

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

273



FROM: Executive Office

SUBMITTAL DATE:
August 29, 2006

**SUBJECT: Response to 2005-2006 Grand Jury Report: Board of Supervisors
and Clerk of the Board**

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding the Board of Supervisors and Clerk of the Board.
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On July 11, 2006, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding the Board of Supervisors and Clerk of the Board.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

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Departmental Concurrence

GARY CHRISTMAS
Deputy County Executive Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE.

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Wilson and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone and Wilson
 Nays: None
 Absent: Ashley
 Date: August 29, 2006
 xc: E.O., Grand Jury, COB, Presiding Judge, Co. Clk. & Recorder

Nancy Romero
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.: 3.6 -- 7/11/06 | **District:** | **Agenda Number:** 3.5

Policy Policy
 Consent Consent
 Dep't Recomm.: Per Exec. Ofc.:

**Board of Supervisors and Clerk of the Board
Response to Findings and Recommendations**

FINDINGS:

Number 1:

Board Resolution 2005-475, Section 204, reads, "Any employee whose position is determined to be exempt from the Fair Labor Standards Act (FLSA) shall not be entitled to compensation for overtime of any type."

Response:

Respondent agrees with the finding.

Number 2:

There are exempt Board of Supervisors and Clerk of the Board employees who utilize compensatory time for vacation in lieu of annual leave, then "buy down"¹ this banked leave. Both County Counsel and Human Resources Director stated that this is an acceptable practice. The Grand Jury found this to be in direct violation of Board Resolution 2005-475.

Response:

Respondent disagrees partially with the finding.

County Counsel and the Human Resources Director agree that this is an acceptable practice. The Board of Supervisors' staff are allowed to accumulate (earn) a large amount of compensatory time because of their extensive and irregular hours that exceed the normal workday, therefore, some employees utilize compensatory time for vacation in lieu of annual leave, then "buy down" the banked annual leave.

The Clerk of the Boards' exempt employees seldom work extensive and/or irregular hours so they do not accumulate a large amount of compensatory time, but have been allowed to utilize compensatory time for personal appointments, etc., and also "buy down" the banked annual leave.

¹ The County of Riverside has an Annual Leave redemption policy, referred to as "buy down, for employees who are entitled to this benefit.

Number 3:

The Human Resources Director issued a memorandum effective October 13, 2005, addressing the following points:

- a. Cited Department of Labor regulation 29 C.F.R. 541.118(a), as a basis for allowing compensatory time for exempt employees, even though this regulation was superseded by C.F.R. 541.602(a) on August 23, 2004.
- b. "The Board of Supervisors' staffs are exempt employees paid a regular salary. However, due to the extensive and irregular hours worked by the staff that exceed the normal workday, they are also allowed to accumulate (earn) a large amount of compensatory time."
- c. "Each employee is required to contact the Clerk of the Board in the event their annual leave banks need to be charged (decreased). . . in excess of pay earned or banked 'compensatory time' during the pay period of the occurrence."
- d. "Each employee is required to informally track the compensatory time earned. Board members or their designee will periodically review and direct staff members to begin using their annual leave banks when the compensatory time is exhausted."

Response:

Respondent agrees with the finding.

Number 4:

Some departments require all employees to complete detailed time sheets signed under penalty of perjury. Other departments require no time reporting unless the employee takes annual leave during that period.

Response:

Respondent agrees with the finding.

Number 5:

There is no law or regulation specifically requiring exempt employees to report their time. Not having a consistent time reporting system creates a breakdown in internal controls causing an opportunity for, and appearance of, impropriety or fraud in the payroll process.

Response:

Respondent agrees with the finding.

Number 6:

During fiscal years, July 1, 2002 through June 30, 2005:

Four of the thirty-three Board of Supervisors' staff employees did not utilize any annual leave time.

Nine of the Board of Supervisors' staff employees did not utilize annual leave time for one or more years during this period.

Almost half of the thirty-three Board of Supervisors' staff employees, who worked part-time or a fraction of the year, did not use annual leave within reasonable limits of an average percentage, as determined by the County Auditor-Controller.

Response:

Respondent disagrees partially with the finding. Explain the partial disagreement:

Three (not four) of the thirty-three Board of Supervisors' staff employees did not utilize any annual leave time during the three fiscal years.

Eleven (not nine) of the Board of Supervisors' staff employees did not utilize annual leave time for one or more years during this period.

In reality there were five of the Board of Supervisors' staff employees, who worked part-time or a fraction of the year that did not use annual leave:

In FY 02/03 there were three part-time or fraction employees of five that used no annual leave.

In FY 03/04 there were zero part-time or fraction employees of seven that used no annual leave.

In FY 04/05 there were three part-time or fraction employees of six that used no annual leave.

Number 7:

An employee can "buy down" (receive compensation) for annual leave time earned in the amount of 80 hours in any one calendar year. Subject to budgetary limitations, the employee can also "buy down" an additional 80 hours in the same calendar year with supervisory approval. He/she is not permitted to "buy down" more than 160 hours in the same calendar year, nor permitted to submit more than two "buy down" requests in the same calendar year.

Response:

Respondent agrees with the finding.

Number 8:

Nine of the thirty-three Board of Supervisors' staff employees, including several who did not utilize any annual leave time, "bought down" annual leave in excess of 160 hours, thus violating Section 704 of Board Resolution 2005-475.

Response:

Respondent disagrees partially with the finding.

In reviewing the documentation three (not nine) "bought down" annual leave in excess of 160 hours.

Number 9:

Many of the "buy down" requests reviewed were incomplete, lacked supervisory approval and/or had hours not formally tracked. Further Grand Jury investigation revealed employees feel that it is not their responsibility to track their requests.

Response:

Respondent disagrees partially with the finding.

The Annual Leave Buy down forms referenced in the Grand Jury report contained all information necessary to process the form. The report may be referring to the area of the form in which the department payroll clerk is to enter the calculated value of the buy down. This area was once completed when buy downs were required to be sent to Central Payroll. However, since they have been entered in OASIS, the department retains the forms in-house and does not forward them to Payroll. The calculation is now optional. Nevertheless, the calculated amount is reflected on the buy down tracking report and is available for review.

*Only **one** of the 24 forms lacked supervisory approval.*

There is now a process in place where all buy downs are tracked showing who, how much, first or second request. This will avoid situations where someone exceeds the maximum amount of 160 hours per calendar year.

RECOMMENDATIONS:

Number 1:

Riverside County Board of Supervisors and Clerk of the Board employees adhere to Board Resolution 2005-475, Section 204, and the Fair Labor Standards Act (FLSA).

Response:

The recommendation has been implemented for the Clerk of the Board employees.

The recommendation will not be implemented for the Board of Supervisors' staff because it is not warranted or is not reasonable.

The Board of Supervisors' staffs are exempt employees paid a regular salary. However, due to the extensive and irregular hours worked by the staff that exceed the normal workday, they are also allowed to accumulate (earn) a large amount of compensatory time.

Each of the Board of Supervisors' staff are required to contact the Clerk of the Board in the event their annual leave banks need to be charged (decreased). . . in excess of pay earned or banked 'compensatory time' during the pay period of the occurrence.

Each employee is required to informally track the compensatory time earned. Board members or their designee will periodically review and direct staff members to begin using their annual leave banks when the compensatory time is exhausted.

Number 2:

County Executive Officer improve countywide control over the payroll process, to include a requirement that all exempt employees prepare, sign and submit regular biweekly time sheets to their supervisors under penalty of perjury.

Response:

The recommendation has been implemented (within the boundaries of FLSA regulations).

The Executive Office recognizes the importance of maintaining complete payroll records for all the county's exempt employees, and requires that all department heads have procedures in place that ensure this outcome. The County Executive Officer distributed a memo to county department heads on March 16, 2006, outlining county policy on the application of FLSA regulations to exempt employees.

As a part of its regular audits, the Auditor-Controller verifies that departments follow this policy.

Number 3:

The accuracy of time sheets submitted by all employees of the Board of Supervisors and the Clerk of the Board be certified by a supervisor or designee.

Response:

The recommendation has been implemented for the Clerk of the Board staff.

All of the Clerk of the Board staff are submitting certified time sheets certified by a supervisor or designee.

Two of the five Chief of Staff are reporting their staffs' time sheets and the rest contact the Clerk of the Board in the event their annual leave banks need to be charged (decreased). . . in excess of pay earned or banked 'compensatory time' during the pay period of the occurrence.

Number 4:

County Executive Officer enforce current County policy regarding the maximum allowable "buy down" provisions, and implement a tracking program to assure compliance. In the alternative, discontinue the annual leave "buy down" benefit.

Response:

The recommendation has been implemented.

The Executive Office has a procedure in place and requires a signed form before granting a buy down request. The procedure holds employees to the policy's limit, which is 160 hours per calendar year.

The Executive Office recognizes that maintaining these records on a calendar year basis could lead to some confusion, as most county records are maintained on a fiscal year basis. Furthermore, payroll managers of large departments might not notice when multiple requests from a given employee exceed the yearly total maximum. The Executive Office recently provided departments with a tool (a tracking report) that will help them to more closely monitor the cumulative totals of buy down hours requested by all their employees.

Number 5:

Auditor-Controller audit all County departments to determine if similar reporting inconsistencies exist in payroll recordkeeping.

Response:

The recommendation has not yet been implemented, but will be implemented in the future. Provide a time frame for implementation:

The Auditor-Controller will evaluate the internal controls over payroll recordkeeping while auditing County departments and will determine if similar reporting inconsistencies exist when internal controls are not in place to assure adequate recordkeeping. To be implemented during FY2006/07.