

No. C061011

COPY

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,
Plaintiffs and Appellants,

v.

JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,
Defendants and Respondents.

FILED

MAR - 2 2010

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT
BY _____ Deputy

On Appeal of an Order and Judgment
by the Sacramento County Superior Court,
Case No. 34-2008-80000126-CU-WM-GDS,
The Honorable Patrick Marlette

**APPELLANT STATE CONTROLLER'S
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF BRIAN METZKER**

Richard J. Chivaro, State Bar No. 124391

Chief Counsel

Ronald V. Placet, State Bar No. 155020

Senior Staff Counsel

Shawn D. Silva, State Bar No. 190019

Senior Staff Counsel

Ana Maria Garza, State Bar No. 200255

Staff Counsel

OFFICE OF THE STATE CONTROLLER

300 Capitol Mall, Suite 1850

Sacramento, CA 95814

Phone: (510) 445-6854

Fax: (510) 322-1220

Email: rchivaro@sco.ca.gov

Robin B. Johansen, State Bar No. 79084

Margaret R. Prinzing, State Bar No. 209482

REMCHO, JOHANSEN & PURCELL, LLP

201 Dolores Avenue

San Leandro, CA 94577

Phone: (510) 346-6200

Fax: (510) 346-6201

Email: mprinzing@rjp.com

Attorneys for Defendant and Appellant State Controller John Chiang

REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court 8.252 and California Evidence Code sections 452 and 459, defendant and appellant State Controller John Chiang requests that the Court take judicial notice of the following:

1. The Office of Legislative Counsel's Report on Assembly Bill No. 1464, dated June 27, 1955, and an Inter-Departmental Communication from former California Deputy Attorney General Paul M. Joseph to former California Governor Goodwin J. Knight, dated June 21, 1955, attached together as Exhibit 1 to the Declaration of Brian Metzker.
2. Enrolled Bill Reports and Request from the Department of Water Resources, dated September 5, 1974, and the Department of Finance, dated September 3, 1974, attached together as Exhibit 2 to the Declaration of Brian Metzker.
3. Letter and Bill Analysis for Assembly Bill No. 3436 from Department of Finance Deputy Director Tim Cole, dated April 30, 1974; Bill Analysis from the Legislative Analyst, dated April 30, 1974; and Bill Analysis from the Legislative Analyst, dated August 5, 1974, attached together as Exhibit 3 to the Declaration of Brian Metzker.
4. The Bill Analysis Worksheet for Assembly Bill No. 3436 from the Assembly Committee on Employment and Public Employees for hearing date April 23, 1974, attached as Exhibit 4 to the Declaration of Brian Metzker.

5. The Legislative Analysis for Assembly Bill No. 3436 from the Business and Transportation Agency, attached as Exhibit 5 to the Declaration of Brian Metzker.

6. Assembly Bill No. 3053, introduced by Assemblyman Berman on March 22, 1978; Assembly Bill No. 3053, amended in the California State Assembly on May 3, 1978; and Assembly Bill No. 3053, amended in Conference on August 31, 1978, attached together as Exhibit 6 to the Declaration of Brian Metzker.

7. Letter from the Coalition of Independent State Employee Organizations' Chairman Ken Brown, to Senator Ralph C. Dills, dated May 24, 1977; and Bill Analysis for Senate Bill No. 839 from the Agriculture and Services Agency, last dated August 12, 1977, attached together as Exhibit 7 to the Declaration of Brian Metzker.

8. The Assembly Office of Research's analysis of Senate Bill No. 839, as amended on September 6, 1977, attached as Exhibit 8 to the Declaration of Brian Metzker.

9. Excerpts from SEIU Local 1000's Tentative Agreement with the California Department of Personnel Administration, attached as Exhibit 9 to the Declaration of Brian Metzker.

Exhibits 1-8 are properly subject to judicial notice under California Evidence Code section 452, subdivisions (a) and (c), which permit the Court to take judicial notice of legislative history. (*See, e.g., Assem. v. P.U.C.* (1995) 12 Cal.4th 87, 97, fn. 6 [taking judicial notice of legislative enactments and proposed legislation].) Exhibits 1-8 constitute cognizable legislative history, permissible in a request for judicial notice. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-37.)

For Exhibit 6, the Court also may take judicial notice of different versions of a bill. (*See, e.g., Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5.) For Exhibit 4, the Court also may take judicial notice of legislative committees' analyses as evidence of legislative intent. (*See, e.g., Hutnick v. U.S. Fidelity and Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7.)

Exhibit 9 is properly subject to judicial notice under California Evidence Code section 452(c) as an official act of an executive department of the State and the record of a government agency. (*See, e.g., Pearson v. State Social Welfare Bd.* (1960) 54 Cal.2d 184, 210.)

Exhibits 1-9 are relevant because the Court's order dated January 29, 2010 directed the parties "to provide additional briefing" in response to the Court's questions. Specifically, the Court directed the parties to look to the legislative history of Government Code sections 19851 and 3516.5 to answer the Court's questions concerning legislative intent.

The Controller does not believe that any of these exhibits were presented to the Superior Court.

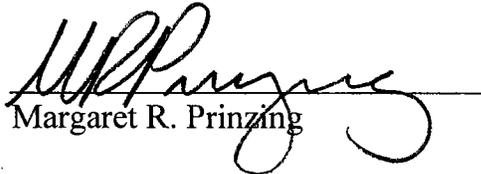
Based upon the above authorities, appellant requests that the Court take judicial notice of Exhibits 1 through 9 attached to the Declaration of Brian Metzker.

Dated: March 1, 2010

Respectfully submitted,

OFFICE OF THE STATE CONTROLLER

REMCHO, JOHANSEN & PURCELL, LLP

By: 
Margaret R. Prinzing

Attorneys for Defendant and Appellant
State Controller John Chiang

Defendant and Appellant State Controller's Supplemental Request for
Judicial Notice is hereby GRANTED.

DATED:

PRESIDING JUSTICE

(00104823-4)

DECLARATION OF BRIAN METZKER

I, Brian Metzker, declare under penalty of perjury as follows:

1. I am a paralegal at Remcho, Johansen & Purcell, LLP, attorneys for defendant and appellant State Controller John Chiang. I submit this declaration in support of the Controller's supplemental letter brief.
2. Attached as Exhibit 1 is a true and correct copy of the Office of Legislative Counsel's Report on Assembly Bill No. 1464, dated June 27, 1955, and an Inter-Departmental Communication from former California Deputy Attorney General Paul M. Joseph to former California Governor Goodwin J. Knight, dated June 21, 1955. I obtained these materials from Legislative Research Incorporated, a firm specializing in historical California legislative research.
3. Attached as Exhibit 2 is a true and correct copy of Enrolled Bill Reports from the Department of Water Resources, dated September 5, 1974 and the Department of Finance, dated September 3, 1974. I obtained these materials from Legislative Research Incorporated, a firm specializing in historical California legislative research.
4. Attached as Exhibit 3 is a true and correct copy of a Letter and Bill Analysis for Assembly Bill No. 3436 from Department of Finance Deputy Director Tim Cole, dated April 30, 1974; a Bill Analysis from the Legislative Analyst, dated April 30, 1974; and a Bill Analysis from the Legislative Analyst, dated August 5, 1974. I obtained these materials from Legislative Research Incorporated, a firm specializing in historical California legislative research.
5. Attached as Exhibit 4 is a true and correct copy of a Bill Analysis Worksheet for Assembly Bill No. 3436 from the Assembly

Committee on Employment and Public Employees for hearing date April 23, 1974. I obtained these materials from Legislative Research Incorporated, a firm specializing in historical California legislative research.

6. Attached as Exhibit 5 is a true and correct copy of a Legislative Analysis for Assembly Bill No. 3436 from the Business and Transportation Agency. I obtained these materials from Legislative Research Incorporated, a firm specializing in historical California legislative research.

7. Attached as Exhibit 6 is a true and correct copy of Assembly Bill No. 3053, introduced by Assemblyman Berman on March 22, 1978; Assembly Bill No. 3053, amended in the California State Assembly on May 3, 1978; and Assembly Bill No. 3053, amended in Conference on August 31, 1978. I obtained these materials from Legislative Research Incorporated, a firm specializing in historical California legislative research.

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9. Attached as Exhibit 8 is a true and correct copy of the Assembly Office of Research's analysis of Senate Bill No. 839, as amended on September 6, 1977. I obtained these materials from Legislative

Research Incorporated, a firm specializing in historical California legislative research.

10. Attached as Exhibit 9 is a true and correct copy of excerpts from SEIU Local 1000's Tentative Agreement with the California Department of Personnel Administration. I printed a copy of these materials on Friday, February 26, 2010 from the SEIU Local 1000 website at http://seiu1000.org/Admin/Assets/AssetContent/56c29e54-7567-49b2-8681-f686122a4f66/546bfa9e-94e2-495f-9d30-54cc81f55e47/13d9d879-617b-4b41-9076-b6542bd96ef4/1/DraftContractafterSBAC_2_24_09.pdf.

I declare under penalty of perjury that the foregoing is true and correct, and if called upon to do so I could and would so testify.

Executed this 1st day of March, 2010, at San Leandro, California.


BRIAN METZKER



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

The Core Legislative History of

California
Statutes of 1955, Chapter 1787
Assembly Bill 1464 – Fleury

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(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Authentication of the Records and Table of Contents

Core Legislative History Research Report Regarding:
California Statutes of 1955, Chapter 1787, Assembly Bill 1464 – Fleury

I, Lisa Hampton, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½” x 11” sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

Legislative Research, Incorporated was established in 1983 (formerly Legislative Research Institute), and is a firm which specializes in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Legislative Research, Incorporated has been cited by name as the source of records relied upon by the court in *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994).

- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed June 22, 2009, in Sacramento, California.

Lisa Hampton, Research Director



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Enrolled (Governor) Materials

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RALPH N. KLEPS
LEGISLATIVE COUNSEL
CHARLES W. JOHNSON
CHIEF DEPUTY
GREG C. MORRISON
J. D. STRAUSS
PRINCIPAL DEPUTIES
OWEN K. KUNS
DEPUTY IN CHARGE
LOS ANGELES OFFICE



STATE OF CALIFORNIA
Office of Legislative Counsel

3021 STATE CAPITOL, SACRAMENTO 14
311 STATE BUILDING, LOS ANGELES 12

June 27, 1955

LAWRENCE G. ALLYN
TERRY L. BAUM
HARRIETT R. BUEHLER
BARBARA C. CALAIS
VIRGINIA COKER
BERNARD CIESLA
ROBLEY E. GEORGE
DONALD L. GILMOUR
J. GOULD
WILLIAM D. HEERIN
GEORGE H. MURPHY
JOSEPH W. PAULUCCI
EDWARD K. PURCELL
RAY H. WHITAKER
DEPUTIES

REPORT ON ASSEMBLY BILL NO. 1464. FLEURY.

SUMMARY: Amends Secs. 18020 and 18021, adds Sec. 18021.5, Gov. C., re hours of employment and overtime in state service.

Recasts existing sections and deletes provisions establishing four work week groups and requiring overtime compensation for first three groups. Provides it is state policy that work week shall be 40 hours, but work weeks with different number of hours may be established to meet needs of state agencies. Provides it is policy to avoid necessity for overtime work whenever possible, but policy does not restrict extension of regular working hours on overtime basis in activities or agencies where necessary to carry on state business properly during manpower shortage.

Provides that State Personnel Board shall establish work week groups and assign classes or positions thereto. Groups may be of different lengths or of same length but with different provisions re overtime.

Requires board to establish extent to which and method by which ordered overtime or overtime in periods of critical emergency is compensated, and may provide for cash compensation equal to or less than regular rate. Rate may vary within class depending on conditions of work, or board may provide for compensating time off. Provisions so made shall be based on prac-

Report on Assembly Bill No. 1464 - p. 2

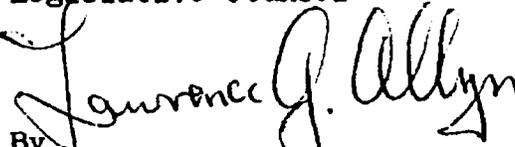
tices of private industry and other public
employment, needs of state service, and internal
relationships.

FORM: Approved.

TITLE: Approved.

CONSTITUTIONALITY: Approved.

Ralph N. Kleps
Legislative Counsel



By
Lawrence G. Allyn
Deputy

LGA/1a

STATE OF CALIFORNIA

Inter-Departmental Communication

To: Honorable Goodwin J. Knight
Governor of California
State Capitol
Sacramento, California

Date: June 21, 1955

File No.

Subject: Assembly Bill
No. 1464

From: Office of The Attorney General
Department of Justice

Paul M. Joseph
Deputy Attorney General

This bill amends Sections 18020 and 18021 of the Government Code and adds Section 18021.5 to that code, all dealing with days and hours of work of State employees. The amended sections are recast. Section 18020 now provides that the State Personnel Board shall classify civil service and exempt positions with a monthly or annual salary into four designated work week groups. This bill does away with the four classifications and gives broader work week classification authority to the Board with respect to those positions or classes for which the Board establishes a monthly or annual salary (i.e., principally civil service positions) to be exercised by Board rules. At present, Work Week Class 4, in which are placed various positions designated as unlimited as to hours or otherwise not requiring a set number of hours, requires "unusual conditions or hours of work" and some question has been raised as to the authority of the State Personnel Board to place higher paid managerial and journeymen employees in this work week group on the basis of higher salary alone, without any other "unusual" conditions. To obviate this, and probably other objections, these amendments are made by this bill.

The bill also sets forth a statement of State policy 1) that State workers shall be employed forty hours a week, except that to meet the varying needs of the different State agencies workweeks of a different number of hours may be established, 2) to avoid the payment of overtime, 3) except during a manpower shortage.

The new section 18021.5 incorporates parts of the existing section 18021 in changed form and gives the State Personnel Board authority to determine the extent to which, and the method

Honorable Goodwin J. Knight
(Assembly Bill No. 1464)

-2-

June 21, 1955

by which, 1) ordered overtime and 2) overtime in times of critical emergency are to be compensated; that the Board may provide 1) cash compensation equal to or less (nothing is said about greater) than the regular rate of pay, which rate may vary within the same class or 2) for compensating time off. The provisions made by the Board under this new Section 18021.5 "shall be based on the practices of private industry and other public employment, the needs of State service, and internal relationships".

Title satisfactory.

No legal objections.

Paul M. Joseph

PMJ:DMc



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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The Core Legislative History of

California
Statutes of 1974, Chapter 1368
Assembly Bill 3436 – Z'berg

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Authentication of the Records and Table of Contents

Core Legislative History Research Report Regarding: California Statutes of 1974, Chapter 1368, Assembly Bill 3436 – Z'berg

I, Lisa Hampton, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

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- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed June 23, 2009, in Sacramento, California.

Lisa Hampton, Research Director



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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GOVERNOR'S OFFICE

ENROLLED BILL REPORT REQUEST

AUG 28

Date * _____

Bill No. AB 3436

SEP 3

Date Due _____

*No concern
Bill signed*

* Please reply within five working days of above date unless a different due date is indicated.

- To:
- Agriculture and Services Agency
 - Business and Transportation Agency
 - Department of Finance
 - Resources Agency
 - Health and Welfare Agency
 - Education Unit
 - Legal Affairs
 - State Department of Education
 - _____

The attached bill has been received by this office for Governor Reagan's consideration.

An analysis of this bill, together with your recommendations will be appreciated.

LEGISLATIVE SECTION

ENROLLED BILL REPORT

RESOURCES	BILL NUMBER AB 3436
DEPARTMENT, BOARD OR COMMISSION Water Resources	AUTHOR Z'berg et al.

SUBJECT:

This bill establishes state policy that the workday of state employees shall be eight hours, but that workdays of a different number of hours may be established to meet varying needs of different state agencies. Authorizes the State Personnel Board to provide for payment of overtime in designated classes for work performed after the normal scheduled workday or normal scheduled workweek.

HISTORY, SPONSORSHIP, AND RELATED LEGISLATION:

This bill is sponsored by California State Employees' Association.

ANALYSIS:

A. Specific Findings:

The provisions of this bill embody those contained in AB 1093 of the 1973 Regular Session of the Legislature, which was vetoed by the Governor. The Department may benefit from more flexible scheduling which the bill would make possible. Payment of overtime for work scheduled in the interest of the State after the normal scheduled workday would also be possible.

B. Fiscal Analysis:

Could increase Department labor costs in the short run.

Passed Assembly 5/13/74	Passed Senate 8/23/74
Ayes 71	Ayes 37
Noes 0	Noes 0

Assembly Concurrence
Senate Amendments 8/26/74
Ayes 76
Noes 0

COMMENT: The Resources Agency does not feel strongly about this bill and defers to the Agriculture and Services Agency.

J.M. Carl
8-29-74

RECOMMENDATION:

Sign the bill.

DEPARTMENT HEAD <i>Senic</i>	DATE AUG 30 1974	AGENCY HEAD <i>John Moya</i>	DATE 9-3-74
--	----------------------------	--	-----------------------

ENROLLED BILL REPORT

Form BR-44 (Rev. 12-73 41)

AGENCY DEPARTMENT OF FINANCE	AUTHOR Z. Berg, Powers, and Greene	BILL NUMBER AB 3436	DATE LAST AMENDED 6-12-79
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SUBJECT:

This bill provides that it is state policy that the workday of state employees and employees of the California State University and Colleges shall be eight hours.

HISTORY, SPONSORSHIP, AND RELATED BILLS

Related bills: AB 1093 (1975); vetoed.

ANALYSIS

A. Specific Findings

The current definition of overtime is authorized time worked in excess of the regularly scheduled workweek. The workweek consists of 40 hours for most state employees. The State Personnel Board may provide for overtime cash compensation not to exceed 1½ times the regular rate of pay or compensating time off not to exceed 1½ hours time off for each overtime hour.

The 8-hour or 10-hour base for calculating overtime is the prevailing method in private enterprise and Federal Government.

This bill provides that it is state policy that the workday of state employees and employees of the California State University and Colleges is eight hours, except that workday of a different number of hours may be established to satisfy varying needs of different agencies. It also provides that the State Personnel Board may provide for payment of overtime in designated classes.

It specifically provides that the same workday policy be applied to the employees of the State University and Colleges and gives the Trustees the same overtime payment authorization.

The Personnel Board supports the measure because they feel that it would allow them to make provisions for such special work schedules as the 4-day, 40-hour week. Consequently, the Board feels the bill is not overly restrictive but will allow the flexibility to try new concepts in work scheduling, while providing for control by the Board.

(continued)

SUMMARY OF REASONS FOR SIGNATURE/VETO

Finance initially opposed this measure since clarification of the prior Labor Standards Act was needed. S.P.B. has assured us that there is no problem with PLSA now and that flexibility can be maintained.

RECOMMENDATION

RECOMMENDATION <i>Approved</i> <i>Signature</i>	DATE	DIRECTOR <i>Signature</i>	DATE 9.5.79
---	------	------------------------------	----------------

A. Specific Findings (continued)

The Department of Finance, however, is concerned with the reduction this measure might create in management flexibility now available to the individual manager and supervisor. It would authorize the State Personnel Board to require the payment of overtime on an 8-hour day time base rather than the 40-hour week time base as is now the practice.

According to the State Personnel Board, this measure does not conflict with Federal legislation, effective May 1, 1974, which changed the overtime requirements under the Fair Labor Standards Act, since that legislation deals with the payment of overtime on the 40-hour week time base.

B. Fiscal Effect

Current practice allows a department to eliminate excess hours worked by an employee through Compensating Time Off before the 40-hour limit has been exceeded. CTO time represents an equal cost to the State in terms of productivity.

State cost would increase to some extent. No data are available, however, as to the number of additional overtime hours for which employees would be paid as a result of this measure.

10/11/74 - 10/11/74



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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Author's File Materials

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DEPARTMENT OF FINANCE
SACRAMENTO

APR 30 1974

Honorable Edwin L. Z'berg
Member of the Assembly
State Capitol, Room 3132
Sacramento, California

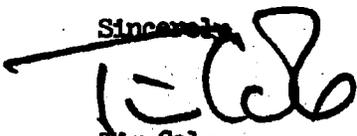
Dear Ed:

Our office has reviewed AB 3436, and on the basis of our analysis of available information, we regret that we must oppose your legislation.

Attached for your information is a copy of our Department's analysis of your bill. If you feel that we may have overlooked factors that may be important in evaluating your legislation, please do not hesitate to call. For your convenience, we have attempted to summarize our reasons for opposition at the bottom of our analysis.

As always, should you wish to discuss this matter, Verne Orr, Director of Finance, or I would be pleased to arrange a meeting with you.

Sincerely,



Tim Cole
Deputy Director

TC:mb

Attachment

cc: Honorable Willie L. Brown, Jr., Chairman
Assembly Ways and Means Committee

BILL ANALYSIS

Form BD-43 (Rev. 2-72)

DEPARTMENT FINANCE	AUTHOR Z'berg, Powers & Greene	BILL NUMBER AB 3436
SPONSORED BY	RELATED BILLS AB 1093(73) vetoed	DATE LAST AMENDED Original

BILL SUMMARY

This bill provides that it is state policy that the workday of State employees shall be 8 hours.

ANALYSIS

A. Specific Findings

The current definition of overtime is authorized time worked in excess of the regularly scheduled work week. The work week consists of forty hours for most state employees. The State Personnel Board may provide for overtime cash compensation not to exceed 1-1/2 times the regular rate of pay or compensating time off not to exceed 1-1/2 hours time off for each overtime hour.

The 8 hour or 10 hour base for calculating overtime is the prevailing method in private enterprise and Federal Government.

This bill provides that it is state policy that the workday of state employees is 8 hours, except that workdays of a different number of hours may be established to satisfy varying needs of different agencies.

AB 1093 of 1973, which made an identical proposal, was vetoed by the Governor.

B. Fiscal Analysis

The current practice allows a department to eliminate excess hours worked by an employee through Compensating Time Off before the 40 hour limit has been exceeded. CTO time represents an equal cost to the State in terms of productivity.

State cost would increase to some extent. No data are available, however, as to the number of additional overtime hours for which employees would be paid as a result of the measure.

Federal legislation, effective May 1, 1974, changed the overtime requirements under the Fair Labor Standards Act. As a result, the State's treatment of CTO, and the application to various job classifications will have to be reviewed.

SUMMARY OF OPPOSITION/SUPPORT

We are opposed to this bill because it will reduce management flexibility which is available under current law.

Until the impact of the new Federal requirements have been fully assessed, we are opposed to changes in existing State policy.

POSITION
OPPOSE

POSITION
OPPOSE

Legislative Analyst
April 30, 1974

ANALYSIS OF ASSEMBLY BILL NO. 3436 (Z'berg)

1973-74 Session

AB 3436

Fiscal Effect:

Cost: Indeterminable additional state cost.

Revenue: None.

Analysis:

Under existing law, the regular workweek of state employees is 40 hours. Many state employees, including clerical, trades and certain technical and administrative employees, are eligible to be compensated for working overtime by receiving (1) payment at the rate of time-and-a half or (2) compensating time off. The type of overtime compensation allowed (payment or time off) is at the discretion of the appointing power. "Overtime" is considered as the time an employee works in excess of the regular 40 hour week. If the employee works on a weekend or for more than eight hours in a day, overtime compensation is received only for time worked in excess of 40 hours during that week.

According to the State Personnel Board, state civil service employees received \$20 million in cash payments for overtime worked during the 1971-72 fiscal year.

This bill provides that it is state policy that the workday of state employees is 8 hours, except that workdays of a different number of hours may be established to satisfy varying needs of different agencies. The State Personnel Board is authorized to provide for the payment of overtime for designated classes for working longer than the normal workday or normal workweek.

State cost would increase to some extent. No data are available, however, as to the number of additional overtime hours for which employees would be paid as a result of the measure.

AB 3436 (Z'berg)
Govt. Code

Comm. Consultant A
6/3/74 B

Overtime in State Service

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3
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HISTORY

Source: California State Employees'
Association

Prior Legislation: AB 1093 Z'berg, 1973
Vetoed

PURPOSE

Provides that overtime be paid when a State Employee works in excess of his normal workday or in excess of his normal workweek.

ANALYSIS

1. This measure would require the payment of overtime to State Employees who worked in excess of the "normal" workweek or workday (e.g. overtime after 8 or after 40).

2. Currently, the State Personnel Board is authorized to pay overtime only when an employee works in excess of 40 hours. An employee may be required to work a workday in excess of "normal" but is not entitled to overtime if the employees' weekly total is less than or equal to "normal".

COMMENT

1. Prevailing practice in the private and public sectors provides for the payment of overtime on the basis of a daily and weekly work period.

(More)

AB 3436 (Z'berg)
Page Two

A
B

2. The State Personnel Board has taken a
support position on this measure changing their
position of last year on AB 1093.

3
4
3
6

ANALYSIS OF ASSEMBLY BILL NO. 3436 (Z'berg)
As Amended in Senate June 12, 1974
1973-74 Session

Fiscal Effect:

Cost: Indeterminable additional state cost.

Revenue: None.

Analysis:

Under existing law, the regular workweek of state civil service employees is 40 hours. Many state employees, including clerical, trades and certain technical and administrative employees, are eligible to be compensated for working overtime by receiving (1) payment at the rate of time-and-a half or (2) compensating time off. The type of overtime compensation allowed (payment or time off) is at the discretion of the appointing power. "Overtime" is considered as the time an employee works in excess of the regular 40 hour week. If the employee works on a weekend or for more than eight hours in a day, overtime compensation is received only for time worked in excess of 40 hours during that week.

According to the State Personnel Board, state civil service employees received \$20 million in cash payments for overtime worked during the 1971-72 fiscal year.

This bill provides that it is state policy that the workday of state civil service employees is eight hours, except that workdays of a different number of hours may be established to satisfy varying needs of different agencies. The State Personnel Board is authorized to provide for the payment of overtime for designated classes for working longer than the normal workday or normal workweek.

The bill also makes the workday and workweek policy which applies to civil service employees applicable to employees of the California State University and Colleges

AB 3436 (Am. 6/12/74)

AB 3436 (cont.)

and authorizes the CSUC trustees to provide for payment of overtime for designated classes for working longer than the normal workday or normal workweek.

State cost would increase to some extent. No data are available, however, as to the number of additional overtime hours for which employees would be paid as a result of the measure.

83



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Assembly Policy Committee Materials

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ASSEMBLY COMMITTEE ON EMPLOYMENT AND PUBLIC EMPLOYEES

MARCH K. FONG, CHAIRMAN

Bert Butler
Secretary, ~~James Long~~
Room 4167 - 5-1616

BILL ANALYSIS WORK SHEET

AUTHOR: 3'bug BILL NO. 9B3436 Requested Hearing Date: _____

Please complete this form and return it to the Committee on Employment and Public Employees as soon as possible. The Secretary will call to verify the hearing date and we will honor your choice of hearing date if it is at all possible.

1. Origin of the bill:

- (a) What is the source? (What person, organization or government entity, if any, requests introduction.)

CSBA

- (b) Has a similar bill been before either this or a previous session of the Legislature? If so, please identify the session and bill number.

Not yet - not yet

- (c) Has there been an interim committee report on the bill? If so, please identify the report.

2. Problem or deficiency in the present law which the bill seeks to remedy:

*Give time as 1/2 when over the
worked - as in custom in productivity.*

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by the committee staff.

4. Are you aware of any opposition to this legislation? By whom?

probably since last year

5. Who supports this legislation?

CSBA

ASSEMBLY COMMITTEE ON EMPLOYMENT AND PUBLIC EMPLOYEES

MARCH K. FONG, CHAIRMAN

BILL ANALYSIS

AB 3436 - Z'BERG

- SUBJECT: Overtime in State Service in excess of normal workday
- SPONSOR: California State Employees' Association
- SUMMARY: AB 3436 provides that overtime be paid when a state employee works in excess of his normal workday or in excess of his normal workweek. Flexibility is given the SPB to provide for different overtime policy for different classes of employees.
- BACKGROUND: Currently the State Personnel Board is authorized to pay overtime only when an employee works in excess of the normal work week of 40 hours. An employee may be required to work a workday in excess of "normal" but is not entitled to overtime if the employee's weekly total is less than or equal to "normal."
AB 3436 is identical to AB 1093 of the 1973 Legislative Session which passed both houses of the Legislature unanimously and was vetoed by the Governor.
- COMMENT:
- The State Personnel Board recognizes that prevailing practice in the private and public sectors provides for the payment of overtime on the basis of a daily and weekly work period.
 - Proponents argue that employees who are required to work overtime on a daily basis but who work only a "normal" work week as a result of compensating time-off suffer from disruption of car pools and of family life with no premium compensation. To provide overtime on a daily basis would discourage the use of overtime consonant with state policy and compensate a state employee for the disruption to his schedule.
 - A hearing conducted by the SPB in 1971 indicated that most state departments were in favor of the concept of AB 3436.

• Unless otherwise specified by SPB resolutions pursuant to Board rules 132 and 133, the rate of cash compensation paid for compensable overtime and compensating time off shall be time and one-half the hourly equivalent of the employee's monthly salary. Currently under SPB rules not all employees are eligible for overtime, classes exempt from overtime benefits include some of those supervisory and professional in nature.

FISCAL IMPACT:

No firm estimate is available, however the SPB believes that the costs will be negligible as the result of AB 3436.

POLICY/
CONSIDERATION:

Congress has passed S 2747, the Fair Labor Standards Act of 1974. This measure, which was signed by the President on April 8, 1974, included state and local employees. It is unclear what potential effect the Federal legislation may have on state employees concerning 40 hour week and minimum wage. Is AB 3436 consistent with the Fair Labor Standards Act of 1974?

SUPPORT/
OPPOSITION:

AB 3436 is supported by the State Personnel Board and the California State Employees' Association.

CLC

Ann Reed

Hearing Date:
4/23/74



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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Assembly Republican Caucus Materials

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DEPARTMENT	AUTHOR	NUMBER
Motor Vehicles	Z' Berg	AB 3436
SUBJECT		AS AMENDED
Definition of Workweek and Overtime		Original

SUMMARY

This bill would change the policy of determining when overtime is earned.

ANALYSIS

A. Detailed

Existing law is silent on the subject; however, the State Personnel Board (Rule 130) defines overtime as "authorized time worked in excess of the regularly scheduled workweek". When a pay period ends in the middle of a week, then any overtime an employee may have worked in the first half of the week is not counted until the full 40-hour week is completed. This carries the overtime into the next pay period and the employee does not get paid until the end of that next pay period, a full month later.

This bill would allow the State Personnel Board to extend the definition of overtime to include time worked in excess of the normal 8-hour workday, as well as those exceeding the scheduled workweek.

B. Cost

Presently, hourly rate employees are paid at the premium rate only when they exceed 40 hours in a workweek. Since hourly employees frequently do not work a full 40-hour week, their daily overtime hours are paid only at the straight time rate. If all hours over 8 become overtime, the cost for hourly employees will increase. This expense would be offset to some degree by a savings in administrative cost. It would be impossible to predict the exact amount at this time.

LEGISLATIVE HISTORY

Identical to AB 1093 (73 RS) vetoed by the Governor 1 Oct 73.

REASON(S) FOR RECOMMENDED POSITION

Insofar as this Department is concerned a position of NEUTRAL is recommended because:

1. A savings in administrative costs would be realized because of a simplified method of records keeping which would be permitted by this proposed change.
2. This bill would facilitate auditing and timekeeping in that all hours over 8 could be counted without regard for 40-hour workweek consideration.
3. The bill also would facilitate and expedite overtime payments by paying overtime on a current pay period basis.



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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The Core Legislative History of

California
Statutes of 1978, Chapter 776
Assembly Bill 3053 – Berman

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Authentication of the Records and Table of Contents

Core Legislative History Research Report Regarding: California Statutes of 1978, Chapter 776, Assembly Bill 3053 – Berman

I, Lisa Hampton, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

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- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed February 8, 2010, in Sacramento, California.

Lisa Hampton, Research Director



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1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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General Enactment History

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ASSEMBLY BILL

No. 3053

Introduced by Assemblyman Berman

March 22, 1978

REFERRED TO COMMITTEE ON PUBLIC EMPLOYEES AND RETIREMENT

An act to amend Sections 3517.6, 19100, and 19120 of, and to add Sections 19100.5 and 19120.5 to, the Government Code, relating to state employment relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3053, as introduced, Berman (P.E. & Ret.). State employment relations.

Existing provisions of the State Employer-Employee Relations Act provide that in any case where specified provisions of the law relating to state civil service are in conflict with the provisions of a memorandum of understanding entered into pursuant to the act, the memorandum of understanding shall be controlling without further legislative action.

This bill would delete from those provisions specified to be superseded by the memorandum of understanding provisions of the State Civil Service Act relating to limited-term employees, the authority of appointing powers to require an employee to submit to a medical examination, and the temporary assignment or loan of employees.

In addition, it would make certain provisions of the State Civil Service Act relating to intermittent, irregular time base, and emergency employees subject to the provisions of the State Employer-Employee Relations Act which provide that the memorandum of understanding shall supersede.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3517.6 of the Government Code
2 is amended to read:
3 3517.6. In any case where the provisions of
4 subdivision (h) of Section 3513, or ~~Sections~~ Section 1156,
5 1156.1, 1156.2, 13920, 13924, 14876, 18001, 18005, 18005.5,
6 18006, 18007, 18020, 18021, 18021.5, 18021.6, 18021.7, 18022,
7 18023, 18024, 18025, 18025.1, 18026, 18050, 18051, 18051.5,
8 18100, 18100.5, 18101, 18101.5, 18102, 18102.5, 18103, 18105,
9 18120, 18121, 18122, 18122.1, 18123, 18124, 18125, 18126,
10 18127, 18128, 18129, 18135, 18135.5, 18136, 18137, 18137.5,
11 18138, 18139, 18140, 18141, 18142, 18300, 18301, 18302,
12 18310, 18705, 18714, 18730, 18731, 18732, 18850, 18850.1,
13 18851, 18852, 18853, 18853.5, 18854, 18855, 18856, 18857,
14 18859, 18860, 18861, 19080.5, ~~19083~~, 19100, 19120, 19251,
15 19252, ~~19253.5~~, 19261, 19300, 19301, 19302, 19303, 19304,
16 19330, 19330.5, 19331, 19332, 19333, 19334, 19335, 19360,
17 19360.5, 19361, 19362, ~~19369~~, 19450, 19451, 19452, 19455,
18 19460, 19461, 19462, 19463, 19464, 19465, 19502, 19503,
19 19532, 19533, 19535, 19536, 19536.5, 19537, 19538, 19540,
20 19541, 19555, 19556, 20750.11, 21400, 21402, 21404, 21405,
21 22754, 22790, 22813, 22814, 22815, 22816, 22825, or 22825.1
22 are in conflict with the provisions of a memorandum of
23 understanding, the memorandum of understanding shall
24 be controlling without further legislative action. If any
25 provision of the memorandum of understanding requires
26 the expenditure of funds, those provisions of the
27 memorandum of understanding shall not become
28 effective unless approved by the Legislature in the
29 annual Budget Act. If any provision of the memorandum
30 of understanding requires legislative action to permit its
31 implementation by amendment of any section not cited
32 above, those provisions of the memorandum of
33 understanding shall not become effective unless
34 approved by the Legislature.
35 SEC. 2. Section 19100 of the Government Code is
36 amended to read:

1 19100. Whenever the appointing power requires the
2 appointment of a person to a position requiring the
3 performance of work on an intermittent or irregular time
4 basis, the request for certification shall state the probable
5 amount of working time to be required in the position.
6 For persons employed on an intermittent or irregular
7 time base, the status, tenure, vacation and sick leave
8 privileges, salary, and other conditions of employment or
9 methods of separation governed by this part shall be
10 subject to board rule.

11 *If the provisions of this section are in conflict with the*
12 *provisions of a memorandum of understanding reached*
13 *pursuant to Section 3517.5, the memorandum of*
14 *understanding shall be controlling without further*
15 *legislative action.*

16 SEC. 3. Section 19100.5 is added to the Government
17 Code, to read:

18 19100.5. Whenever the appointing power requires
19 the appointment of a person to a position requiring the
20 performance of work on an intermittent or irregular time
21 basis, the request for certification shall state the probable
22 amount of working time to be required in the position.
23 For persons employed on an intermittent or irregular
24 time base, the status, tenure, and methods of separation
25 governed by this part shall be subject to board rule.

26 SEC. 4. Section 19120 of the Government Code is
27 amended to read:

28 19120. The appointing power, to prevent the
29 stoppage of public business when an actual emergency
30 arises, or because the work will be completed within 30
31 working days, may make emergency appointments for a
32 period not to exceed 30 working days without utilizing
33 persons on employment lists and, if necessary, without
34 regard to existing classes. The method of selection and
35 the qualification standards for an emergency employee
36 shall be determined by the appointing power. The
37 frequency of appointment and length of employment of
38 an individual under emergency appointments shall be
39 restricted by the board by rule so as to prevent the use
40 of emergency appointments to circumvent employment

1 lists.

2 Service under emergency appointment shall be
3 credited for purposes of ~~layoff~~, vacation, sick leave and
4 salary adjustment only if and as provided by board rule.

5 *If the provisions of this section are in conflict with the*
6 *provisions of a memorandum of understanding reached*
7 *pursuant to Section 3517.5, the memorandum of*
8 *understanding shall be controlling without further*
9 *legislative action.*

10 SEC. 5. Section 19120.5 is added to the Government
11 Code, to read:

12 19120.5. The appointing power, to prevent the
13 stoppage of public business when an actual emergency
14 arises, or because the work will be completed within 30
15 working days, may make emergency appointments
16 without utilizing persons on employment lists and, if
17 necessary, without regard to existing classes. The method
18 of selection and the qualification standards for an
19 emergency employee shall be determined by the
20 appointing power. The frequency of appointment and
21 length of employment of an individual under emergency
22 appointments shall be restricted by the board by rule so
23 as to prevent the use of emergency appointments to
24 circumvent employment lists.

25 Service under emergency appointment shall be
26 credited for purposes of layoff only if and as provided by
27 board rule.

O

AMENDED IN ASSEMBLY MAY 3, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 3053

Introduced by Assemblyman Berman

March 22, 1978

REFERRED TO COMMITTEE ON PUBLIC EMPLOYEES AND RETIREMENT

An act to amend Sections ~~3517.6, 19100, and 19120~~ 1156, 1156.1, 1156.2, 3513, 3517.6, 13920, 13924, 14876, 18001, 18005, 18005.5, 18006, 18007, 18020, 18021, 18021.5, 18021.6, 18021.7, 18022, 18023, 18024, 18025, 18025.1, 18026, 18050, 18051, 18051.5, 18100, 18100.5, 18101, 18101.5, 18102, 18102.5, 18103, 18105, 18120, 18121, 18122, 18122.1, 18123, 18124, 18125, 18126, 18127, 18128, 18129, 18135, 18135.5, 18136, 18137, 18137.5, 18138, 18139, 18140, 18141, 18142, 18300, 18301, 18302, 18310, 18705, 18714, 18730, 18731, 18732, 18850, 18850.1, 18851, 18852, 18853, 18853.5, 18854, 18855, 18856, 18857, 18859, 18860, 18861, 19080.5, 19100, 19120, 19251, 19252, 19261, 19300, 19301, 19302, 19303, 19304, 19330, 19330.5, 19331, 19332, 19333, 19334, 19335, 19360, 19360.5, 19361, 19362, 19450, 19451, 19452, 19455, 19460, 19461, 19462, 19463, 19464, 19465, 19502, 19503, 19532, 19533, 19535, 19536, 19536.5, 19537, 19538, 19540, 19541, 19555, 19556, 20750.11, 21400, 21402, 21404, 21405, 22754, 22790, 22813, 22814, 22815, 22816, 22825, and 22825.1 of, and to add Sections 19100.5 and 19120.5 to, the Government Code, relating to state employment relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3053, as amended, Berman (P.E. & Ret.). State employment relations.

Existing provisions of the State Employer-Employee Relations Act provide that in any case where specified provisions of the law relating to state civil service are in conflict with the provisions of a memorandum of understanding entered into pursuant to the act, the memorandum of understanding shall be controlling without further legislative action, *except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.*

This bill would delete from those provisions specified to be superseded by the memorandum of understanding provisions of the State Civil Service Act relating to limited-term employees, the authority of appointing powers to require an employee to submit to a medical examination, ~~and~~ the temporary assignment or loan of employees.

~~In addition, it would make certain provisions of the State Civil Service Act relating to employees, the appointment of a person to a position requiring work on an intermittent, irregular time base, basis, and the appointment of emergency employees subject to the provisions of the State Employer/Employee Relations Act which provide that the memorandum of understanding shall supersede.~~

This bill would also make technical changes in related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 1156 of the Government Code is*
- 2 *amended to read:*
- 3 1156. State officers and employees may authorize
- 4 deductions to be made from their salaries or wages for the
- 5 payment of:
- 6 (a) Premiums on any health benefits plan provided for
- 7 under Part 5 (commencing with Section 22751) of

1 The employer's contribution for each employee or
2 annuitant shall be the amount necessary to pay the cost
3 of his enrollment, including the enrollment of his family
4 members, in a health benefits plan or plans, or, if less,
5 sixteen dollars (\$16) per month. There shall be only one
6 such contribution with respect to all annuitants receiving
7 allowances as survivors of the same employee or
8 annuitant. The employer's contribution to the health
9 benefits plan or plans to each employee shall commence
10 on the first day of the calendar month next following the
11 completion of six months of employment by the
12 employer; provided, the employment has not been
13 interrupted by a break of more than one month. An
14 absence for military service shall not be considered a
15 break.

16 The contribution of each employee and annuitant shall
17 be the total cost per month of the benefit coverage
18 afforded him under the plan or plans less the portion
19 thereof to be contributed by the employer.

20 *(b) If the provisions of this section are in conflict with*
21 *the provisions of a memorandum of understanding*
22 *reached pursuant to Section 3517.5, the memorandum of*
23 *understanding shall be controlling without further*
24 *legislative action, except that if such provisions of a*
25 *memorandum of understanding require the expenditure*
26 *of funds, the provisions shall not become effective unless*
27 *approved by the Legislature in the annual Budget Act.*

28 *SEC. 138. Section 22825.1 of the Government Code is*
29 *amended to read:*

30 22825.1. *(a) Notwithstanding any other provision of*
31 *this article, the employer's contribution, with respect to*
32 *each state officer and employee or an annuitant who was*
33 *in such employment or office including an academic*
34 *position with a California state university or college or is*
35 *a survivor of such person, shall be the amount necessary*
36 *to pay the cost of his enrollment, including the*
37 *enrollment of his family members, in a health benefits*
38 *plan or plans or, if less, thirty-two dollars (\$32) for basic*
39 *and related major medical plans with respect to*
40 *employees or annuitants enrolled for self alone or for an*

1 employee or annuitant so enrolled for self and one family
2 member, fifty-three dollars (\$53) or, for an employee or
3 annuitant so enrolled for self and two or more family
4 members, sixty-six dollars (\$66). The annual total
5 compensation report by the State Personnel Board shall
6 recommend adjustments of the dollar amounts herein
7 based on the principle that the employer's contribution
8 for each employee or annuitant shall be an amount equal
9 to 85 percent of the weighted average of the premiums
10 required for basic and related major medical plans with
11 respect to employees or annuitants enrolled for self alone
12 plus 60 percent of the weighted average of the additional
13 premiums required for enrollment of family members in
14 basic and major medical plans as applicable for the level
15 of benefits offered by (1) the statewide service plan
16 contracted by the state; (2) the statewide indemnity plan
17 contracted by the state; (3) the two prepaid
18 comprehensive medical-hospital plans with the largest
19 number of enrollments contracted by the state, as
20 determined by the board, whichever is less. There shall
21 be only one such contribution with respect to all
22 annuitants receiving allowances as survivors of the same
23 employee or annuitant.

24 The employer's contribution under this section for
25 each employee shall commence on the effective date of
26 his enrollment.

27 The contribution of each employee and annuitant shall
28 be the total cost per month of the benefit coverage
29 afforded him under the plan or plans less the portion
30 thereof to be contributed by the employer.

31 *(b) If the provisions of this section are in conflict with*
32 *the provisions of a memorandum of understanding*
33 *reached pursuant to Section 3517.5, the memorandum of*
34 *understanding shall be controlling without further*
35 *legislative action, except that if such provisions of a*
36 *memorandum of understanding require the expenditure*
37 *of funds, the provisions shall not become effective unless*
38 *approved by the Legislature in the annual Budget Act.*

AMENDED IN CONFERENCE
ASSEMBLY AUGUST 31, 1978; SENATE AUGUST 31, 1978

AMENDED IN SENATE AUGUST 16, 1978

AMENDED IN ASSEMBLY JUNE 19, 1978

AMENDED IN ASSEMBLY MAY 3, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL

No. 3053

Introduced by Assemblyman Berman

March 22, 1978

REFERRED TO COMMITTEE ON PUBLIC EMPLOYEES AND RETIREMENT

An act to amend Sections ~~1156~~, ~~1156.1~~, ~~1156.2~~, 3513, 3515, 3515.6, 3516.5, 3517.6, 3520.5, 3521, 3523, 3526, 3541, 13920, 13924, 14876, 18001, 18005, 18005.5, 18006, 18007, 18020, 18021, 18021.5, 18021.6, 18021.7, 18022, 18023, 18024, 18025, 18025.1, 18026, 18050, 18051, 18051.5, 18100, 18100.5, 18101, 18101.5, 18102, 18102.5, 18103, 18105, 18120, 18121, 18122, 18122.1, 18123, 18124, 18125, 18126, 18127, 18128, 18129, 18135, 18135.5, 18136, 18137, 18137.5, 18138, 18139, 18140, 18141, 18142, 18300, 18301, 18302, 18310, 18705, 18714, 18730, 18731, 18732, 18850, 18850.1, 18851, 18852, 18853, 18853.5, 18854, 18855, 18856, 18857, 18859, 18860, 18861, 19080.5, 19100, 19120, 19251, 19252, 19261, 19300, 19301, 19302, 19303, 19304, 19330, 19330.5, 19331, 19332, 19333, 19334, 19335, 19360, 19360.5, 19361, 19362, 19450, 19451, 19452, 19455, 19460, 19461, 19462, 19463, 19464, 19465, 19502, 19503, 19532, 19533, 19535, 19536, 19536.5, 19537, 19538, 19540, 19541, 19555, 19556, 20750.11, 21400, 21402, 21404, 21405, 22754, 22790, 22813, 22814, 22815, 22816, 22825, and 22825.1 of, and to add Sections 19100.5 and 19120.5 to, the Government Code,

relating to state employment relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 3053, as amended, Berman (P.E. & Ret.). State employment relations.

Existing provisions of the State Employer-Employee Relations Act (*SEERA*) provide that in any case where specified provisions of the law relating to state civil service are in conflict with the provisions of a memorandum of understanding entered into pursuant to the act, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would delete from those provisions specified to be superseded by the memorandum of understanding provisions *relating to state officers and employees authorizing deductions from their salaries and wages for the payment of specified items, and provisions of the State Civil Service Act relating to limited-term employees, layoffs and demotions, the authority of appointing powers to require an employee to submit to a medical examination, the temporary assignment or loan of employees, the appointment of a person to a position requiring work on an intermittent, irregular time basis, and the appointment of emergency employees.* The bill would also provide that in cases where specified provisions relating to layoffs and demotions are in conflict with the memorandum of understanding, the memorandum is controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles, in which case the statutory provisions would prevail until the memorandum is renegotiated to resolve the inconsistency.

Existing law provides that nonclerical employees of the State Personnel Board, except managerial and confidential employees, and conciliators employed by the State Conciliation Service are covered by the ~~State Employer/Employee Relations Act (SEERA)~~ *SEERA* for purposes of employer-employee relations with the state.

This bill would remove nonclerical employees of the State

Personnel Board engaged in technical or analytical personnel functions and such conciliators from coverage under the SEERA, and would instead provide that such employees are covered by other specified provisions governing employer-employee relations between the state and any person employed by the state, except those elected, appointed by the Governor, or subject to SEERA.

Existing law specifically excludes employees regularly working outside of the state and employees of the California Maritime Academy from being state employees for purposes of the SEERA.

This bill would delete the specific exclusion for such employees from the SEERA.

Existing law provides for a Public Employment Relations Board (PERB) of three members with specified duties, powers, and functions.

This bill would require the Governor to appoint one legal advisor for each board member, upon the recommendation of the board member, who would serve at the pleasure of the recommending board member.

Existing law requires the state to grant exclusive recognition to employee organizations formally recognized pursuant to rules established by the PERB.

This bill would instead require the state to grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the PERB.

Existing law requires that any reports or information relating to establishing and adjusting salary ranges for the state civil service issued by the State Personnel Board be given in confidence to the parties meeting and conferring.

This bill would instead require the board to submit an annual report to the parties meeting and conferring and to the Legislature containing the board's findings relative to the salaries of employees in comparable occupations in private industry and other governmental agencies.

Existing law requires the state, its agencies, departments, commissions, or boards to give reasonable written notice to each recognized employee organization affected by any proposed law, rule, resolution, or regulation directly relating to matters within the scope of representation, and to give such

organizations the opportunity to meet and confer concerning such proposal.

This bill would instead require such notice to be given by the state employer, and would define the term "state employer", for purposes of bargaining or meeting and conferring in good faith, to mean the Governor or his designated representatives.

This bill would also make technical changes in related provisions.

This bill would incorporate additional changes in Sections ~~1156.2, 3513, 3517.6~~, 3526, 18120, 18128, 18135, 18142, ~~18850~~, 21404, 22754, and 22825.1 of the Government Code proposed by Assembly Bills Nos. ~~1091, 3187, 3114~~, 3136, 2595, 2468, and 1605, and Senate Bill No. 1943, to be effective only if such bill and this bill are both chaptered and become effective on or before January 1, 1979, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** Section 1156 of the Government Code is
 2 amended to read:
 3 **1156.** State officers and employees may authorize
 4 deductions to be made from their salaries or wages for the
 5 payment of:
 6 (a) Premiums on any health benefits plan provided for
 7 under Part 5 (commencing with Section 22751) of
 8 Division 5 of Title 2 of this code.
 9 (b) Premiums on National Service Life Insurance or
 10 United State Government Converted Insurance.
 11 (c) Dues in any bona fide association, other than an
 12 employee organization as defined in subdivision (a) of
 13 Section 3513, if the association, or the unit thereof, is
 14 comprised principally of employees and former
 15 employees of agencies of the State of California.
 16 (d) Shares or obligations to any regularly chartered
 17 credit union.
 18 (e) Recurrent fees or charges payable to a state
 19 agency under a collection plan approved by the Director

1 refuse to join or participate in the activities of employee
2 organizations, except that nothing shall preclude the
3 parties from agreeing to a maintenance of membership
4 provision, as defined in subdivision (h) of Section 3513,
5 pursuant to a memorandum of understanding. In any
6 event, state employees shall have the right to represent
7 themselves individually in their employment relations
8 with the ~~public agency~~ *state*.

9 *SEC. 4.5. Section 3515.6 of the Government Code is*
10 *amended to read:*

11 3515.6. All employee organizations shall have the
12 right to have membership dues, initiation fees, insurance
13 premiums, and general assessments deducted pursuant
14 to Sections 1156, 1156.1, and 1156.2 until such time as an
15 employee organization is recognized ~~or certified~~ as the
16 exclusive representative for employees in an appropriate
17 unit, and then such deductions as to any employee in the
18 negotiating unit shall not be permissible except to the
19 exclusive representative.

20 *SEC. 4.7. Section 3516.5 of the Government Code is*
21 *amended to read:*

22 3516.5. Except in cases of emergency as provided in
23 this section, the ~~state, its agencies, departments,~~
24 ~~commissions, or boards, or its representatives as may be~~
25 ~~properly designated by law,~~ *employer* shall give
26 reasonable written notice to each recognized employee
27 organization affected by any law, rule, resolution, or
28 regulation directly relating to matters within the scope of
29 representation proposed to be adopted by the ~~state or its~~
30 ~~agencies, departments, commissions, or boards~~ *employer*,
31 and shall give such recognized employee organizations
32 the opportunity to meet and confer with the
33 administrative officials or their delegated representatives
34 as may be properly designated by law.

35 In cases of emergency when the ~~state or its agencies,~~
36 ~~departments, commissions, or boards~~ *determine*
37 *employer determines* that a law, rule, resolution, or
38 regulation must be adopted immediately without prior
39 notice or meeting with a recognized employee
40 organization, the administrative officials or their

1 delegated representatives as may be properly designated
2 by law shall provide such notice and opportunity to meet
3 and confer *in good faith* at the earliest practical time
4 following the adoption of such law, rule, resolution, or
5 regulation.

6 SEC. 5. Section 3517.6 of the Government Code is
7 amended to read:

8 3517.6. In any case where the provisions of
9 subdivision (h) of Section 3513, or Section ~~4156, 4156.1,~~
10 ~~4156.2,~~ 13920, 13924, 14876, 18001, 18005, 18005.5, 18006,
11 18007, 18020, 18021, 18021.5, 18021.6, 18021.7, 18022, 18023,
12 18024, 18025, 18025.1, 18026, 18050, 18051, 18051.5, 18100,
13 18100.5, 18101, 18101.5, 18102, 18102.5, 18103, 18105, 18120,
14 18121, 18122, 18122.1, 18123, 18124, 18125, 18126, 18127,
15 18128, 18129, 18135, 18135.5, 18136, 18137, 18137.5, 18138,
16 18139, 18140, 18141, 18142, 18300, 18301, 18302, 18310,
17 18705, 18714, 18730, 18731, 18732, 18850, 18850.1, 18851,
18 18852, 18853, 18853.5, 18854, 18855, 18856, 18857, 18859,
19 18860, 18861, 19080.5, 19100, 19120, 19251, 19252, 19261,
20 19300, 19301, 19302, 19303, 19304, 19330, 19330.5, 19331,
21 19332, 19333, 19334, 19335, 19360, 19360.5, 19361, 19362,
22 19450, 19451, 19452, 19455, 19460, 19461, 19462, 19463,
23 19464, 19465, 19502, 19503, 19555, 19556, 20750.11, 21400,
24 21402, 21404, 21405, 22754, 22790, 22813, 22814, 22815,
25 22816, 22825, or 22825.1 are in conflict with the provisions
26 of a memorandum of understanding, the memorandum
27 of understanding shall be controlling without further
28 legislative action. In any case where the provisions of
29 Section 19532, 19533, 19535, 19536, 19536.5, 19537, 19538,
30 19540, or 19541 are in conflict with the provisions of a
31 memorandum of understanding, the terms of the
32 memorandum of understanding shall be controlling
33 unless the State Personnel Board finds those terms to be
34 inconsistent with merit employment principles as
35 provided for by Article VII of the California Constitution.
36 Where such finding is made, the provisions of the
37 Government Code shall prevail until those affected
38 sections of the memorandum of understanding are
39 renegotiated to resolve the inconsistency. If any
40 provision of the memorandum of understanding requires

1 effective January 1, 1979, both bills amend Section 3526 of
2 the Government Code, and this bill is chaptered after
3 Senate Bill No. 1943, that the amendments to Section 3526
4 proposed by both bills be given effect and incorporated
5 in Section 3526 in the form set forth in Section 5.7 of this
6 act. Therefore, Section 5.7 of this act shall become
7 operative only if this bill and Senate Bill No. 1943 are both
8 chaptered and become effective January 1, 1979, both
9 amend Section 3526, and this bill is chaptered after
10 Senate Bill No. 1943, in which case Section 5.5 of this act
11 shall not become operative.

12 *SEC. 142. It is the intent of the Legislature that if this*
13 *bill and Senate Bill No. 1943 or Assembly Bill No. 1091, or*
14 *both, are chaptered and become effective January 1,*
15 *1979, each of the bills amend Section 3526 of the*
16 *Government Code, and this bill is chaptered last, that*
17 *amendments proposed by each of the bills which are*
18 *chaptered be given effect as follows:*

19 *(1) If this bill and Senate Bill No. 1943 are both*
20 *chaptered and become effective January 1, 1979, both*
21 *bills amend Section 3526 of the Government Code, but*
22 *Assembly Bill No. 1091 is not chaptered or as chaptered*
23 *does not amend that section, and this bill is chaptered*
24 *after Senate Bill No. 1943, the amendments proposed by*
25 *both bills shall be given effect and incorporated in*
26 *Section 3526 in the form set forth in Section 5.7 of this act.*
27 *Therefore, if this bill and Senate Bill No. 1943 are both*
28 *chaptered and become effective January 1, 1979, both*
29 *bills amend Section 3526, this bill is chaptered after*
30 *Senate Bill No. 1943, and Assembly Bill No. 1091 is not*
31 *chaptered or as chaptered does not amend that section,*
32 *Section 5.7 of this act shall be operative and Sections 5.5,*
33 *5.8, and 5.9 of this act shall not become operative.*

34 *(2) If this bill and Assembly Bill No. 1091 are both*
35 *chaptered and become effective January 1, 1979, both*
36 *bills amend Section 3526 of the Government Code, but*
37 *Senate Bill No. 1943 is not chaptered or as chaptered does*
38 *not amend that section, and this bill is chaptered after*
39 *Assembly Bill No. 1091, that Section 3526 of the*
40 *Government Code, as amended by Section 5.5 of this act,*

1 shall remain operative until the operative date of
2 Assembly Bill No. 1091, and that on the operative date of
3 Assembly Bill No. 1091, Section 3526 of the Government
4 Code, as amended by Section 5.5 of this act, be further
5 amended in the form set forth in Section 5.8 of this act to
6 incorporate the changes in Section 3526 proposed by
7 Assembly Bill No. 1091. Therefore, if this bill and
8 Assembly Bill No. 1091 are both chaptered and become
9 effective on or before January 1, 1979, both bills amend
10 Section 3526, this bill is chaptered after Assembly Bill No.
11 1091, and Senate Bill No. 1943 is not chaptered or as
12 chaptered does not amend that section, Section 5.8 of this
13 act shall become operative on the operative date of
14 Assembly Bill No. 1091, and Sections 5.7 and 5.9 of this act
15 shall not become operative.

16 (3) If this bill and Senate Bill No. 1943 and Assembly
17 Bill No. 1091 are all chaptered and become effective
18 January 1, 1979, all three bills amend Section 3526 of the
19 Government Code, and this bill is chaptered after Senate
20 Bill No. 1943 and Assembly Bill No. 1091, that Section 3526
21 of the Government Code, as amended by Section 5.7 of
22 this act, incorporating the changes in Section 3526
23 proposed by Senate Bill No. 1943 and this bill, shall
24 remain operative only until the operative date of
25 Assembly Bill No. 1091, and that on the operative date of
26 Assembly Bill No. 1091, Section 3526 of the Government
27 Code, as amended by Section 5.7 of this act, be further
28 amended in the form set forth in Section 5.9 of this act to
29 incorporate the changes in Section 3526 proposed by
30 Assembly Bill No. 1091. Therefore, if this bill and Senate
31 Bill No. 1943 and Assembly Bill No. 1091 are all chaptered
32 and become effective January 1, 1979, all three bills
33 amend Section 3526 of the Government Code, and this
34 bill is chaptered after Senate Bill No. 1943 and Assembly
35 Bill No. 1091, Section 5.9 of this act shall become operative
36 on the operative date of Assembly Bill No. 1091, and
37 Sections 5.5 and 5.8 of this act shall not become operative.

38 ~~SEC. 144.~~

39 SEC. 143. It is the intent of the Legislature, if this bill
40 and Assembly Bill No. 3136 are both chaptered and

1 become effective January 1, 1979, both bills amend
2 Section 18120 of the Government Code, and this bill is
3 chaptered after Assembly Bill No. 3136, that the
4 amendments to Section 18120 proposed by both bills be
5 given effect and incorporated in Section 18120 in the
6 form set forth in Section 36.5 of this act. Therefore,
7 Section 36.5 of this act shall become operative only if this
8 bill and Assembly Bill No. 3136 are both chaptered and
9 become effective January 1, 1979, both amend Section
10 18120, and this bill is chaptered after Assembly Bill No.
11 3136, in which case Section 36 of this act shall not become
12 operative.

13 ~~SEC. 145.~~

14 *SEC. 144.* It is the intent of the Legislature, if this bill
15 and Assembly Bill No. 3136 are both chaptered and
16 become effective January 1, 1979, both bills amend
17 Section 18128 of the Government Code, and this bill is
18 chaptered after Assembly Bill No. 3136, that the
19 amendments to Section 18128 proposed by both bills be
20 given effect and incorporated in Section 18128 in the
21 form set forth in Section 45.5 of this act. Therefore,
22 Section 45.5 of this act shall become operative only if this
23 bill and Assembly Bill No. 3136 are both chaptered and
24 become effective January 1, 1979, both amend Section
25 18128, and this bill is chaptered after Assembly Bill No.
26 3136, in which case Section 45 of this act shall not become
27 operative.

28 ~~SEC. 146.~~

29 *SEC. 145.* It is the intent of the Legislature, if this bill
30 and Assembly Bill No. 3136 are both chaptered and
31 become effective January 1, 1979, both bills amend
32 Section 18135 of the Government Code, and this bill is
33 chaptered after Assembly Bill No. 3136, that the
34 amendments to Section 18135 proposed by both bills be
35 given effect and incorporated in Section 18135 in the
36 form set forth in Section 47.5 of this act. Therefore,
37 Section 47.5 of this act shall become operative only if this
38 bill and Assembly Bill No. 3136 are both chaptered and
39 become effective January 1, 1979, both amend Section
40 18135, and this bill is chaptered after Assembly Bill No.

1 3136, in which case Section 47 of this act shall not become
2 operative.

3 ~~SEC. 147.~~

4 *SEC. 146.* It is the intent of the Legislature, if this bill
5 and Assembly Bill No. 3136 are both chaptered and
6 become effective January 1, 1979, both bills amend
7 Section 18142 of the Government Code, and this bill is
8 chaptered after Assembly Bill No. 3136, that the
9 amendments to Section 18142 proposed by both bills be
10 given effect and incorporated in Section 18142 in the
11 form set forth in Section 56.5 of this act. Therefore,
12 Section 56.5 of this act shall become operative only if this
13 bill and Assembly Bill No. 3136 are both chaptered and
14 become effective January 1, 1979, both amend Section
15 18142, and this bill is chaptered after Assembly Bill No.
16 3136, in which case Section 56 of this act shall not become
17 operative.

18 ~~SEC. 148.~~ It is the intent of the Legislature, if this bill
19 and Assembly Bill No. 3114 are both chaptered and
20 become effective January 1, 1979, both bills amend
21 Section 18850 of the Government Code, and this bill is
22 chaptered after Assembly Bill No. 3114, that the
23 amendments to Section 18850 proposed by both bills be
24 given effect and incorporated in Section 18850 in the
25 form set forth in Section 66.5 of this act. Therefore,
26 Section 66.5 of this act shall become operative only if this
27 bill and Assembly Bill No. 3114 are both chaptered and
28 become effective January 1, 1979, both amend Section
29 18850, and this bill is chaptered after Assembly Bill No.
30 3114, in which case Section 66 of this act shall not become
31 operative.

32 ~~SEC. 149.~~

33 *SEC. 147.* It is the intent of the Legislature, if this bill
34 and Assembly Bill No. 2595 are both chaptered and
35 become effective January 1, 1979, both bills amend
36 Section 21404 of the Government Code, and this bill is
37 chaptered after Assembly Bill No. 2595, that the
38 amendments to Section 21404 proposed by both bills be
39 given effect and incorporated in Section 21404 in the
40 form set forth in Section 129.5 of this act. Therefore,

1 Section 129.5 of this act shall become operative only if this
2 bill and Assembly Bill No. 2595 are both chaptered and
3 become effective January 1, 1979, both amend Section
4 21404, and this bill is chaptered after Assembly Bill No.
5 2595, in which case Section 129 of this act shall not
6 become operative.

7 ~~SEC. 150.~~

8 *SEC. 148.* It is the intent of the Legislature, if this bill
9 and Assembly Bill No. 2468 are both chaptered and
10 become effective January 1, 1979, both bills amend
11 Section 22754 of the Government Code, and this bill is
12 chaptered after Assembly Bill No. 2468, that the
13 amendments to Section 22754 proposed by both bills be
14 given effect and incorporated in Section 22754 in the
15 form set forth in Section 131.5 of this act. Therefore,
16 Section 131.5 of this act shall become operative only if this
17 bill and Assembly Bill No. 2468 are both chaptered and
18 become effective January 1, 1979, both amend Section
19 22754, this bill is chaptered after Assembly Bill No. 2468,
20 in which case Section 131 of this act shall not become
21 operative.

22 ~~SEC. 151.~~

23 *SEC. 149.* It is the intent of the Legislature, if this bill
24 and Assembly bill No. 1605 are both chaptered and
25 become effective on or before January 1, 1979, both bills
26 amend Section 22825.1 of the Government Code, and this
27 bill is chaptered after Assembly Bill No. 1605, that Section
28 22825.1 of the Government Code, as amended by Section
29 1 of Assembly Bill No. 1605, be further amended on the
30 effective date of this act in the form set forth in Section
31 139 of this act to incorporate the changes in Section
32 22825.1 proposed by this bill. Therefore, if this bill and
33 Assembly Bill No. 1605 are both chaptered and become
34 effective on or before January 1, 1979, and Assembly Bill
35 No. 1605 is chaptered before this bill and amends Section
36 22825.1, Section 139 of this act shall become operative on
37 the effective date of this act and Section 138 of this act
38 shall not become operative.



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

The Core Legislative History of

California
Statutes of 1977, Chapter 1159
Senate Bill 839 – Dills

Part 1

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Authentication of the Records and Table of Contents

Core Legislative History Research Report Regarding: California Statutes of 1977, Chapter 1159, SB 839 – Dills Part 1

I, Lisa Hampton, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

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- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed February 12, 2010, in Sacramento, California.

Lisa Hampton, Research Director



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

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Coalition of Independent State Employee Organizations

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CALIFORNIA ASSOCIATION
OF
HUMAN SERVICE TECHNOLOGISTS

May 24, 1977

CALIFORNIA ASSOCIATION
OF
SPECIAL INVESTIGATORS

CALIFORNIA CORRECTIONAL
OFFICERS ASSOCIATION

CALIFORNIA
DIVISION OF FORESTRY
EMPLOYEES ASSOCIATION

CALIFORNIA
FISH & GAME WARDENS
PROTECTIVE ASSOCIATION

CALIFORNIA MEDICAL
TECHNICAL ASSISTANTS
ASSOCIATION

CALIFORNIA STATE EMPLOYED
FIRE FIGHTERS ASSOCIATION

CALIFORNIA
STATE PARK RANGERS
ASSOCIATION

CALIFORNIA
STATE POLICE ASSOCIATION

CALIFORNIA YOUTH AUTHORITY
PAROLE AGENTS ASSOCIATION

CALIFORNIA
YOUTH COUNSELORS
ASSOCIATION

CORRECTIONAL COUNSELORS
ASSOCIATION

PAROLE AGENTS ASSOCIATION
OF
CALIFORNIA, INC.

PROFESSIONAL ENGINEERS
IN CALIFORNIA GOVERNMENT

PUBLIC EMPLOYEES
SERVICE ASSOCIATION

STATE TRIAL
ATTORNEYS ASSOCIATION

STATE ASSOCIATION
OF
REAL PROPERTY AGENTS

UNIVERSITY
POLICE ASSOCIATION, BERKELEY

Senator Ralph C. Dills
State Capitol Rm 5050
Sacramento, CA 95814

RE: Position of Opposition/Senate Bill 839

Dear Senator Dills:

This is to advise you that the Coalition of Independent State Employee Organizations, representing on a collective basis about 22,000 state employees, has studied your Senate Bill 839 and has respectfully taken a position of opposition, unless amended.

SB-839 proposes to extend certain provisions of the Meyers-Milius-Brown Act to state employees, but in doing so excludes certain existing provisions of that act which we believe makes the bill unworkable. We support the concept of extending the Meyers-Milius-Brown Act to cover all state employees, and attached we have included proposed amendments which would accomplish this objective.

Actually, two provisions which are excluded from your bill are currently applicable to state employee relations under the Brown Act and are provisions which are supported strongly by the affected employees. Enactment of new legislation without these provisions would in effect be penalizing these affected persons, and we therefore urge the provisions not be eliminated. These two provisions allow professional employees to be represented separately from non-professional employees by a professional employee organization, and allow peace officers to join or participate in employee organizations which are composed solely of such peace officers.

The third amendment we are suggesting would provide that disputes relating to the appropriateness of a unit of representation are to be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute. Without such a provision, a dispute in the area of unit representation would necessarily have to be taken to a court of law for resolution, which would be both time consuming and expensive for all parties concerned.

(Continued)

Senator Ralph Dills

May 24, 1977

Page -2-

The forth amendment suggested spells out what we think to be the purpose of the entire act: that, except in cases of emergency, the state, its agencies, departments, commissions or boards, or its representatives as may be properly designated by law, shall give reasonable notice to each recognized employee organization affected by law, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the state. As currently drafted, SB-839 is silent on the obligation of the state with respect to notifying recognized employee organizations notice of proposed changes to be adopted which are within the scope of representation, and therefore we think the bill becomes somewhat meaningless.

In summary, we suggest and request that the attached amendments be placed into SB-839 so that state employees will be provided the minimum protections embodied in the Meyers-Milius-Brown Act. Without such amendments, our position must remain in opposition to enactment of the measure.

Respectfully,



Ken Brown
Chairman

Coalition of Independent State Employee Organizations

KB:jp

cc: John Sullivan, Vice Chairman
Members of the Senate Finance Committee
Michael Douglas, CSEA

Enclosure

Coalition of Independent State Employee Organizations

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OF
HUMAN SERVICE TECHNOLOGISTS

Senate Bill 839 (Dills)

CALIFORNIA ASSOCIATION
OF
SPECIAL INVESTIGATORS

Proposed Amendments

CALIFORNIA CORRECTIONAL
OFFICERS ASSOCIATION

Add the following section:

CALIFORNIA
DIVISION OF FORESTRY
EMPLOYEES ASSOCIATION

3530.5 Except in cases of emergency as provided in this section, the state, its agencies, departments, commissions or boards, or its representatives as may be properly designated by law, shall give reasonable written notice to each recognized employee organization affected by any law, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the state or its agencies, departments, commissions or boards, and shall give such recognized employee organizations the opportunity to meet with the administrative officials or their delegate representatives as may be properly designated by law.

CALIFORNIA
FISH & GAME WARDENS
PROTECTIVE ASSOCIATION

CALIFORNIA MEDICAL
TECHNICAL ASSISTANTS
ASSOCIATION

CALIFORNIA STATE EMPLOYED
FIRE FIGHTERS ASSOCIATION

CALIFORNIA
STATE PARK RANGERS
ASSOCIATION

In cases of emergency when the state or its agencies, departments, commissions or boards determine that a law, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the administrative officials or their delegated representatives as may be properly designated by law shall provide such notice and opportunity to meet at the earliest practical time following the adoption of such law, rule, resolution or regulation.

CALIFORNIA
STATE POLICE ASSOCIATION

CALIFORNIA YOUTH AUTHORITY
PAROLE AGENTS ASSOCIATION

CALIFORNIA
YOUTH COUNSELORS
ASSOCIATION

CORRECTIONAL COUNSELORS
ASSOCIATION

Add the following language to Section 3536:

(Insert on line 23 page 6, SB-839 amended April 25, 1977)

CALIFORNIA ASSOCIATION
OF
CALIFORNIA, INC.

"...purposes of this chapter. Rules and regulations in accordance with this chapter may be adopted by the State Personnel Board."

CALIFORNIA ASSOCIATION
OF
PUBLIC EMPLOYEES

PUBLIC EMPLOYEES
SERVICE ASSOCIATION

Add the following sections:

STATE TRIAL
ATTORNEYS ASSOCIATION

3536.1 In the event of a dispute on the appropriateness of a unit of representation, upon the request of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

STATE ASSOCIATION
OF
REAL PROPERTY AGENTS

UNIVERSITY
POLICE ASSOCIATION, BERKELEY

(Continued)

Add the following sections:

3536.5 Professional employees shall not be denied the right to be represented separately from non-professional employees by a professional employee organization consisting of such professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

"Professional employees", for the purpose of this section, means employees engaged in work requiring a specialized knowledge and skill attained through completion of a recognized course of instruction, including, but not limited to attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists.

3537.5 The state may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws, and may by resolution adopted after a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so; however, the state may not prohibit the right of its employees who are "peace officers" as that term is defined in Chapter 4.5 (commencing with Section 830) of title 3 of part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, in which are no subordinate to any other organization.

The above proposed amendments to Senate Bill 839 would conform existing provisions of the Meyers-Miliias-Brown Act to state employees. Without the above amendments, SB-839 extends certain provisions of the Meyers-Millias-Brown Act to state employees, but in so doing deletes certain sections which are currently applicable to all public employees, both those in the local public sector as well as state employees, and which are supported by the affected employees. Specifically, the above proposed amendments would continue to allow state employed peace officers to join or participate in employee organizations composed solely of such peace officers, would allow the state to prohibit such peace officer employees to join or participate in organizations representing non-peace officer employees when it is held to be in the public interest to do so; and the above amendments would also continue to allow professional employees to be represented separately from non-professional employees.

BILL ANALYSIS

A 1-100

AGRICULTURE AND SERVICES AGENCY

DEPARTMENT INDUSTRIAL RELATIONS	AUTHOR DILLS	BILL NUMBER SB 839
SPONSORED BY CSEA	RELATED BILLS	DATE LAST AMENDED 8/1/77

BILL SUMMARY

See Legislative Counsel's Digest.

BILL ANALYSIS

This amendment defines certain references to the State. Such definitions now make references to the Governor and/or the State Personnel Board. Section 3530.5 has been amended into the bill which provides that the designated responsible agencies etc., shall give reasonable written notice to effected recognized employee organizations when certain specified matters within the scope of representation are proposed to be adopted.

It further provides that they may do so without such written notice in emergency situations, however, the organizations effected shall be notified as early as possible and given an opportunity to meet and confer on same.

This is not unlike provisions presently found in the Meyers-Willis-Brown Act.

As a state agency with an obligation to maintain a neutral position in order to maximize its effectiveness in dealing with the parties, the Conciliation Service, must, out of necessity, take a position of neutral.

FISCAL IMPACT:

3 Additional Conciliators

Prepared by:
Edward Allen
7-2426

STATE-MANDATED LOCAL PROGRAM Yes No

OFFICIAL POSITION: NEUTRAL *Refer to Gov E R Off.*

Edward N. Allen 8/10/77

DEPARTMENT DIRECTOR

William Becker 8/12/77

DATE

AGENCY SECRETARY

DATE

GOVERNOR'S OFFICE USE

Position noted

Position approved

Position disapproved



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

The Core Legislative History of

California
Statutes of 1977, Chapter 1159
Senate Bill 839 – Dills

Part 2

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Authentication of the Records and Table of Contents

Core Legislative History Research Report Regarding: California Statutes of 1977, Chapter 1159, SB 839 – Dills Part 2

I, Lisa Hampton, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

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- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed February 12, 2010, in Sacramento, California.

Lisa Hampton, Research Director



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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Assembly Republican Caucus Materials

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ASSEMBLY THIRD READING

SB 839 (Dills) As Amended: 6 September 1977SENATE VOTE 24-3

ASSEMBLY ACTIONS:

COMMITTEE P. E. & RET. VOTE 9-0 COMMITTEE W. & M. VOTE 18-0

Ayes:

Ayes:

Nays:

Nays:

DIGEST

Currently, the George Brown Act provides that state employees have a right to form, join and participate in the activities of employee organizations for the purpose of representation on matters of employer-employee relations. The chosen employee organization has a right to represent its members in their employment relations, including grievances, with the state, and the scope of such representation includes wages, hours, and other terms and conditions of employment. In this connection, representatives of the state are required to meet and confer with the employee organization upon request and to consider, as fully as the representatives of the state deem reasonable, the presentations made by the employee organization.

This bill:

- 1) Provides that the George Brown Act would apply only to state employees who are not covered by the State Employer-Employee Relations Act, enacted by this bill.
- 2) Enacts the State Employer-Employee Relations Act which would provide that state employees, defined as any civil service employee of the state and teachers under the jurisdiction of the Department of Education or the Superintendent of Public Instruction, and excluding elected, appointed, and exempt employees, have a right to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations.
- 3) Provides that the Educational Employment Relations Board (EERB) shall be renamed the Public Employment Relations Board (PERS). The current powers and duties of the EERB shall apply as appropriate to this act.
- 4) Provides that law enforcement employees would be given the right to be represented separately from other employees.

-continued-

- 5) Provides that the chosen employee organization would have a right to represent its members, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, only that organization may represent employees in that unit.
- 6) Establishes that the scope of representation of an employee unit would include wages, hours, and other terms and conditions of employment.
- 7) Requires representatives of the Governor to confer in good faith and to endeavor to reach agreement with the employee organization. If agreement is reached, the parties would prepare a memorandum of understanding and present it to the Legislature for determination. The parties may mutually agree to a mediator in order to settle any dispute, or either party can request the PERB to appoint a mediator, in which case the costs of mediation would be paid by the PERB.
- 8) Provides that any employee, employee organization, or employer would have the right to file an unfair labor practice with the PERB.
- 9) Provides that the PERB would be required to establish procedures for granting exclusive recognition to employee organizations, and would determine appropriate units pursuant to specified criteria.
- 10) Provides that in case of a conflict between specified code sections in the bill and a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action, but if any provision of a memorandum of understanding requires the expenditure of funds or the amendment of any code section not specified, such provisions would not become effective unless approved by the Legislature.
- 11) Provides supervisory employees with the right to form, join and participate in their own employee organization for representation on all matters of supervisory employer-employee relations, and provides procedures for governing such supervisory employer-employee relations.
- 12) Provides that state employees may voluntarily join a recognized employee organization.
- 13) Prohibits the State Personnel Board from establishing, adjusting or recommending a salary range for any employees in a bargaining unit in which an employee organization has been chosen as the exclusive representative.
- 14) Repeals the requirement that the Board of Administration of the Public Employees' Retirement System (PERS) annually report to the State Personnel Board (SPB) its findings relative to the benefits of state employees, and that the State Personnel Board annually report to the Governor and the Legislature its recommendations on the total compensation of the state civil service employees.

-continued-

- 15) Authorizes state officers and employees to make deductions from their salaries or wages for payment of membership dues, initiation fees, and general assessments of any employee organization which has as one of its primary purposes the representing of such employees in their relations with the state.
- 16) Declares that the enactment of this act shall not be construed to contravene the spirit or intent of the merit principle in state employment.
- 17) Defines "state employee" as any civil service employee of the state, the teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, and those state employees regularly working outside of the state.
- 18) Define "Board" as the Public Employment Relations Board (PERB).
- 19) Authorizes PERB to devise and promulgate procedures for investigating, hearing, and deciding charges of unfair practices.
- 20) Empowers PERB to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to, the reinstatement of employees with or without pay, as will effectuate the policies of this act.
- 21) Provides that judicial review of a unit determination shall be allowed, but only when specified administrative procedures have been exhausted.
- 22) Authorizes skilled crafts employees to form a separate unit or representation based on occupation.
- 23) Prohibits the state employer and employee organizations from interfering with, intimidating, restraining, coercing, or discriminating against supervisory employees for exercising their rights under this act.
- 24) Excludes employees of the California Maritime Academy from coverage under the State Employer-Employee Relations Act created by this bill.
- 25) Provides that initial meet and confer proposals of recognized employee organizations would need to be presented to the public employer at a public meeting, and following proposals would be public record. Similarly, proposals/counterproposals of the public employers would have to be public.
- 26) Provides that the annual salary level of Public Employment Relations Board members would be statutorily set at \$42,500 rather than \$36,000, as currently provided for by statute for members of the EERB.
- 27) Authorizes the Chairperson of the Public Employment Relations Board to appoint an executive director to act as chief administrative officer for the board. The board shall employ a general counsel to assist it in the performance of its functions (Rodda Act provision). The executive

-continued-

director and general counsel serving the Educational Employment Relations Board on 31 December 1977 shall become employees of the Public Employment Relations Board and shall continue to serve at the discretion of this new board.

28) Becomes operative 1 July 1978 and 1 January 1978.

FISCAL EFFECT

According to the Assembly Ways and Means Committee analysis, the overall fiscal effect of the measure is unknown. There would be some administrative costs for PERB, additional staff and costs for the Office of Employee Relations, some cost for PERB, including costs for mediation which in some cases would be borne by the board, agency and department costs for employee relations personnel, potential mediation and litigation costs. Although overall costs are unknown, the order of magnitude is probably up to several million dollars.

COMMENTS

According to the Assembly Ways and Means Committee analysis:

The effect of broader employer-employee relations on the level of state salaries is debatable. The first-year effects of collective bargaining in Pennsylvania yielded over a 40% increase in state salaries; similar experience in Oregon resulted in a 22% increase. It is not known how much of these increases were catch-up. There is the potential for higher increases in compensation than current experience.

DRAFT

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- C. If any dispute arises about this personal leave section, an employee may file a grievance and the decision reached at Step 3 (DPA) of the grievance procedure shall be final and not subject to the arbitration clause of this Contract.
- D. An employee may request, due to personal hardship, all or a portion of unused personal leave credits to be cashed out at the employee's salary rate at the time the personal leave payment is made. Upon termination from State employment, the employee shall be paid for unused personal leave credits in the same manner as vacation leave. Cash out or lump sum payment for any personal leave credits shall not be considered as "compensation" for purposes of retirement.

8.32 Voluntary Personal Leave Program (VPLP) Opt Out

Upon ratification of this agreement by the parties, there will be a sixty (60) day window for employees currently participating in the VPLP to modify their participation or to opt out of the program.

8.33 Mandatory Personal Furlough Leave Program (MPFLP)

- A. Effective with the February 2009 pay period and ending June 30, 2010, full time bargaining unit employees shall be subject to a Mandatory Personal Furlough Leave Program (MPFLP) eight (8) hours per month in the manner outlined below:
 - 1. Effective with the February 2009 pay period, each full time employee's monthly pay shall be reduced by 4.62%. However, salary rates and salary ranges shall remain unchanged. Each full-time employee shall continue to work his/her assigned work schedule.
 - 2. Each full time employee shall be credited with eight (8) hours of MPFLP time on the first day of the following monthly pay period each month for seventeen (17) months. The MPFLP leave credits shall be credited to the employee's MPFLP leave balance.
 - 3. Employees will be given maximum discretion to use the MPFLP time subject to severe operational considerations. Use of deferred MPFLP time off is subject to supervisory approval, except that appointing powers shall ensure that all MPFLP time off is scheduled and taken prior to July 1, 2012. MPFLP time shall be requested and used by the employee in the same manner as vacation/annual leave. Request for use of MPFLP time must be submitted in accordance with departmental policies on vacation/annual leave. MPFLP time shall not be included in the calculation of vacation/annual leave balances pursuant to Article 8 (Leaves).
 - 4. MPFLP time may not be cashed out at any time, nor may it be "carried over" beyond July 1, 2012. However, MPFLP may be used in lieu of sick leave.
- B. This MPFLP shall not adversely affect an employee's service anniversary date, create a break in service, or impact the accrual of vacation or any other leave credits, the payment of health, dental, or vision benefits or the flex-elect cash option.
- C. Compensation for purposes of retirement and death and disability benefits shall not be affected by the MPFLP and shall be based on the unchanged salary rate that would have been credited had the employee not been in the MPFLP.
- D. Service calculation for purposes of retirement allowances for employees participating in the MPFLP shall be based on the amount of service that would have been credited had the employee not been in the MPFLP.
- E. The MPFLP reduction shall not affect transfer determinations between the state civil service classifications.
- F. Part time employees shall be subject to the same conditions as stated above, on a pro-rated basis. Pro-ration shall be determined consistent with the employee's time base consistent with the chart in Article 7.
- G. Seasonal employees are not subject to the MPFLP.
- H. Dispute regarding the denial of the use of MPFLP time may be appealed through the grievance procedure. Other dispute arising from this MPFLP section may be appealed through the grievance procedure, except that the decision by the Department of Personnel Administration shall be final and there may be no further appeals.
- I. All Permanent Intermittent employees and Special School employees who are subject to the State Special Schools 10-month compensation agreement shall be subject to the pro-ration of salary and MPFLP credits pursuant to the below chart.

Hours Worked During Pay Period Salary Reduction in Hours MPFLP Credit

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<u>0-10.9</u>	<u>0</u>	<u>0</u>
<u>11-30.9</u>	<u>1</u>	<u>1</u>
<u>31-50.9</u>	<u>2</u>	<u>2</u>
<u>51-70.9</u>	<u>3</u>	<u>3</u>
<u>71-90.9</u>	<u>4</u>	<u>4</u>
<u>91-110.9</u>	<u>5</u>	<u>5</u>
<u>111-130.9</u>	<u>6</u>	<u>6</u>
<u>131-150.9</u>	<u>7</u>	<u>7</u>
<u>151 or over</u>	<u>8</u>	<u>8</u>

- J. As it relates to employees in Bargaining Unit 3, this article shall be applied consistent with the Addenda to this article applicable to Bargaining Unit 3 employees by CDCR-DAI, CDCR-DJJ and CDE.
- K. Employees on SDI, IDL, EIDL, or Worker's Compensation for the entire monthly pay period shall be excluded from the MPFLP for that month.

8.34.3 MPFLP Addendum - CDCR – DJJ (Unit 3)

The following hours of accrual shall be applied to the employees at DJJ:

220/day Academic Calendar schedule BU #3 employees will accrue 6.78 hours of MPFLP per month

The State and the Union agree that maximum "self-direction" should be afforded employees in consideration of their contribution to the budget crisis solution through the MPFLP. Use of MPFLP credits is subject to supervisory approval. Supervisors must manage the school to allow the employees to use any accumulated MPFLP credits with maximum employee discretion, subject only to severe operational considerations, in which case it is only deferred. If necessary, supervisors may require up to ten (10) days notice before the use of MPFLP credits. MPFLP may be granted with less than ten (10) days notice.

CDCR-DJJ and the Union shall agree on the Annual Academic Calendar, per Article 23.3.3 and determine "black-out" dates on which employees cannot use the MPFLP credits. These events will include important staff development, training and annual MOAB refresher training days.

Due to State mandated student testing such as the CAHSEE and STAR, the department may maintain the ability to deny use of MPFLP credits on student testing days outside of the agreed upon Academic Calendar. Other examples of operational considerations which could warrant disapproval of MPFLP use include a WASC accreditation visit, court appointed experts (PLO, CDE) or a departmental compliance review, special programs or graduation, or when 2 or more employees with the same classification/job description/program (i.e.; elementary, math) request the same MPLP time off. MPFLP shall not be denied due to the lack of a substitute teacher.

MPFLP credits may be used in blocks of up to five (5) consecutive days and may also be combined with other leave credits, consistent with applicable sections of the MOU. The expectation is that no more than 10% of teachers (BU3) at each school, will be approved for MPFLP on any given day or during the same block of time. A block of time is no more than 5 consecutive days. MPFLP use requested beyond 5 days may be approved on a case-by-case basis. If approval of leave requests would exceed the 10% limit, requests shall be approved in order of state seniority.

The State and the Union shall agree to conduct an audit of each DJJ School to determine if BU #3 teachers are granted utilization of MPFLP. The Audit will be conducted between 7/1/2010 and the beginning of the Academic school year, beginning 8/1/2010.

All MPFLP credits must be used by July 1, 2014. During the period preceding July 1, 2014, the PNL cap shall be increased from six (6) to nine (9) days. Effective July 1, 2015, the PNL shall be restored to its original six (6) days.

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MPFLP credits may be used in lieu of sick leave. MPFLP credits may be used to satisfy a leave time deficit revealed in the reconciliation process. In accordance with Government Code 19838, an accounts receivable created at a monthly or annual reconciliation may be paid with MPL credits earned over succeeding months.

Normally MPFLP credits may be used in no less than 8 hour increments for employees on a 5/8/40 schedule. However any MPFLP balance of less than 8 hours may be combined with vacation, annual leave, CTO, PLP, holiday credit or other leave credits in order to ensure all MPFLP credit is off the books by July 1, 2014.

In rare situations where the department may be able to close a program for a specific day, the Department may direct the affected employees to take a MPFLP day off. This will be limited to no more than one (1) day per academic year and require a minimum of ten (10) workdays notice in advance of the date of use.

8.35.3 MPFLP Addendum – CDCR-DAI (Unit 3)

Employees at CDCR- DAI on the 220-day/176 day, 4/10/40 Academic Year schedule will accrue 6.78 hours of MPFLP per month.

The State and the Union agree that maximum "self-direction" should be afforded employees in consideration of their contribution to the budget crisis solution through the MPFLP. Use of MPFLP credits is subject to supervisory approval. Supervisors must manage the school to allow the employees to use any accumulated MPFLP credits with maximum employee discretion, subject only to severe operational considerations, in which case it is only deferred. If necessary, supervisors may require up to ten (10) days notice before the use of MPFLP credits and may limit the number of employees who may use MPFLP simultaneously to 10% of staff. MPFLP may be granted with less than ten (10) days notice.

CDCR-DAI and the Union shall agree on the Annual Academic Calendar, per Article 24.1.3 and determine "black-out" dates on which employees cannot use the MPFLP credits. These events will include important staff development and training. On rare occasions additional black-out days may need to be identified for unforeseen operational circumstances. These events shall not apply to already approved MPFLP.

Examples of operational considerations which could warrant disapproval of MPLP use include a WASC accreditation visit, a departmental compliance review, special programs or graduation. MPLP shall not be denied due to the lack of a substitute teacher.

MPFLP credits may be used in blocks and may also be combined with other leave credits, consistent with applicable sections of the MOU.

All MPFLP credits must be used by July 1, 2014. During this period of time, the PNL cap shall be increased from six (6) to nine (9) days. Effective July 1, 2015, the PNL cap will be restored to its original six (6) days.

MPFLP credits may be used in lieu of sick leave. MPFLP credits may be used to satisfy a leave time deficit revealed in the reconciliation process. In accordance with Government Code 19838, an accounts receivable created at a monthly or annual reconciliation may be paid with MPFLP credits earned over succeeding months.

Normally MPFLP credits may be used in no less than 8 hour increments for employees on a 5/8/40 schedule or 10 hour increments for those on 4/10/40 schedule. However any MPFLP balance of less than 8 (10) hours may be combined with vacation, annual leave, CTO, PLP, holiday credit or other leave credits in order to ensure all MPFLP credit is off the books by July 1, 2014.

DRAFT

8.36.3 MPFLP Addendum – CDE (Unit 3)

The following hours of accrual shall be applied to the employees at CDE based on the following Academic Calendar:

184/day Academic Calendar schedule will accrue 5.67 hours of MPFLP per month.

194/day Academic Calendar schedule will accrue 5.89 hours of MPFLP per month.

209/day Academic Calendar schedule will accrue 6.44 hours of MPFLP per month.

Use of MPFLP is subject to supervisory approval and operational needs as defined below. This leave will be taken prior to July 1, 2014. Request for MPFLP time off shall be made a minimum of ten (10) workdays in advance of the date of use. Employees shall request MPFLP days in the same manner as they currently request personal leave days. MPFLP may be granted with less than ten (10) day notice.

Employees shall use MPFLP in whole day increments. Employees can use this leave in blocks of up to five (5) days and may be taken in conjunction with other leaves and non-work days. Use of these days may be limited to five (5) days per school year. MPFLP may not be taken until it has been earned.

MPFLP may be used in lieu of sick leave or personal leave days. During the term of MPFLP accrual and usage (Feb 2009-July 1, 2014) CDE employees may accrue up to eight (8) days of PLD. Effective July 1, 2015 the PLD cap will be restored to its original four (4) days.

CDE may have "black-out" days. These may include CAHSEE testing, WASC visitation, mandatory student testing days, graduation, IEP weeks, Staff development and special programs.

When two (2) or more employees with the same classification/job description/program (i.e. elementary, math) request the same MPFLP time off, approval may be limited. The number of BU 3 staff already scheduled to be off may also impact this approval process. In these situations employees with the highest seniority shall be provided preference. Once leave is approved, a more senior employee cannot bump the approved leave.

In rare situations where the department may be able to close a program for a specific day, the department may direct the affected employees to take a furlough day off. This will be limited to no more than one (1) day per academic year and require a minimum of ten (10) workdays notice in advance of the date of use.

ARTICLE 9 – HEALTH AND WELFARE

9.1 Health Benefit Plans (Excludes Unit 3 and 17)

A. The employer health benefits contribution for each employee shall be an amount equal to eighty percent (80%) of the weighted average of the Basic health benefit plan premiums for a State active civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four (4) Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional eighty percent (80%) of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four (4) Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous year. To be eligible for this contribution, an employee must positively enroll in a health plan administered or approved by CalPERS.

B. 1. Effective January 30, 2009 through December 31, 2009, and upon approval of funding by the Legislature and ratification by the Union, the State agrees to pay the following monthly health benefit premium contribution in addition to the employer premium contributions calculated in accordance with sub-section A., above, for employees enrolled in the Blue Shield Access+, Blue Shield Net Value and Kaiser HMO Plans.

<u>Single</u>	<u>2-Party</u>	<u>Family</u>
<u>\$13.78</u>	<u>\$29.96</u>	<u>\$43.72</u>

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On March 1, 2010, I served a true copy of the following document(s):

**Appellant State Controller's
Supplemental Request for Judicial Notice;
Declaration of Brian Metzker**

on the following party(ies) in said action:

Gerald A. James
Professional Engineers in California
Government
455 Capitol Mall, Suite 501
Sacramento, CA 95814-4433
Phone: (916) 446-0400
Fax: (916) 446-0489

*Attorneys for Plaintiffs and Appellants
Professional Engineers in California
Government, et al.*

David W. Tyra
Kronick, Moskovitz, Tiedemann &
Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
Phone: (916) 321-4500
Fax: (916) 321-4555

*Attorneys for Defendants and Respondents
Governor Arnold Schwarzenegger and
Department of Personnel Administration*

Will M. Yamada
Chief Counsel
Department of Personnel
Administration
1515 "S" Street, Suite 400
Sacramento, CA 95811-7246
Phone: (916) 324-0512
Fax: (916) 323-4723

*Attorneys for Defendant and Respondent
Department of Personnel Administration*

Richard Chivaro
State Controller's Office
Chief Counsel
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Phone: (916) 445-6854
Fax: (916) 322-1220

*Attorneys for Defendant and Appellant
State Controller John Chiang*

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on March 1, 2010, in San Leandro, California.


Michael Narciso

No. C061011

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,
Plaintiffs and Appellants,

v.

JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,
Defendants and Respondents.

On Appeal of an Order and Judgment
by the Sacramento County Superior Court,
Case No. 34-2008-80000126-CU-WM-GDS,
The Honorable Patrick Marlette

**SUPPLEMENTAL PROOF OF SERVICE OF
APPELLANT STATE CONTROLLER'S
SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF BRIAN METZKER**

Richard J. Chivaro, State Bar No. 124391

Chief Counsel

Ronald V. Placet, State Bar No. 155020

Senior Staff Counsel

Shawn D. Silva, State Bar No. 190019

Senior Staff Counsel

Ana Maria Garza, State Bar No. 200255

Staff Counsel

OFFICE OF THE STATE CONTROLLER

300 Capitol Mall, Suite 1850

Sacramento, CA 95814

Phone: (510) 445-6854

Fax: (510) 322-1220

Email: rchivaro@sco.ca.gov

Robin B. Johansen, State Bar No. 79084

Margaret R. Prinzing, State Bar No. 209482

REMCHO, JOHANSEN & PURCELL, LLP

201 Dolores Avenue

San Leandro, CA 94577

Phone: (510) 346-6200

Fax: (510) 346-6201

Email: mprinzing@rjp.com

Attorneys for Defendant and Appellant State Controller John Chiang

SUPPLEMENTAL PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On March 1, 2010, I served a true copy of the following document(s):

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on the following party(ies) in said action:

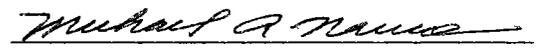
Jeffrey Ryan Rieger
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Phone: (415) 543-8700
Fax: (415) 391-8269
(courtesy copy)

*Attorneys for Amicus Curiae as Appellant
Teachers Retirement Board of the
California State Teachers' Retirement
System*

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
 - depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

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