

EXECUTIVE ORDER S-__-08
(DRAFT)

WHEREAS the constitutional deadline for enacting a state budget for Fiscal Year 2008-09 has passed without the enactment of a budget; and

WHEREAS in the absence of a budget, State government is constitutionally prohibited from making payments that are not compelled by either the State Constitution or federal law; and

WHEREAS until there is a state budget, the State has no authority to pay the following payments: (1) Vendors and Contractors for goods and services chargeable to Fiscal Year 2008-09; (2) Payroll for legislative staff, appointees, and exempt employees; (3) Payroll for other state employees beyond that required by federal labor law; (4) Highway User Taxes that are apportioned to the state, cities and counties for highway and road improvement projects; (5) Cal Grants to students in higher education; (6) Transfers to the Trial Courts; (7) Transfers to University of California, California State University, and Community Colleges; (8) Transportation Revolving Fund disbursements; (9) Non-revenue limit school payments; and (10) Payments for non-federally mandated social services programs such as Community Care Licensing, Adult Protective Services, State Only Foster Care; State Only Adoptions Assistance, and Cash Assistance Program for Immigrants; and (11) tax relief payments to low income seniors and disabled persons; and

WHEREAS on May 1, 2003, the California Supreme Court, in *White v. Davis*, issued a decision that, in conjunction with other pre-existing court orders, clarified that during a period that there is no state budget in place, federal labor laws require the State to pay its nonexempt FLSA employees either federal minimum wage or, for those employees that work overtime, their full salaries; and

WHEREAS it is not known when a budget will be adopted for Fiscal Year 2008-09; and

WHEREAS as a result of the late budget, there is a real and substantial risk that the State will have insufficient cash to pay for state expenditures; and

WHEREAS since June 2008, the unprecedented number and size of fires in California has created states of emergency that have required additional and substantial expenditures of cash to ensure that there are sufficient resources to effectively fight these fires and save lives and homes; and

WHEREAS it is critical that the State be able to meet any unforeseen emergency such as fire, flood or public health emergency and to continue to make timely payments on constitutionally and federally-mandated obligations and existing obligations to pay holders of state bonds.

WHEREAS due to the impending cash crisis and budget delay, the State may be forced to consider a Revenue Anticipation Warrant (RAW) at an exorbitant cost to the State, including hundreds of millions of dollars in credit enhancements, in order to make sure there is sufficient cash to pay for state expenditures; and

WHEREAS after the late adoption of a budget, there will be additional cash demands because all of the deferred payments that were not permitted to be made during the budget impasse will become due and payable; and

WHEREAS the late budget has resulted in loss of savings to the State in the amount of \$164 million for July, and failure to enact a budget in August will result in additional loss of savings in the amount of \$323 million.

WHEREAS as a result of the late budget, additional mitigation measures must be implemented to offset the loss of savings and to ensure that there is sufficient cash to make the State's payments; and

WHEREAS the State employs nearly 22,000 retired annuitants, permanent intermittent employees, and seasonal employees and the State hires new employees at the rate of approximately 1,700 per month; and

WHEREAS except for services and functions of state government deemed critical by this Order, additional mitigation measures need to be taken to immediately reduce expenditures and preserve cash, including the following: (1) halting all hiring, transfers and promotions of employees; (2) prohibition of overtime; (3) termination of the services of retired annuitants, permanent intermittent employees, seasonal employees, temporary help workers, student assistants and certain individuals working under contract; and (4) cessation of contracting for individuals to perform services.

NOW, THEREFORE, I, Arnold Schwarzenegger, Governor of the State of California, in accordance with the authority vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately:

IT IS ORDERED that the services and functions of state government directly related to the preservation and protection of human life and safety, including but not limited to emergency and disaster response activities and the provision of 24-hour medical care, shall be deemed critical and exempt from this Order.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action to cease and desist hiring of employees (except in instances in which there is a bona fide offer and acceptance prior to the effective date of this Order), transferring employees between State agencies and departments, promoting employees, and contracting for individuals to perform services.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and emergent situations to preserve and protect human life and safety, all State agencies and departments under my direct executive authority take immediate action to cease and desist authorization of all overtime for employees.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action to terminate the services of the following four categories of employees and individuals: (1) Retired Annuitants; (2) Permanent Intermittent Employees; (3) Seasonal Employees; (4) Temporary Help Workers; (5) Student Assistants; and (6) individuals providing services under contract, except for services provided pursuant to multi-year contracts for development of Information Technology projects.

IT IS FURTHER ORDERED that all Agency Secretaries and Department Directors shall take immediate action to implement this Order, and any other action that will reduce state expenditures.

IT IS FURTHER ORDERED that the Director of the Department of Finance shall establish an exemption process that Agency Secretaries shall utilize to determine if an exemption is justified based on critical services and functions, which may include either cost-reducing or revenue-producing services and functions that will help ensure that there is sufficient cash for the State to make its payments.

IT IS FURTHER ORDERED that Agency Secretaries and Cabinet-level Directors shall report their exemptions to the Cabinet Secretary and the Director of the Department of Finance within 24 hours of approving an exemption.

IT IS FURTHER ORDERED that the Director of the Department of Finance and Director of the Department of Personnel Administration shall work with the State Controller to develop and implement the necessary mechanisms, including but not limited to pay letters and computer programs, to comply with the California Supreme Court's *White v. Davis* opinion to pay federal minimum wage to those nonexempt FLSA employees who did not work any overtime.

IT IS FURTHER ORDERED that the necessary mechanisms to ensure compliance with the *White v. Davis* opinion must be in place to be effective for the August 2008 payroll.

IT IS HEREBY REQUESTED that during this budget impasse, the State Treasurer shall take all actions necessary to maintain the State's ability to pay its bond obligations, including payment of principal and interest with funds in the State Treasury, and shall take all actions that are necessary to protect the State's funds and investments.

IT IS FURTHER REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, constitutional officers, and legislative and judicial branches, assist in the implementation of this Order and implement similar mitigation measures that will help to preserve the State's cash supply during this budget impasse.

IT IS FURTHER ORDERED that this Order shall remain in effect until such time as both a Fiscal Year 2008-09 Budget is adopted and the Director of the Department of Finance confirms an adequate cash balance exists to meet the State's fiscal obligations.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this XXth day of July 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State