened --
13 if I leave -- I start at 6:15 -- if I leave at 2:45 in
14 the afternoon, I leave when the emergency rooms are just
15 getting busy, when the clinics are just getting busy.
16 I'm a consultant. They call me. They expect me to be
17 there.

18 They're threatening with substituting nurse
19 practitioners with physicians' assistants, because
20 physicians' assistants are not mentioned in this bill.

21 So, our jobs are being threatened, and I just --
22 I just want to leave that where it is. I'll send you a
23 letter.

24 COMMISSIONER CENTER: Thank you.

1 MS. NOWICKI: Thank you.

2 COMMISSIONER CENTER: Susan Carson.

3 MS. CARSON: I think everything's in my
4 testimony I'll give you.

5 COMMISSIONER CENTER: Thank you.

6 Fred Mills.

7 (No response)

8 COMMISSIONER CENTER: Marianne Cotter.

9 (No response)

10 COMMISSIONER CENTER: Cynthia Everett.

11 AUDIENCE MEMBER: (Not using microphone) She
12 already spoke.

13 COMMISSIONER CENTER: Kari Ratterich (sic), from
14 Longs Drugs.

15 (No response)

16 COMMISSIONER CENTER: Jane Downs.

17 MS. DOWNS: I'll be very brief. My name is Jane
18 Downs, D-o-w-n-s. I come with no union or lawyer. I'm a
19 self-made woman. I have a company called Along Came
20 Mary! Productions. We are a catering and party
21 production company.

22 We are an industry all of our own. We are a
23 party production and catering company. We range in
24 events from 100 people to 5,000 people. We employ people

1 sometimes one day a week for 12 hours. Sometimes these
2 people work for us ten times in a year, and that's it.
3 But sometimes it's 500 people at a time, and that's the
4 volume for us.

5 I'm sure that AB 60 was not meant to devastate
6 small businesses, but it will. It will hurt us very
7 badly. We would like to ask for an exemption. I don't
8 know who to go to. We don't have a union or labor
9 organization. We are unto ourselves.

10 On a related note, when the law changed a couple
11 of years ago so that it was a 40-hour workweek, we raised
12 what we pay people. We don't pay one person under \$10.00
13 an hour, not one. And we did that to allow for the
14 change so that people would get basically what they got
15 before. And so, when that law changed, we thought it was
16 there for good. We didn't think that it would change in
17 a couple of years based on some legislation.

18 So, I think we stand alone. I doubt if there
19 are other people in my industry here, but I'm fighting
20 for my company. This would be a huge -- hundreds -- at
21 least, I think, between \$50,000 and \$100,000 a year this
22 would mean to us in overtime. We had a party last week
23 for 8,000 people. We had 600 people employed. They
24 worked on an average of 12 to 14 hours in one day.

1 That's all they worked the rest of the whole week.

2 That's all. Thank you.

3 COMMISSIONER CENTER: Thank you.

4 (Applause)

5 COMMISSIONER CENTER: Hermie --

6 MS. MONTANI: (Not using microphone) Yes.

7 Hermi Montani, right here.

8 COMMISSIONER CENTER: Yeah.

9 (Laughter)

10 COMMISSIONER CENTER: Bingo.

11 MS. MONTANI: You know, I have the same problems
12 as everybody, and I come in front of you to talk to you
13 about a solution.

14 I am in the cheese manufacturing business, and I
15 come here not to represent my employer; I come here to
16 represent my employees. My employees were very much in
17 tune with what the law was before. And you know how it
18 is, once you get a taste of something good, you don't
19 want to go back to that other stuff, in reference to what
20 you mentioned before. We worked 8 hours, and that was
21 life, and that's all they had. Now they got a taste of
22 12 hours. At the beginning, they didn't really want it.
23 They got a taste of 12 hours.

24 We have single moms. And what they do is they

1 switch and they take care of each other's kids, because
2 we have two teams, Team A and Team B. We have fathers --
3 this is a small community -- that's about 300 employees.
4 We have fathers that take turns in coaching the soccer
5 team for their kids, because they all go to the same
6 soccer team. We have the coaches and the assistant
7 coaches.

8 And our employees, we met with our employees, we
9 heard the petition, we went to an attorney. We wanted to
10 find out could we do what they wanted. They said no, the
11 law didn't allow it. We came with -- they came up with a
12 solution: "Do the alternative workweek, 10-hour day, pay
13 us 2 hours of overtime, so we end up working 12 hours.
14 You're happy, we're happy." One week, they work three
15 days; the following week, they work four days. At the
16 end of the pay period, because we have biweekly pay
17 periods, they end up working over 80 hours, 84 hours, but
18 they end up getting paid like 12 or 13 hours of overtime.
19 We as an employer do not mind paying that overtime.

20 So, what I am here to ask of you -- and I
21 submitted information that was written up by our
22 employees, because we wanted to be as real as possible --
23 you have to dot all your i's and cross all your t's;
24 otherwise, you get slapped.

1 I'd like for you to please consider that, read
2 it, and say yes to our employees. They can have 12
3 hours. We're willing to pay the overtime. So, if you do
4 say yes, is it going to be before January 1st?
5 Otherwise, I have been practically interviewing employees
6 up the ying-yang, not knowing if we're going to hire them
7 or not. And I'm being honest with them, and I told them
8 that maybe we will hire them throughout the rest of the
9 year because our business is growing. Okay?

10 And that's all I'm here to ask. I come with a
11 solution. I have the same problem as everybody else, but
12 I come with a solution. And I'd like for you to please
13 consider that solution and allow us to put that forth.

14 Do you have any questions?

15 COMMISSIONER McCARTHY: No, but I have a quick
16 comment. I realize the lateness of the day, so I'll keep
17 it brief.

18 But, you know, the Commission does have, as I
19 say, authority, it seems to me, to make many exemptions,
20 but in reality, the number of exemptions that can
21 possibly be granted, simply for calendar reasons if
22 nothing else, is limited.

23 And I would really urge people to not get
24 sidetracked necessarily exclusively with this Commission.

1 I mean, there are other ways of skinning a cat. And I
2 would urge you, all of you, anyone who's upset, to write
3 their legislators --

4 MS. MONTANI: We did. I did.

5 COMMISSIONER McCARTHY: -- and write the
6 Governor and --

7 MS. MONTANI: I did.

8 COMMISSIONER McCARTHY: Well, do it again. Do
9 it more often. I mean, it's the old premise: if you
10 can't make them see the light, maybe they'll feel the
11 heat.

12 And --

13 MS. MONTANI: Well, I didn't vote for this
14 Governor.

15 COMMISSIONER McCARTHY: Well, whatever. I
16 wouldn't say that in your letter, but I -- no, I am
17 serious, that there is -- you know, maybe in the longer
18 term, whatever --

19 MS. MONTANI: I voted for people that I think
20 are really good; I don't care what party they belong to.

21 COMMISSIONER McCARTHY: But I -- turn the heat
22 on.

23 MS. MONTANI: I did. And you know what?
24 They're already third-degree burned, and they're still

1 not feeling any pain, you know, because he's not the one
2 that has to deal with the rest of us labor people.

3 Thank you.

4 COMMISSIONER DOMBROWSKI: Hang on.

5 COMMISSIONER CENTER: Please --

6 COMMISSIONER DOMBROWSKI: Just as a take-off of
7 what you said, I talked with Commissioner Broad about
8 this, and I'm going to submit a letter to the Labor
9 Commissioner, but a couple of companies that contacted us
10 and raised a question about, if they voted in alternative
11 workweeks and these alternative workweeks entailed
12 working more than 10 hours, but they were willing to pay
13 overtime for anything over 10 hours, was that
14 permissible? And as far as we can see, from our
15 perspective, we think that is. And we're going to submit
16 that to the Labor Commissioner and just get that abated.

17 MS. MONTANI: Thank you. I really, really
18 appreciate even that you're considering that thought,
19 really. I really do. Thank you.

20 COMMISSIONER CENTER: Thank you.

21 Bob Hay.

22 MR. HAY: My name is Bob Hay, H-a-y, General
23 Manager of Poly-Tainer, Incorporated, a plastics flow-
24 molding, manufacturing and molding company, in Simi

1 Valley, 250 employees. We're working 12-hour shifts. We
2 are on 24-7. Our machines run continuously. All our
3 employees, it's the same deal. Everybody wants to stay
4 on 12-hour shifts. Once they've been there, they don't
5 want to go back. Yeah, we may have before, but we don't
6 want to do it again.

7 So, if you feel comfortable with going to AWS,
8 voting in a two-thirds vote on that 10-hour straight time
9 and 2 hours overtime, I mean, is that something I can
10 take back and implement tomorrow?

11 COMMISSIONER BROAD: Well, I suggest that you
12 take a look at AB 60. I'm willing to sign the letter
13 asking for an interpretation of this with Commissioner
14 Dombrowski.

15 However, if you read -- and I don't want to be --
16 -- I'm going to say this on the record, and I'm not -- I'm
17 not trying to confuse you, but Section 511(b) of the
18 Labor Code, which is a new section, says:

19 "An affected employee working longer than
20 eight hours but not more than 12 hours in a day
21 pursuant to an alternative workweek schedule
22 adopted pursuant to this section shall be paid
23 an overtime rate of compensation of no less than
24 one and one-half times the regular rate of pay

1 of the employee for any work in excess of the
2 regularly scheduled hours established by the
3 alternative workweek agreement and for any work
4 in excess of 40 hours per work."

5 Then it goes on to say for hours beyond 12, it's double
6 time. And that seems quite clear on its face to me, that
7 if you have a regularly scheduled 4-10 arrangement and
8 you require employees to work two more hours, that you
9 would owe one and a half times their normal rate of pay,
10 overtime pay, for hours 10 through 12, or 10 and 11.
11 That is my sense of what the statute --

12 MR. HAY: 11 and 12. 11 and 12.

13 COMMISSIONER CENTER: Yeah, 11 and 12.

14 COMMISSIONER BROAD: Yeah. 11 and 12 -- I'm
15 sorry. 11 and 12. That, to me, seems quite clear on the
16 face of the statute. And the difficulty --

17 MR. HAY: Well, the problem --

18 COMMISSIONER BROAD: -- the difficulty for us is
19 that it's not really appropriate for us to sit up here
20 and pass on people's individual questions as such. That
21 is the interpretive role of the Labor Commissioner. And
22 we're not meant -- it's not meant to dodge this. And
23 perhaps it's appropriate for us, when we issue this
24 interim wage order, that on the back of that wage order

1 where we are allowed to put our reasons for why we're
2 doing what we're doing, that we address this issue. And
3 I would encourage you to write us and say, "Please
4 address this issue when you draft your Statement of
5 Reasons."

6 And hopefully, between now and that time, we'll
7 have an opinion back from the Labor Commissioner. It may
8 already be in the document that the Labor Commissioner
9 gave to us today. I don't know -- we've haven't had a
10 chance to read that. So -- and you should probably read
11 that as well.

12 But, I think, in the meantime, you know --

13 MR. HAY: Well, here is the issue, though. I
14 mean, I've talked to at least a dozen lawyers. I mean,
15 you can't get the same guy to say the same thing in the
16 same sentence. I mean, they're constantly changing their
17 view of what is this animal and how do we skin it.

18 And so, as they look at it, they said, "Well, if
19 you do that, then you're really running 12-hour shifts,
20 and that's not what the law is trying to do. They're
21 trying to get you to go to like four 10's, something that
22 lends to 40 hours a week."

23 COMMISSIONER BROAD: Well, see, I disagree with
24 that. What the law says is that if you work a person

1 beyond 8 hours a day, you pay time and a half, beyond --

2 MR. HAY: 12, double.

3 COMMISSIONER BROAD: Right. It is a -- overtime
4 is a penalty, in effect. It's always been a penalty on
5 employers for working longer than, quote, the "standard"
6 8-hour day. When you have an alternative workweek,
7 you're sort of shifting that arrangement of what the
8 standard day is. And that's what AB 60 does, in my
9 opinion.

10 And then, I think the bill quite clearly says
11 that beyond that schedule, you have to pay overtime.
12 Now, that doesn't say you can't go beyond that schedule.
13 And, you know, with all deference -- I know -- I'm a
14 lawyer, married to a lawyer, and know a lot of lawyers --
15 but a lot of lawyers can be wrong too, and a lot of
16 lawyers can give advice which, you know, may get their
17 clients into litigation rather than solving a problem.
18 But I think you can get a more definitive answer by
19 writing the Labor Commissioner and getting an answer.
20 And I think that that's something that you can take to
21 the bank.

22 MR. HAY: Okay.

23 AUDIENCE MEMBER: (Not using microphone) Where
24 can we get a copy of that -- I mean, what they just gave

1 you?

2 AUDIENCE MEMBER: (Not using microphone) He
3 indicated that it would be on the Web within a week.

4 COMMISSIONER CENTER: On the Web site?

5 AUDIENCE MEMBER: (Not using microphone) On the
6 DLSE Web within a week.

7 MR. HAY: Then, unless you have any other
8 questions, I've already submitted testimony. And I just
9 wanted you to have this, but I don't think these people
10 have a clue, what the hell they're talking about, because
11 this is really going to effect these manufacturing
12 facilities in the most negative fashion. And I told that
13 to Wally while he was here, and I gave him a copy of what
14 I submitted to you.

15 I don't want to take any more time.

16 COMMISSIONER CENTER: Thank you.

17 Is this Gabie Lopez?

18 MS. LOPEZ: I just want to say that I wasn't
19 going to be here today. The only reason I came in was
20 that, this morning, one of my employees brought four
21 sheets of signatures that various employees got together.
22 And I knew Bob was coming -- and he's my co-worker that
23 just came and spoke to you about the problems that
24 they're going to have if we go back to 8 hours. Two of

1 them are single members who -- the way we work, they are
2 able to live in the same home. Both of them work 12
3 hours. They get overtime every week. They each have two
4 children. But because of the way they work, they're able
5 to not pay childcare, not have to pay for carpooling
6 because they swap cars.

7 So, where is helping the employees and where is
8 it hurting them? I just -- I don't know. The only
9 reason I came in is to bring the petition that they
10 signed. It is in Spanish. Well, basically, they think
11 that it's our decision to go back to five days, 8-hour
12 days -- five 8-hour days. And they basically are
13 petitioning for, please, the company to take them into
14 consideration.

15 And what I just told her was, understand that
16 this isn't something that we are doing. It's something
17 that the company cannot afford the cost to continue to
18 work 12 hours. And that's why we'll go back to the 8
19 hours.

20 So, even though it is in Spanish, it was
21 something that they brought to me in the morning, and I
22 thought that the least I could do was would bring it in
23 and submit it to you with the letter that Bob drafted.

24 COMMISSIONER CENTER: Thank you.

1 Thomas Halter.

2 (No response)

3 COMMISSIONER CENTER: John Zaimes.

4 (No response)

5 COMMISSIONER CENTER: James Davis.

6 MR. DAVIS: Hi. James Davis. And after sitting
7 here all day, I've learned two things: one, the Labor
8 Code has nothing to do with delivering babies; and,
9 number two, if you masturbate long enough, you go blind.

10 (Laughter)

11 MR. DAVIS: The reason I'm here is I'm one of
12 the plaintiffs' counsel who are prosecuting the class
13 action cases on the exempt employee issue, where
14 companies are taking a thousand employees at a time and
15 saying they're exempt, and then working them 80 or 90 or
16 100 hours a week.
17 And when you approach them on it and you say, "But" --
18 they're entitled to individual prove-ups of exempt status
19 -- "when are you going to do it?," the answer is, "Never.
20 You can't make us. We don't got to."

21 And what I would like to see, and what I'm
22 requesting of the Commission, either in the wage orders
23 themselves under the section that refers to
24 administrative, professional, managerial exemptions, or

1 on the note on the back, simple language that says, "You
2 have to do the audit before you make them exempt. You
3 can't make them exempt by a blanket rule, work them
4 hundreds of millions of dollars of overtime, and then
5 wait to get caught." It's a criminal violation to not
6 pay wages. And it shouldn't take plaintiffs' counsel
7 suing companies for hundreds of millions of dollars to
8 get the companies to realize this isn't how the system
9 works. And somebody needs to do something about that.

10 COMMISSIONER BROAD: Well, let me just ask you
11 this question -- I mean, I'm quite sympathetic to this,
12 and there's been tremendous abuse of this in the last
13 decade -- but, I mean, if we require them to somehow
14 perform an audit, they're just going to fake the audit if
15 they want to reach the right result. So, what's your
16 response to that?

17 MR. DAVIS: The answer is, is that we have the
18 experts that do those sort of audits for us. And we know
19 that the audits can't be faked, for the simple reason
20 that, one, you look at what the company's manuals and
21 procedures and policies are. One of the things that I
22 always ask the defense experts and the company presidents
23 is, "Why don't you just incorporate the statutory
24 language in your manual and then train your managers so

1 that they know what 'exempt' means?" That seems like a
2 real simple thing. "We don't want to, we never have,
3 we're not going to."

4 And in regards to the time, it's very simple.
5 You do you time studies. And despite the fact that I've
6 taken on a labor expert who says, "Well, yeah, I watched
7 the guy for six hours," "Yeah, but did you watch him for
8 a year?," because that's the issue. "Nobody ever does
9 that."

10 And that's why -- what we would like to see is
11 the just the power to be able to go in on a preliminary
12 injunction and say, "If you haven't audited the class of
13 1,000 people, don't treat them as exempt." The burden is
14 on the employer, but there's no enforcement, other than
15 paying money, a million dollars down the road.

16 COMMISSIONER CENTER: We're going to have a
17 special hearing on duties and exemptions and -- later on.
18 You should be at that hearing to testify --

19 MR. DAVIS: Thank you very much.

20 COMMISSIONER CENTER: -- and bring some data.
21 Thank you.

22 B. J. Snell.

23 DR. SNELL: (Not using microphone) I've already
24 testified.

1 COMMISSIONER CENTER: Okay. M. K. --

2 MS. DETE: (Not using microphone) Dete.

3 COMMISSIONER CENTER: Dete.

4 MS. DETE: (Not using microphone) Ginny

5 Pinkerton will read our remarks, for the California

6 Association for Health Services at Home.

7 COMMISSIONER CENTER: Are they written remarks?

8 MS. PINKERTON: Brief, yes. Yes.

9 COMMISSIONER CENTER: Okay, because we're down
10 to fifteen minutes, ten minutes, to get out of here, so -
11 -

12 MS. PINKERTON: Well, if there's such a thing as
13 triple time, I think we're on it now.

14 My name is Ginny Pinkerton, and I'm the chair of
15 the board of directors for the California Association for
16 Health Services at Home, or CAHSAH. And I was an owner-
17 operator of a home care agency for eight years, and I'm
18 now the director of quality management for a company
19 called AccentCare.

20 I want to thank you, at this late hour of the
21 evening, for permitting me to share the concerns of
22 CAHSAH and home care providers, which I don't believe
23 I've heard too much of today.

24 The California Association for Health Services

1 at Home represents home care providers throughout
2 California, including licensed Medicare-certified home
3 health agencies, hospices, home care aide organizations,
4 home infusion pharmacies, home medical equipment dealers,
5 as well as independent clinicians, rehabilitation
6 agencies, and so on. And the hallmark of home care is
7 the ability to provide affordable, personalized care in a
8 setting that the client and the patient prefers, which is
9 in their own home. And as you've heard from the midwives
10 earlier, a lot of times these situations don't follow an
11 8-hour workday.

12 There are approximately 1,180 home health
13 agencies in California. And in the past two years, 235
14 agencies of those agencies were closed. However, there
15 is an expected increased need for registered nurses for
16 home health, at about 11.37 percent over the three-year
17 period of 1997 to 1999. And that is the second highest
18 rate of growth for all our employer categories.

19 The need for home care will only increase over
20 time. Baby Boomers will reach the age of 60 by the year
21 2006, in waves of more than one million per year on a
22 national basis. And California seniors age 65 and older
23 will reach 4.1 million statewide by 2005. So, the need
24 for home care is growing. And that reflects not only the

1 public preference for home and community-based care
2 rather than institutional care, but California's policy
3 preference as well, which includes the concept of aging
4 in place and independent living for the elderly and the
5 disabled.

6 This will manifest itself in the need for
7 additional skilled home care providers and home care
8 aides, as noted by the Development Department's
9 projections, which project an approximate increase of 81
10 percent in the need for personal home care aides and so
11 on in the healthcare industry by the year 2002. With the
12 need and desire for healthcare expected to increase, the
13 need for flexibility to provide these services in the
14 homes of the disabled and the elderly will become
15 increasingly important.

16 Many home health and hospice agency patients
17 require visits that are beyond the normal workday to
18 receive needed medical services in their home. Without a
19 flexible work environment, which has been discussed many
20 times today, interruptions in patient care as a result of
21 shift changes will only increase. Not only will the
22 provisions of AB 60 disrupt continuity of care received
23 by patients, it limits both agency and staff flexibility
24 in responding to patient needs in the home.

1 For example, a developmentally disabled child
2 receives skilled nursing care in the home 12 hours a day.
3 Because of the nursing shortage, which has also been
4 discussed today, and for continuity of care reasons, it's
5 critical to have that shift covered by one nurse. This
6 patient would then be institutionalized if home care
7 providers cannot provide that shift care.

8 The other example would be a family of a loved
9 one who's dying able to maintain that person at home only
10 because of the respite provided at night by 12-hour shift
11 care and the availability of hospice nurses at any hour
12 of the day and night -- again, affordable because of the
13 exemption from overtime. The hospice patient also needs
14 an evening or night visit for pain control or assisting
15 with other end-of-life issues. Without this flexible
16 care, the terminal client would be more than likely
17 ending their life in a skilled nursing facility without
18 their family present.

19 You know, I won't even really talk to you much
20 about the employee flexibility issues that are also
21 critical in the home care industry. That's what attracts
22 nurses to this industry. And if that ability were
23 compromised or not maintained, it would not only impact
24 the ability of employees to maintain that flexible work

1 schedule, but also serious access to care issues as well.

2 Another point I wanted to just make very
3 quickly, and that is the cost of overtime. And the
4 reason I bring that up is important, is that
5 approximately 83 percent of home health care in
6 California is paid for by Medicare and MediCal programs,
7 neither of which provide for overtime. Medicare
8 decreased its reimbursement for home health services by
9 20 percent with the Balanced Budget Act of 1997, and the
10 MediCal program is on a fixed reimbursement schedule,
11 which does not allow for any overtime.

12 So, for example, a child, a ventilator case, a
13 ventilator-dependent child or a child with G2, a
14 medically fragile child that needs 16 hours of care of
15 home, you know, what's the option then? The option of an
16 agency with slim margins is to reduce the care to that
17 child, reduce the care to that senior, or reduce benefits
18 to employees.

19 So, we would urge you again to continue to
20 consider maintaining that 12-hour shift exemption for our
21 industry.

22 Thank you.

23 COMMISSIONER CENTER: Thank you.

24 Who's all left to testify?

1 (Show of hands)

2 MR. DIAZ: Well, there's a problem -- I have a
3 question, Mr. Chairman.

4 COMMISSIONER CENTER: Yeah.

5 MR. DIAZ: I drove 175 miles to get here to be
6 the first one to sign in on the sheet, and I have not
7 been called, nor has the colleague. We've lost a couple
8 of our witnesses.

9 COMMISSIONER CENTER: Well, I called the first
10 one on the sheet. What sheet were you on?

11 MR. DIAZ: The first sheet for testifying on AB
12 60, this morning, when they opened the doors to the
13 building. But that's here nor there.

14 COMMISSIONER CENTER: Yes.

15 MR. DIAZ: We had submitted some testimony in
16 Sacramento. We represent the California Nursing Home
17 Association.

18 COMMISSIONER CENTER: Written testimony or oral?

19 MR. DIAZ: Well, it was submitted in writing,
20 but we also had individual owners here today.
21 Unfortunately, somewhere that list is missing. I spoke
22 with the clerk about four hours ago, what happened to it,
23 and it's not there. And we also still have an owner-
24 operator here. But I know the time is running late.

1 We ditto most of the comments by all the
2 professional nursing categories. We have a significant
3 labor shortage.

4 Without making it an issue, I just wanted to
5 make you aware that we were one of the first people to
6 sign in.

7 COMMISSIONER CENTER: Okay.

8 MR. DIAZ: And that sheet is not --

9 COMMISSIONER CENTER: Well, part of the problem
10 --

11 THE REPORTER: What is your name, sir?

12 MR. DIAZ: Joseph Diaz.

13 COMMISSIONER CENTER: There's just a couple of -
14 - if you didn't get the copy of the draft orders that's
15 on the Internet, at www.dir.ca.gov, and also you can
16 submit written testimony, if you don't get to testify, to
17 that e-mail address or to the IWC at 1121 L Street, Suite
18 300, Sacramento.

19 MS. VERA-SCHUBERT: Commissioner?

20 COMMISSIONER CENTER: Yes.

21 MS. VERA-SCHUBERT: I have not heard from my
22 industry at all, and I'm not sure if you're calling it a
23 night. But I also got up super-early, and I had a big
24 problem to find out who would take care of my kids if I

1 came.

2 COMMISSIONER CENTER: Anybody else that has not
3 heard from their industry here?

4 (Show of hands)

5 COMMISSIONER CENTER: Which industry are you
6 from?

7 AUDIENCE MEMBER: (Not using microphone) We're
8 pharmacists. I don't know if that's healthcare or what,
9 but --

10 MS. VERA-SCHUBERT: Yeah. I'm also a
11 pharmacist. And if I could come up --

12 COMMISSIONER CENTER: Why don't both of you come
13 up together?

14 MS. VERA-SCHUBERT: Okay. I'm a pharmacist.
15 Thank you very much.

16 My name is Monica Vera-Schubert, and I'm a
17 community pharmacist and have been for over ten years.

18 If you talk about the image of pharmacists --
19 and that was mine fifteen years ago when I decided to go
20 to college and what I wanted to do -- I thought of a
21 pharmacist as a person who stands behind a counter and
22 transfers pills from one container to the next. That
23 image still stays alive, and I feel that that is one of
24 the reasons for this law. And I can tell you, when I

1 worked in a pharmacy as a college students, my eyes
2 opened up.

3 Since I've been a pharmacist, I've been able to
4 -- I feel I've been able to make an impact in lives.
5 I've seen not only myself, but other pharmacists,
6 actually deal with drug interactions, catch and counsel
7 prescriber errors, combat food-drug interactions. Who
8 best but the pharmacist would know about medication?

9 But not all just about the profession, but
10 talking about my personal life also, when I chose --
11 choose a company to work for, a 12-hour shifts, it was
12 for purely reasons that were financial, but now it evolve
13 to the reasons of having two small kids. I want to be at
14 home with my kids. I love working seven days out of the
15 fourteen. I won't be having that luxury any more.

16 I have -- when I -- when my kids were small, I
17 hired babysitters in the house. Those stories that you
18 hear about kids being abused? That happened to me. My
19 biggest worry is to leave my kids alone with a stranger.
20 And right now, I'm very lucky to have my parents take
21 care of my kids. When my parents become senior citizens,
22 they can't do it past the schedule that I've been blessed
23 with. So, I'm asking you.

24 Also, in my free time, as a lot of other

1 pharmacists enjoy their free time, we go out and we do
2 patient education. Right now, I work in a pharmacy
3 school and we go out to the L.A. Unified School Districts
4 to kids that are under-served, that are absent, because
5 they don't understand asthma. I go out and I teach them
6 all about asthma.

7 Also -- and I'll talk about it real quick -- I
8 go to mentor. I talk to kids -- again, under-served
9 areas -- about the importance of higher education.

10 So, please, I'm asking you to consider
11 pharmacists as health professionals, but also consider
12 them -- consider the time and their lives, the schedules
13 that they've adapted to, and how it will affect not only
14 them, but their families.

15 Thank you.

16 MS. FLASTER: Annette Flaster, staff pharmacist
17 at a hospital for thirty years. And I just have a couple
18 of things to say.

19 I was very disappointed when I found out that we
20 were going to be -- lose our professional status -- and
21 that's basically what it becomes. After thirty years,
22 I've been told that I really don't know if I'm being
23 taken advantage of, and that I'm a fool if I work 10-hour
24 shifts.

1 And another thing that -- you know, nurses have
2 their shifts, they -- you know, they deal with the
3 patients directly. We don't deal with them, necessarily,
4 directly. However, when there is a rush in the hospital
5 and things get busy, you can't leave exactly at the time
6 you're supposed to leave. Now that I work for a private
7 corporation, they are very indignant. You have to check
8 out. We don't pay overtime.

9 Well, for years, you just stayed and you worked,
10 and that was it. You know, you didn't make a big deal
11 about it. You just did your job and you went. And now
12 you can't take the risk of checking out, coming back,
13 helping your colleague. And then what happens if you
14 should get injured? You know, you're not under
15 compensation any more because you're back -- you're not
16 there. But you can't see somebody working along and
17 possibly, you know, having the patient care jeopardized
18 because of things like that, in a timely manner, because
19 there isn't the staff. And this is specifically --

20 COMMISSIONER DOMBROWSKI: Excuse me. Excuse me.

21 MS. FLASTER: Yes, sir.

22 COMMISSIONER DOMBROWSKI: Is your bottom point
23 that you want to have 12-hour days?

24 MS. FLASTER: I personally work 10-hour shifts.

1 COMMISSIONER DOMBROWSKI: Today, under the law,
2 you can go into four 10-hour days.

3 MS. FLASTER: Well, I'm not sure what the
4 company will do because it's a big corporation.

5 COMMISSIONER DOMBROWSKI: Okay.

6 MS. FLASTER: However, the thing is, it's not
7 just that. It's the fact that it's overtime. Why should
8 one hour of pharmacy work be more important than another
9 hour? In my mind, every hour I work is equally valid as
10 another hour. I don't think a pharmacist should be paid
11 overtime. You know, that -- that, in fact, limits my
12 working ability. Right now, I can go work at a sister
13 hospital --

14 COMMISSIONER DOMBROWSKI: Well, just --

15 MS. FLASTER: -- and work an extra day and, you
16 know, not have to worry about it because I'm an exempt
17 employee. So, I can work here extra and there extra, and
18 I can work and earn my keep.

19 COMMISSIONER DOMBROWSKI: I understand. And we
20 -- just -- we have heard testimony now in three different
21 -- or two different hearings from pharmacists, so the
22 issue is not -- has been brought in front of the IWC.
23 And I, obviously, am one who is sympathetic to that, as
24 my other commissioners know.

1 We are trying to figure out how to address that.

2 MS. FLASTER: Right.

3 COMMISSIONER DOMBROWSKI: But I know there's one
4 other gentleman who wants to talk, and we're running out
5 of time.

6 MS. FLASTER: Do I pay malpractice insurance?
7 Am I no longer suable if I'm not a professional? That's
8 my question, you know. And I don't like the idea that,
9 you know, my representative, Wally Knox, felt that they
10 know better how to run our lives and take away, again,
11 personal freedoms that are not -- you know, why don't
12 state employees have to have the same restrictions put
13 upon them as private-sector employees? How are they
14 better? I don't think they are. I mean, that's my
15 point.

16 COMMISSIONER CENTER: Thank you.

17 MR. GOLDSTEIN: Hi. I'm Morrie Goldstein. I
18 work for the Guild for Professional Pharmacists. That's
19 the largest bargaining unit for pharmacists in the State
20 of California.

21 I've submitted some documentation to you, and
22 that was to ask for an exception -- exemption for the
23 graveyard, or nighttime-graveyard pharmacists. This is
24 not -- I'm not here for the union pharmacists, of course,

1 so that bargaining unit will override this AB 60 without
2 a problem. What we're concerned about is the other
3 pharmacists, the nonunion pharmacists. I'm telling you
4 that, if you can, look for an exemption for these seven-
5 day-on, seven-day-off graveyard pharmacists, which they
6 love, and that's the lifestyle for them.

7 I've never been in a meeting where everybody --
8 all the employees were so damn happy. I really feel bad
9 for the pharmacists here, what an unhappy group they are
10 -- I'm going to have to yell at them. All the guys here
11 seem to be -- the employers seem to be treating them
12 perfectly. I'm sorry. We're glad that you passed AB 60.
13 It's terrific. We support it wholeheartedly.

14 There are certain exemptions, just like we
15 talked about. But let me tell you, if all employers --
16 and if there are any still left here, they should listen
17 -- if all of you treated your employees as happily as --
18 as graciously as all the other people here do, or at
19 least seemingly does, we wouldn't have this bill. This
20 bill came about because pharmacists were being treated
21 sub-human. A bathroom break was unheard of.

22 Barry, I think you've heard some of these
23 stories through the CPHA, and I won't repeat any of them.
24 Anyway, do consider the exemption for the graveyard

1 pharmacists.

2 Thank you.

3 COMMISSIONER CENTER: Thank you.

4 And I'd announce that our next hearing will be
5 at the California State Capitol, June -- excuse me --
6 June, I wish it was June, but it's not, it's January --
7 January 28th in Room 4203, I think. And we'll get notice
8 out. We're looking at ten, maybe earlier.

9 And thanks for everybody --

10 COMMISSIONER DOMBROWSKI: Chuck, just one thing,
11 I think, before you close.

12 We don't know if it's John's last meeting or
13 not, and I just would like to have the Commission
14 recognize his efforts in the last four years.

15 COMMISSIONER CENTER: Yes. And especially
16 because I served with John --

17 (Applause)

18 COMMISSIONER CENTER: -- during some very
19 volatile hearings on the repeal of the 8-hour day.

20 COMMISSIONER MCCARTHY: Oh, this is nothing,
21 really!

22 COMMISSIONER CENTER: Yeah, this is easier.

23 COMMISSIONER MCCARTHY: I won't tell you what
24 happened.

1 COMMISSIONER CENTER: We had guns at one
2 hearing. It was pretty cool.
3 Thanks for everybody's cooperation.
4 Do you want to make a motion to adjourn?
5 COMMISSIONER DOMBROWSKI: So moved.
6 COMMISSIONER CENTER: Sorry.
7 AUDIENCE MEMBER: (Not using microphone) I just
8 have one question for you on something that you said that
9 --
10 COMMISSIONER BROAD: How about afterwards?
11 COMMISSIONER CENTER: Yeah, afterwards.
12 AUDIENCE MEMBER: (Not using microphone) Oh,
13 I'm so sorry.
14 COMMISSIONER CENTER: Anybody make a motion to
15 adjourn?
16 COMMISSIONER DOMBROWSKI: So moved.
17 COMMISSIONER BROAD: Second.
18 COMMISSIONER CENTER: All in favor, aye?
19 (Chorus of "ayes")
20 COMMISSIONER CENTER: Motion carries.
21 Thank you.
22 (Thereupon, at 6:00 p.m., the public
23 meeting was adjourned.)
24 --o0o--

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CERTIFICATE OF TRANSCRIBER

--oOo--

I, Cynthia M. Judy, a duly designated
transcriber, do hereby declare and certify under penalty

1 of perjury under the laws of the State of California that
2 I transcribed the five tapes recorded at the Public
3 Meeting of the Industrial Welfare Commission, held on
4 December 15, 1999, in Los Angeles, California, and that
5 the foregoing pages constitute a true, accurate, and
6 complete transcription of the aforementioned tapes, to
7 the best of my abilities.

8

9 Dated: December 30, 1999

10

11

CYNTHIA M. JUDY, Transcriber

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EXHIBIT I

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



July 21, 2020

Artemis Nuval

Re: Case No. WC-CM-754262

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over waiting time penalties claims against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Sonja Sonnenburg
Deputy Labor Commissioner
(510) 622-3251

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



July 21, 2020

Brian Walker



Re: Case No. WC-CM-755348

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over waiting time penalties claims against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Sonja Sonnenburg
Deputy Labor Commissioner
(510) 622-3251

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



July 21, 2020

Lai Saechao



Re: Case No. WC-CM-795461

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over waiting time penalties claims against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Sonja Sonnenburg
Deputy Labor Commissioner
(510) 622-3251

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



July 22, 2020


Stephanie Iribarren

Re: Case No. WC-CM-708659

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over waiting time penalties claims against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Sonja Sonnenburg
Deputy Labor Commissioner
(510) 622-3251

STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS Labor Commissioner's Office 1515 Clay St, Ste 801 Oakland, CA 94612 Email: laborcomm.wca.oak@dir.ca.gov Fax: (510) 622-3257	
PLAINTIFF: Danielle Richardson	
DEFENDANT: Alameda Health System, A public entity 7677 OAKPORT ST STE 1200 OAKLAND, CA 94621	
State Case Number WC-CM-458041	NOTICE-INVESTIGATION COMPLETED

We have completed our investigation of the complaint made by the Plaintiff shown above.

This is to advise you that no further action is contemplated by this office and we are closing our file:

Pursuant to California Labor Code Section 220, the Labor Commissioner's Office cannot pursue waiting time penalties under California Labor Code 203 on behalf of employees or former employees of any county, incorporated city, or town or other municipal corporation.

NOTICE DATE: July 13, 2020

Jennie Culjat
 Senior Deputy Labor Commissioner

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



September 21, 2020

Valerie Martinez Gomez

Re: *Martinez-Gomez v. Alameda Health System* (Case No. WC-CM-725171)

Dear Sir/Madam:

Your wage claim seeking meal and rest period premiums has been dismissed on the basis that the Wage Orders exempt public employees from the meal and rest sections of the orders. The Alameda Health System is a public employer.

Enclosed is a copy of Wage Order 4. See Section 1, subsection (B) ("the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof,...").

The above-titled case is closed.

Sonja Sonnenburg
Deputy Labor Commissioner

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



October 16, 2020

Catherine Jordan

Re: Case No. WC-CM-745397 (Alameda Health System)

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over claims for regular wages and waiting time penalties against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Sonja Sonnenburg
Deputy Labor Commissioner

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



November 5, 2020

Diana Gonzalez

Re: Case No. WC-CM-803900 (Alameda Health System)

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over claims for regular wages and waiting time penalties against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Labor Commissioner's Office

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



December 14, 2020

Lourdes Gonzalez



Re: Case No. WC-CM-806721

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over claims for waiting time penalties against government entities, such as the Alameda Health System. CA Labor Code section 220(a)-(b).

Labor Commissioner's Office

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (510) 622-3257 • www.dir.ca.gov



December 21, 2020


Alameda Health System
15400 FOOTHILL BLVD
SAN LEANDRO, CA 94578

Re: Case No. WC-CM-763186 (Alameda Health System)

Dear Sir/Madam:

Please be advised that we are closing our file in the above-numbered case. This office does not have jurisdiction over claims for meal and rest period premiums against government entities, such as the Alameda Health System. Wage Order 4, section 1, subdivision (B).

Labor Commissioner's Office

STATE OF CALIFORNIA Department of Industrial Relations Labor Commissioner's Office 1515 Clay St, Ste 801 Oakland, CA 94612 EMAIL: laborcomm.wca.oak@dir.ca.gov FAX: (510) 622-3257		
PLAINTIFF: Andrew Henderson <div style="background-color: black; width: 150px; height: 30px; margin-top: 5px;"></div>		
DEFENDANT: Alameda Health System, a Political Subdivision of the State of California 15400 FOOTHILL BLVD SAN LEANDRO, CA 94578		
State Case Number WC-CM-854221CW	NOTICE—INVESTIGATION COMPLETED	

We have completed our investigation of the complaint made by the Plaintiff shown above.


This is to advise you that no further action is contemplated by this office and we are closing our file:

Pursuant to Labor Code Section 220(b), penalties under Labor Code Section 203.1 do not apply to public entities such as named Defendant, Alameda Health System.

This case is closed due to lack of jurisdiction.

NOTICE DATE: November 29, 2021

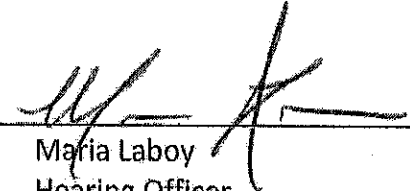
Cecilia Wong
 Deputy Labor Commissioner
 (510) 622-3272

STATE OF CALIFORNIA Department of Industrial Relations Labor Commissioner Office 1515 Clay St, Ste 801 Oakland, CA 94612 EMAIL: laborcomm.wca.oak@dir.ca.gov FAX: (209) 812-1907		
PLAINTIFF: Lance Hardaway		
DEFENDANT: Alameda Health System Foundation, a California Non-Profit Corporation 350 FRANK H OGAWA PLZ STE 900 OAKLAND, CA 94612		
State Case Number WC-CM-632101	NOTICE OF DISMISSAL	

The above entitled matter came before the Labor Commissioner of the State of California, pursuant to the provisions of Section 98 of the California Labor Code, and all parties were duly served with the Notice of Hearing. The complaint is dismissed for the following reason(s):

- ☐ For want of prosecution due to plaintiff's failure to attend the scheduled hearing. The complaint is dismissed without prejudice.
- ☒ For want of statutory jurisdiction of the California Labor Commissioner per Labor Code Section 220(b). The matter is taken off calendar.
- ☐ Due to payment of the claimed amount.
- ☐ As a result of a stipulated settlement by the parties herein, a copy of which is contained in the files of the Labor Commissioner.
- ☐ As a result of the Plaintiff expressly abandoning his/her claim.
- ☐ Other:

NOTICE DATE: May 4, 2022


 Maria Laboy
 Hearing Officer

State of California
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013A) OR CERTIFIED MAIL**

I, Shaira Ali, do hereby certify that I am a resident of or employed in the County of Alameda, over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

LABOR COMMISSIONER, STATE OF CALIFORNIA

1515 Clay St Ste 801

Oakland, CA 94612

Tel: (510) 622-3273 Fax: (209) 812-1907

I am readily familiar with the business practice of my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 5, 2022, at my place of business, a copy of the following document(s):

Dismissal

was(were) placed for deposit in the United States Postal Service in a sealed envelope, by with postage fully prepaid, addressed to:

NOTICE TO:

Lance Hardaway, an Individual

	Service Address
Alameda Health System Foundation, a California Non-Profit Corporation	ATTN: Michael Gomez, Agent for Service 350 FRANK H OGAWA PLZ STE 900 OAKLAND, CA 94612
	Additional Service Address(es)
Alameda Health System Foundation, a California Non-Profit Corporation	ATTN: David A. Abella, Associate General Counsel 7677 OAKPORT STREET OAKLAND, CA 94621

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2022, at Oakland, California.

STATE CASE NUMBER: WC-CM-632101

/s/ Shaira Ali

Lance Hardaway



STATE CASE NUMBER: WC-CM-632101

DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office

1515 Clay St, Ste 801

Oakland, CA 94612

Email: laborcomm.wca.oak@dir.ca.gov • Fax: (209) 812-1907 • www.dir.ca.gov



June 14, 2022


Myriam Escamilla

Re: Case No. WC-CM-656550

Dear Ms. Escamilla:

Please be advised that we are closing our file in the above-numbered case. Defendant Alameda Health System is a local government entity established under Health and Safety Code section 101850. This office does not have jurisdiction over waiting time penalties claims against local government entities, such as the Alameda Health System. (Labor Code section 220 (b).)

Alejandro Soto-Vigil
Deputy Labor Commissioner
(510) 622-3274

STATE OF CALIFORNIA Department of Industrial Relations Labor Commissioner's Office 1515 Clay St, Ste 801 Oakland, CA 94612 EMAIL: laborcomm.wca.oak@dir.ca.gov FAX: (209) 812-1907		
PLAINTIFF: Samir Syriani <div style="background-color: black; width: 250px; height: 40px; margin-top: 5px;"></div>		
DEFENDANT: Alameda Health System, a Political Subdivision of the State of California 7677 OAKPORT ST STE 1200 OAKLAND, CA 94621-1975		
State Case Number WC-CM-874592	NOTICE—INVESTIGATION COMPLETED	

We have completed our investigation of the complaint made by the Plaintiff shown above.

This is to advise you that no further action is contemplated by this office and we are closing our file.

NOTICE DATE: June 16, 2022

Ashley Moore
 Industrial Relations Representative

EXHIBIT J

UNFINISHED BUSINESS

Bill No: SB 1334
Author: Bradford (D)
Amended: 8/25/22
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-1, 4/4/22
AYES: Cortese, Durazo, Newman
NOES: Ochoa Bogh
NO VOTE RECORDED: Laird

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 28-9, 5/24/22
AYES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk
NO VOTE RECORDED: Archuleta, Caballero, Hertzberg

ASSEMBLY FLOOR: Not available

SUBJECT: Meal and rest periods: hospital employees

SOURCE: California Nurses Association/National Nurses United

DIGEST: This bill extends existing meal and rest period rights and remedies available to private sector employees to those who provide direct patient care or support direct patient care in general acute care hospitals, clinics or public health settings who are directly employed by specified public sector employers.

Assembly Amendments (1) add references to an employee's ability to waive a second meal period by mutual consent with the employer and the ability to provide on-duty meal periods, both consistent with existing labor code and Industrial Welfare Commission Wage Orders; and (2) include "counties" under the definition of "employer" for which the bill's provisions apply.

ANALYSIS:

Existing law:

- 1) Empowers the Labor Commissioner's office, within the Department of Industrial Relations, with ensuring a just day's pay in every workplace in the State and promote economic justice through robust enforcement of labor laws. (Labor Code §79-107)
- 2) Defines a full workday as eight hours, and 40 hours as a workweek and requires overtime to be paid at the rate of no less than one and one-half times an employee's regular rate of pay for work performed beyond eight hours in a day or 40 hours in a week. Furthermore, work performed beyond 12 hours in a day is to be compensated at twice the regular rate of pay. (Labor Code §510)
- 3) Requires, with certain exemptions, that all *private sector* employees be provided a meal period as follows:
 - a) 30 minutes every five hours, except if the total work period is no more than 6 hours, the meal period may be waived by mutual consent.
 - b) A second 30 minute meal period if working more than 10 hours a day, except if the work period is no more than 12 hours, the second meal period may be waived by mutual consent, but only if the first was not waived. (Labor Code §512)
- 4) Requires that employers authorize and permit employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half hours. Authorized rest period time must be counted as hours worked for which there shall be no deduction from wages. (IWC Wage Orders 1-16)
- 5) Prohibits an employer from requiring an employee to work during a meal or rest or recovery period (cooldown period required for heat illness prevention)

mandated pursuant to statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (IWC), the Occupational Safety and Health Board, or the Division of Occupational Safety and Health. (Labor Code §226.7)

- 6) Provides that, if an employer fails to provide a meal or rest or recovery period as required by state law or applicable regulation, standard or IWC order, the employer must pay the employee *one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.* (Labor Code §226.7)
- 7) Specifies that unless the employee is relieved of all duty during their meal period, the meal period is considered "on duty" that is counted as hours worked which must be compensated at the employee's regular rate of pay. An "on duty" meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to. The written agreement must state that the employee may, in writing, revoke the agreement at any time. (IWC Wage Orders 1-16)

This bill:

- 1) Provides, for purposes of this bill, the following definitions:
 - a) "Employee" means an employee who provides direct patient care or supports direct patient care in a general acute care hospital, clinic, or public health setting.
 - b) "Employer" means the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California.
 - c) "General acute care hospital" means a health facility as defined in subdivision (a) of Section 1250 of the Health and Safety Code.
- 2) Entitles an employee who provides direct patient care or supports direct patient care in a general acute care hospital, clinic, or public health setting, and who is directly employed by a *public employer* to:
 - a) One unpaid 30-minute meal period on shifts over five hours and a second unpaid 30-minute meal period on shifts over 10 hours, with the ability to waive the second meal period by mutual consent, as specified in Labor Code

Section 512. Additionally, specifies that an on-duty meal period may be provided in accordance with existing IWC Wage Orders No. 4 and 5.

- b) A rest period based on the total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction thereof, as provided by Wage Order No. 4 and Wage Order No. 5 of the Industrial Welfare Commission.
- 3) Requires an employer, who fails to provide to an employee with a meal period or rest period in accordance with these provisions, to pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the periods are not provided.
- 4) Exempts from these provisions employees who are covered by a valid collective bargaining agreement that provides for meal and rest periods, and, if the employee does not receive a meal or rest period as required by the agreement, includes a monetary remedy that, at a minimum, is equivalent to those provided for in this bill.
- 5) Makes legislative findings and declarations regarding the importance of meal and rest periods and draws attention to the disparity between private sector hospital employees who are guaranteed meal and rest periods and a remedy of one hour premium pay for missed meal and rest breaks while such employees in the public sector lack these basic protections, even though they perform the same duties.

Background

As noted above, existing labor code provisions entitle *private sector* employees to an unpaid 30-minute meal period, as specified, and per existing Industrial Wage Orders, to a 10-minute rest period. If the meal or rest periods are not provided, existing law entitles them to one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided. In general, California Labor Code regulates private employment unless a provision explicitly states that it applies to public sector employment. Employees providing patient care in a public health setting and at the University of California may currently be entitled to a meal and rest period; however, these rights would have to be negotiated as part of their collective bargaining agreement. This bill statutorily entitles these workers to a meal and rest period and an extra hour of pay per meal and rest period not provided by the employer – eliminating the need for these rights to be collectively bargained.

Comments

Need for this bill? According to the author, “Section 512, the provision on meal periods, does not state that it applies to public employees and the Appeals Court in *Johnson v. Arvin-Edison Water Storage District* ruled that it did not. Wage orders may apply to the public sector but the Appeals Court in *Gomez v. Regents of the University of Cal.* held that Wage Order 4 did not apply to the UC. SB 1334 will explicitly include public sector workers who provide direct patient care, or support direct patient care, in a hospital, clinic, or public health setting in Section 512 of the California Labor Code guaranteeing enforceable missed meal breaks and rest periods for UC Nurses and other public sector workers. Better rested nurses will provide higher quality patient care for Californians.”

Related/Prior Legislation

SB 698 (Leyva, Chapter 508, Statutes of 2019) required the University of California to pay their employees on a regular payday, as specified by the Labor Code. According to the Senate Labor, Public Employment and Retirement Committee analysis for SB 698, “This bill’s supporters believe that making UC subject to Labor Code provisions requiring timely payment of wages and providing fines and penalties for violations thereof will create pressure to ensure UC puts forward the necessary attention and resources to ensure UC pays university employees earned wages in a timely fashion. Toward this end, they seek to strip UC of the Labor Code exemption for public employers from certain relevant wage payment protections in the Labor Code.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Costs in the low millions of dollars annually to the University of California (UC) system. UC notes it has three bargaining agreements covering approximately 50,000 hospital employees, which all include bargained provisions for meal and rest periods. UC hospitals make a good-faith effort to provide alternative time for an employee to take a missed meal or rest break when patient emergencies arise, but an employee who ultimately misses the meal or rest is compensated for the time worked, not for a full hour as required by this bill.
- 2) Minor and absorbable costs to the Division of Labor Standards Enforcement (DLSE). DLSE cannot anticipate the extent to which public employers may violate this bill’s provisions or how many of those employers’ employees may

bring a claim to DLSE, but does not estimate significant increased workload to DLSE's claims or enforcement units.

SUPPORT: (Verified 8/26/22)

California Nurses Association/National Nurses United (source)
American Federation of State, County and Municipal Employees, AFL-CIO
California Alliance for Retired Americans
California Board of Registered Nursing
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Labor Federation, AFL-CIO
California School Employees Association
California Teamsters Public Affairs Council
Engineers and Scientists of California, IFPTE Local 20, AFL-CIO
SEIU California
Unite Here International Union, AFL-CIO
Utility Workers Union of America, AFL-CIO

OPPOSITION: (Verified 8/26/22)

None received

ARGUMENTS IN SUPPORT: According to the sponsors, the California Nurses Association/National Nurses United (CNA), “Even before the pandemic, nurses typically took few breaks during shifts and often faced greater workloads because of insufficient staffing. Shift lengths have increased over the years, with shifts of 12 hours or longer becoming ubiquitous in some settings. The use of overtime has also increased and continues to rise. In a recent national survey, 33% of nurses reported working extra shifts or overtime and 15% reported working on-call shifts within the past year. Working under such conditions is likely to cause fatigue—feeling very tired or exhausted, both physically and emotionally—which in turn contributes to poorer physical and mental health outcomes. Indeed, according to the National Institute for Occupational Safety and Health (NIOSH), shift work and long hours have been associated with sleep disturbances; obesity; musculoskeletal disorders and injury; negative immune system effects; chronic health problems such as cardiovascular disease, gastrointestinal disorders, and diabetes; and mood disturbances such as anxiety and depression. Demanding work schedules that don’t allow sufficient rest and recovery time contribute not only to fatigue and injury but also to moral injury. Moral injury among nurses has been linked to caring for sicker patients and having fewer staff to care for them. Such conditions contribute

to higher rates of intent to leave and job turnover, problems that have worsened during the COVID-19 pandemic.

“Hospital employees at UC and other public sector healthcare facilities deserve the same meal break and rest period enforceability that the private sector currently enjoys. The pandemic will continue for some time. Let us put in place laws that support our healthcare heroes so that they may continue to provide the lifesaving services we so desperately need.”

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
8/30/22 18:47:39

****** END ******

PROOF OF SERVICE

Case Name: *Stone et al. v. Alameda Health System*
Case No.: S279137

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On July 17, 2023, I served the following document(s):
**RESPONDENT'S MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF RYAN P. MCGINLEY-STEMPEL;
[PROPOSED] ORDER** to each party below *via TrueFiling*:

David Y. Imai
Law Offices of David Y. Imai
311 Bonita Drive
Aptos, CA 95003
davidimai@sbcglobal.net

*Attorneys for Appellants
Tamara Stone, et al.*

On July 17, 2023, I also served the **RESPONDENT'S
MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATION OF RYAN
P. MCGINLEY-STEMPEL; [PROPOSED] ORDER** on the
parties below *via U.S. Mail*:

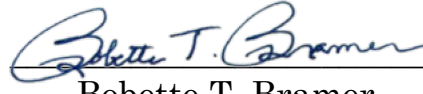
First District Court of Appeal
Division 5
350 McAllister Street
San Francisco, CA 94102

Court of Appeal

Hon. Noël Wise
Alameda County Superior
Court
1221 Oak Street, Floor 3
Oakland, CA 94612

*Judge of the Superior Court of
Alameda County*

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on July 17, 2023, at San Francisco, California.

A handwritten signature in blue ink, reading "Bobette T. Bramer", written over a horizontal line.

Bobette T. Bramer

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **STONE v. ALAMEDA HEALTH
SYSTEM**

Case Number: **S279137**

Lower Court Case Number: **A164021**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **rmcginleystempel@publiclawgroup.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Defendant and Respondent Alameda Health System's Opening Brief on the Merits
MOTION	Respondent's Motion for Judicial Notice; Memorandum of Points and Authorities; Declaration of Ryan P. McGinley-Stempel; [Proposed]Order

Service Recipients:

Person Served	Email Address	Type	Date / Time
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/17/2023

Date

/s/Ryan McGinley-Stempel

Signature

McGinley-Stempel, Ryan (296182)

Last Name, First Name (PNum)

Renne Public Law Group

Law Firm