LCW LIEBERT CASSIDY WHITMORE

400 CAPITOL MALL, SUITE 1260
SACRAMENTO, CALIFORNIA 95814
T: 916-584-7000 F: 916-584-7083

ecuadros@lcwlegal.com
916.584.7000

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RECEIVED
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Commission on
State Mandates

Ms. Heather Halsey
Executive Director
State of California Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: ***City of Glendora's Comments to November 16, 2016 Draft Proposed Decision***
Local Agency Employee Organizations: Impasse Procedures, Claim No. 5-TC-01
Client-Matter: GL050/051

Dear Ms. Halsey:

The City of Glendora (City), claimant in the above-referenced matter, submits the following written comments in response to the Commission on State Mandate's November 16, 2016 Draft Proposed Decision concerning the test claim. The City further and hereby notifies the Commission that Melanie L. Chaney, Attorney for Liebert Cassidy Whitmore, will appear on the City's behalf during the January 27, 2017 hearing for this matter. As explained below, the results-oriented Proposed Decision fails to address critical facts establishing that the California Legislature intended to and did, in fact, establish mandatory factfinding procedures via Government Code section 3505.4. AB 1606 did not establish any new factfinding procedures. Rather, AB 1606 merely clarified the mandatory factfinding procedures already established by AB 646.

I. FACTUAL BACKGROUND

A. THE LEGISLATIVE HISTORY OF ASSEMBLY BILL 646

In 2011, Assembly Member Toni G. Atkins introduced AB 646 intending to establish mandatory mediation and factfinding procedures as a means to resolve impasse during labor negotiations between local agencies and recognized employee organizations subject to the Meyers-Milias-Brown Act (MMBA). (*See generally,* May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011.) Assembly Member Atkins argued in favor of establishing mandatory impasse procedures, stating: "[t]he *creation of mandatory impasse procedures* is likely to increase the effectiveness of the collective bargaining process," and "[f]act-finding panels can also help facilitate agreement, by making objective, factual determinations that can help the parties engage in productive discussions and reach reasonable decisions." (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 2.)

Opponents argued that the bill "undermined a local agency's authority to establish local rules for resolving impasse and the requirement that a local agency engage in factfinding may delay rather than speed the conclusion of contract negotiations." (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 2 [prior to 2012, employee organizations and public agencies could, but were not required, to engage in mediation or interest arbitration and the parties were permitted to consult regarding local impasse rules].) As a result of these and other constituent concerns, Assembly Member Atkins agreed to a series of amendments. The Committee memorialized the relevant changes as follows:

> 1) *Remove all of the provisions related to mediation*, making no changes to existing law.
>
> 2) Remove the requirements that an employer and employee organization submit their differences to a fact-finding panel and instead *provides employees organizations with the option to participate in the fact-finding process* established in Government Section 3505.4 which is added by this measure. (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 3.)

As described below, these factfinding procedures are not implemented unless impasse is reached and an exclusive employee representative first requests fact-finding. *Upon request by the exclusive employee representative, the public agency is **required**, not permitted, to participate in the factfinding procedures, regardless of its objections to factfinding, if any.* Therefore, public agencies have no choice but to participate in factfinding following an exclusive employee representative's demand to PERB for factfinding.

Following the amendments, the Senate Floor Analysis stated that AB 646 "allows local public employee organizations to request fact-finding if a mediator is unable to effect a settlement of a labor dispute within 30 days of appointment," as well as defined other responsibilities of the fact-finding panel and interested parties.[1] (August 29, 2011 Senate Floor Analysis of AB 646, as amended June 22, 2011, p. 1.) Assembly Member Atkins continued to argue that the bill was necessary to prevent "some municipalities and agencies [from] attempting to expedite the impasse [procedures] to unilaterally impose their last, best, and final offer... rush[ing] through the motions" of good faith bargaining. She explicitly argued that a uniform process was essential, stating that "[f]act-finding is an effective tool... [to] facilitate agreement." (August 29, 2011 Senate Floor Analysis of AB 646, as amended June 22, 2011, p. 5.)

In August 2011, following the major amendments to proposed mediation procedures on which the Proposed Decision turns, the Department of Finance provided its analysis of AB 646

[1] Previous proposals allowed *either* party to request factfinding. The amendments reserved this right solely for employee organizations.

to Governor Brown. As the Governor's chief fiscal policy advisor, the Department analyzes proposed legislation for its fiscal impact, among other policy considerations.[2] The Department's analysis of AB 646, in its final form prior to enactment, described employee organizations' right to compel fact-finding and that "*local employer[s] would be **required** to participate in the fact-finding panel*." (August 1, 2011 Department of Finance Bill Analysis of AB 646, as amended June 22, 2011, p. 1 [emphasis added].) The Department opposed the bill because, in its opinion, the bill "could create a reimbursable state mandate." (*Id.*)

AB 646 returned to the State Assembly in September 2011 following passage by the State Senate. The final Assembly Floor Analysis explicitly acknowledged that AB 646 could require "substantial state mandated reimbursement of local costs." (September 1, 2011 Assembly Floor Analysis of AB 646, as amended June 22, 2011, p. 2.) In support, Assembly Member Atkins continued to argue in favor of the perceived benefits of mandatory impasse procedures, stating that uniform impasse procedures were necessary to ensure "fully effective" negotiations. As part of those procedures, she again argued: "*[t]he creation of mandatory impasse procedures* is likely to increase the effectiveness of the collective bargaining process" and "[f]act-finding panels can also help facilitate agreement, by making objective, factual determinations that can help the parties engage in productive discussions and reach reasonable decision." (September 1, 2011 Assembly Floor Analysis of AB 646, as amended June 22, 2011, pp. 2-3.)

Opponents of the bill similarly continued to argue that the bill created "a disincentive for employee organizations to negotiate in good faith when there exists the option of *further processes* under the PERB that will prolong negotiations." Specifically, they reasoned that "*requiring mediation and fact finding* prior to imposing a last, best and final offer would simply add costs and be unhelpful to both the employer and the employees." (September 1, 2011 Assembly Floor Analysis of AB 646, as amended June 22, 2011, p. 3.)

Notwithstanding such opposition, the Assembly voted in favor of the final bill. In October 2011, Governor Brown signed AB 646 into law. AB 646 changed the MMBA significantly by establishing new impasse procedures, effective January 1, 2012. (Gov. Code §§ 3505.4, 3505.5, 3505.7.)

B. THE LEGISLATIVE HISTORY OF ASSEMBLY BILL 1606

On February 7, 2012, only one month after AB 646 took effect, Assembly Member Henry Perea and the Legislature introduced clean-up legislation to constituent questions over factfinding and its original intent regarding AB 646. (*See,* March 27, 2012 Assembly Committee Analysis of AB 1606, as introduced February 7, 2012.)

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[2] The Department reports its findings and support positions through Bill Analyses, available at <http://www.dof.ca.gov/Legislative_Analyses/index.php>; *see also,* Department of Finance Home Page, <http://www.dof.ca.gov/>.

The Assembly Committee on Public Employees, Retirement and Social Security bill analysis on AB 1606 stated that the bill was necessary to "clarif[y] impasse procedures governing local public agencies and employee organizations." (*Ibid.*, p. 1.) Assembly Member Perea acknowledged that:

> *Ambiguity in the **drafting** of AB 646* has called into question whether an employer can forgo all impasse procedures, including mediation and factfinding... the issue whether AB 646 requires that mediation occur as a precondition to an employee organization's ability to request fact-finding remains unresolved. AB 1606 would clarify that fact-finding is available to employee organizations in all situations, regardless of whether the employer and employee have engaged in mediation. (*Ibid.*, pp. 1-2 [emphasis added].)

Supporters, which included AB 1606 co-sponsor American Federation of State, County and Municipal Employees (i.e., previous sponsor of AB 646), stated that in December 2011, prior to AB 646's effective date, it "became apparent that *AB 646 was **drafted in a manner** that called into question whether mediation was a precondition to an employee organization's ability to request factfinding*." (*Ibid.*, p. 2.) As a result, PERB adopted emergency regulations allowing "factfinding to be requested in all circumstances, because they found it to be the most efficient way to implement the entirety of AB 646 and accurately reflect the intent of the Legislature." (*Ibid.*)

In summary, the bill's proponents argued that final, statutory clarification of this question was necessary to effectuate the purposes of AB 646. Accordingly, they stated, "AB 1606 properly reflects the intent of the Legislature to strengthen collective bargaining by ensuring employers and employees operate in good faith and work collaboratively to deliver government services in a fair, cost-efficient manner." (*Ibid.*)

As AB 1606 worked its way through the Legislature, the Department of Finance issued its analysis of bill. In review of the final draft for AB 1606, the Department acknowledged the Assembly Member Perea's efforts to enact "a technical clean-up," writing:

> [T]his bill would *clarify* a substantive dispute between labor and some local governments that arose during the rule-making process in late 2011 for implementing AB 646.
>
> Specifically, the bill makes clear that mediation is not required before parties can pursue resolution through a PERB factfinding panel. AB 646 may have suggested that factfinding can occur only after mediation efforts have been exhausted. Because some local government entities do not utilize mediation services as a matter of

> practice or policy during negotiations, *the drafting of AB 646 left it unclear* if public employees in non-mediation cities, counties, and districts could still seek redress from a factfinding panel. (June 25, 2012 Department of Finance Bill Analysis of AB 1606, as amended May 17, 2012, p. 1 [emphasis added].)

In September 2012, Governor Brown signed AB 1606 into law, clarifying this discrepancy and employee organizations' right to request (e.g., demand) factfinding even in cases where the parties do not submit their dispute to mediation. Thus, AB 1606 makes clear that "fact-finding is available to employee organizations *in all situations*, regardless of whether the employer and employee engaged in mediation." (November 13, 2012 Senate Floor Analysis of Assembly Bill 1606, as amended May 17, 2012, p. 2 [emphasis added].) Accordingly, AB 1606 enacted the following changes to Government Code section 3505.4, effective January 1, 2013:

> (a) ~~If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, t~~***[T]***he employee organization may request that the parties' differences be submitted to a factfinding panel ***not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse***. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the fact-finding panel. (*Compare* City Exhibit H *with* City Exhibit I.)

C. THE CITY FILES A TEST CLAIM FOR REIMBURSEMENT FOR COMPLIANCE WITH MANDATORY FACTFINDING PROCUEDURES UNDER GOVERNMENT CODE SECTION 3505.4

The City first incurred increased costs under Government Code section 3505.4 on June 16, 2015, more than two years after AB 1606 first took effect. Under Section 3505.4(a), as it existed when the City first incurred costs, the City was required to participate in factfinding where an impasse had been reached and the exclusive employee representative requested fact-finding within 30 – 45 days following the appointment of a mediator or if mediation was not used, within 30 days of the written declaration of impasse by either party.

On June 2, 2016, the City filed the instant Test Claim for reimbursement of costs incurred in compliance with mandatory factfinding procedures under Section 3505.4, as that statute existed in June 2015. The City identified Section 3505.4 as the statute under which it acted, acknowledging that the State first implemented the statutory mandate and other impasse alterations in 2011 under AB 646. (*See generally,* June 2, 2016 Test Claim; *see also,* Stat. 2011, Chapter 680.) But the City also submitted the current statutory language of Section 3505.4 enacted in 2012 by AB 1606. The current provisions, under which the City had acted, clarified the mandatory nature of AB 646's factfinding requirements and were critical to the City's Test Claim. (*See,* June 2, 2016 Test Claim, pp. 19-21.)

II. LEGAL ANALYSIS

A. THE CITY IS REQUIRED TO PARTICIPATE IN FACTFINDING PROCEDURES UNDER GOVERNMENT CODE SECTION 3505.4 AND IS ENTITLED TO SUBVENTION FOR REIMBURSABLE STATE MANDATE

Under the California Constitution, "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of such program or increased level of service...." (Cal. Const., art. XIII B, § 6.) The Constitution, therefore, imposes on the State an obligation to reimburse local agencies for the cost of most programs and services they are required to provide pursuant to State mandate provided that those local agencies were not under a preexisting duty to fund the activity. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 328.) The purpose of this Constitutional provision is to prohibit "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *see also, Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 735 [local agency protection critical following limitation on state and local governments' taxing and spending powers].)

In 1984, the State enacted legislation establishing comprehensive administrative procedures for resolving claims through the Commission on State Mandates. (Gov. Code, §§ 17500 *et seq.*) The legislation also established a "test claim" procedure to resolve whether a cost is or is not a reimbursable state mandate. (*See,* Gov. Code, §§ 17552-54, 17562, 17600, 17612.) A "test claim" is "the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state...." (Gov. Code, § 17521.) Because Commission decisions apply statewide, *the test claim* "functions similarly to a class action and *has been established to expeditiously resolve disputes affecting multiple agencies*." (Cal. Code Regs., tit. 2, § 1181.2, subd. (s) [emphasis added].)

A test claim must identify *the statutory sections*... that purportedly impose a mandate, explain in detail how they create new costs, *and include evidentiary support*. (Gov. Code, § 17553(b); Cal. Code Regs., tit. 2, §§ 1181.2(s) [test claims allege "that a particular statue" imposes State-mandated costs] and 1183.1.) It is apparent from the comprehensive nature of this legislative scheme, and the Legislature's expressed intent, that *the... statutes... establish procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created*. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.)

The question whether a statute imposes a mandate is a question of law. Thus, it is critical that "the *entire* record before the Commission" be considered, including references to state statutes and regulations. (*Dep't of Fin. v. Comm'n on State Mandates* (2016) 1 Cal.5th 749, 762, as modified on denial of reh'g (Nov. 16, 2016).)

The Proposed Decision is based solely on the Commission staff's conclusion that the test claim statute encompasses only those activities arising from Statute 2011, chapter 680 (AB 646). The Proposed Decision urges the Commission to find that AB 646, allegedly the only law pled by the City, did not compel the City to engage in factfinding. (Proposed Decision, pp. 1 and 17 [alleging City did not plead AB 1606 in its Test Claim].)

The administrative record, however, is clear: the City alleged that it first incurred mandatory factfinding costs in 2015 under Government Code section 3505.4. The Test Claim acknowledged that the Legislature first altered applicable impasse procedures through the passage of AB 646 in 2011. (*See generally,* June 2, 2016 Test Claim; *see also,* Stat. 2011, Chapter 680.) In accordance with Commission regulations, the City provided additional evidentiary support demonstrating the mandatory nature of the MMBA's factfinding procedures – it submitted the current, modified language of Section 3505.4, enacted 2012 by AB 1606, under which it acted. (*See,* June 2, 2016 Test Claim, pp. 19-21; *see also,* AB 1606, Stat. 2012, Chapter 314.)

Therefore, the City properly identified the statutory sections and evidentiary support demonstrating the State mandate in its test claim. If the Commission narrows its decision to address the City's claim based solely on obsolete statutory provisions, the language under which the City did not act, the Commission will defeat the legislative purpose and intent of the California Constitution and Government Code sections 17500 *et seq.* (*County of San Diego, supra,* 15 Cal.4th at 81 [state barred from shifting financial responsibilities to local agencies] and Cal. Code Regs., tit. 2, § 1181.2(s) [test claim procedures intended to *expeditiously* resolve disputes affecting multiple agencies]; *see also,* Gov. Code 17572(a) and (b) [establishing legislative preference for early settlement of mandate claims].) The Commission cannot put off until tomorrow what it should rule on today; the Commission must consider the entire record as presented by the City, including the clarifying statutory provisions enacted by AB 1606. The clarifying provisions clearly required the City to participate in factfinding at an employee organization's request, whether or not the parties engaged in mediation.

B. THE CANONS OF STATUTORY INTERPRETATION DEMONSTRATE THAT THE STATE ESTABLISHED MANDATORY FACTFINDING PROCEDURES IMPOSING UNIQUE REQUIREMENTS UPON LOCAL GOVERNMENT AGENCIES

The rules of statutory interpretation require that the Commission: (1) ascertain and give effect to the legislative intent; (2) provide a reasonable and common sense interpretation consistent with its apparent purpose; (3) give significance to every possible word and harmonize the parts by considering a particular clause or section in the context of the whole; (4) take into account matters such as context, object in view, evils to be remedied, Legislation on the same subject, public policy, and contemporaneous construction; and (5) give great weight to consistent administrative construction. (*DeYoung v. San Diego* (1983) 147 Cal.App.3d 11, 17 (disapproved on different grounds by *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10, 15.)

When interpreting a statute, a court or administrative body starts with the statutory language to determine if the words used unequivocally express the legislature's intent. (*People v. Hall* (2002) 101 Cal.App. 4th 1009, 1020 [when statutory language is "ambiguous or *susceptible of more than one reasonable interpretation*, [courts must consider] a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, and the statutory scheme of which the statute is a part."]; *Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market* (2011) 52 Cal. 4th 1100, 1107.)

But in construing or interpreting a statute, the Commission's primary objective is to determine and effectuate the legislative intent of the enactment. All other rules of statutory construction yield to this rule. (*See,* Code Civ. Proc. § 1859; *see also, Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 235; *In re C.H.* (2011) 53 Cal.4th 94, 100.) Thus, when the legislative intent is not expressed in the statute or the language is not clear, as is the case here, the Commission should examine the statutory history to determine the Legislature's intent. (*Delaney v. Baker* (1999) 20 Cal.4th 23, 29.)

Lastly, even if the language of a statute is unambiguous, the Commission must consider the consequences that will flow from a particular interpretation. The legislative history of such statutes should be considered if the literal meaning of the language in the statute would result in absurd consequences that the Legislature did not intend. (*In re Michele D.* (2002) 29 Cal.4th 600, 606; *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

1. <u>The Proposed Decision Ignores Rules of Statutory Construction to Suggest There Is No Basis to Consider the Applicable Legislative History</u>

The Proposed Decision suggests there is no need to review the legislative history of AB 646, or evidence of PERB's subsequent emergency regulations nor the Legislature's AB 1606, because "the plain language of the test claim statute [is] unambiguous." (Proposed Decision, p. 29.) This argument, however, ignores other pertinent rules of statutory construction.

The Proposed Decision, which highlights PERB's (i.e., the expert agency responsible for interpreting and enforcing public employer-employee bargaining obligations), public agencies', and employee organizations' conflicting understanding of Section 3505.4 (Stat. 2011, Chapter 680), contradicts this notion. AB 646's factfinding provisions were anything but clear. The Commission cannot lightly dismiss its responsibility to construe the words of the statute in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other. (*Dyna-Med, supra,* 43 Cal.3d at 1387.) Accordingly, the Commission is obligated to determine and effectuate the legislative intent of Section 3505.4. And, as demonstrated below, the Legislature intended to create mandatory impasse and factfinding procedures.

a. Comments from the Sponsor of AB 646 Demonstrate Legislative Intent to Create Mandatory Factfinding Procedures

Assembly Member Atkins sponsored AB 646. The analysis prepared by the Assembly Committee on Public Employees, Retirement and Social Security includes the following comments by Assembly Member Atkins:

> The *<u>creation of mandatory impasse procedures</u>* is likely to increase the effectiveness of the collective bargaining process," and "[f]act-finding panels can also help facilitate agreement, by making objective, factual determinations that can help the parties engage in productive discussions and reach reasonable decisions." (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 2.)

The final analysis of AB 646, as amended on June 22, 2011, includes identical statements from the bill's sponsor. (September 1, 2011 Assembly Floor Analysis of AB 646, as amended June 22, 2011, pp. 2-3.) The records unequivocally demonstrate that, before and after the amendments on which the Proposed Decision turns, the Legislature intended that AB 646 would create mandatory impasse procedures, including the requirement that public agencies would be required to participate in factfinding if demanded by an employee organization.

Although the Proposed Decision argues that factfinding under AB 646 was premised on the occurrence of mediation, which was voluntary under Government Code section 3505.2, the record clearly demonstrates that the City acted in accordance with Section 3505.4 *as it existed in June 2015*. This decision cannot turn on the occurrence of mediation, a provision rendered obsolete in 2012 when AB 1606 clarified Section 3505.4's mandatory nature. Nor can the Commission escape Assembly Member Atkins comments. Statements by the sponsor of legislation are entitled to be considered in determining the import of legislation. (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 401.) Here, Assembly Member Atkin's express intent must be incorporated into the meaning of Government Code § 3505.4 because it leads to the only rational interpretation of the statute.

b. Legislative Amendments and Department of Finance Analysis Regarding Section 3505.4 Illustrates Legislative Intent to Create Mandatory Factfinding Procedures

The amendment history of AB 646 prior to its enactment further demonstrates the Legislature's intent to enact mandatory factfinding procedures. (*See, Dyna-Med, Inc., supra,* 43 Cal.3d at 1387 ["Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent."]

Assembly Member Atkins originally drafted AB 646 to permit *either* the agency or employee organization to request mediation without agreement by the other. The bill further authorized *either* party to request factfinding if the mediator was not able to settle the matter. (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 1.) The Legislature revised AB 646 following concerns that its procedures would delay contract negotiations, removing new mediation provisions but preserving employee organizations' right to compel factfinding without the agency's agreement. Without considering other possibilities, the Proposed Decision summarily determines these revisions signaled the Legislature's intent to permit factfinding only if the parties agreed to mediation under Section 3505.2. (Proposed Decision, pp. 10-11, 27-28) But it is also reasonable that Assembly Member Atkins revised the bill to limit opposition without considering Section 3505.2's effect on employee organizations' mandatory factfinding rights.

This conclusion is all the more reasonable given her consistent statements on the Assembly floor, described above, regarding the creation of mandatory impasse procedures both before and after these revisions. Further, following the March 23, 2011 amendments, Assembly Member Atkins continued to argue that a uniform impasse process was essential and that "[f]act-finding is an effective tool… [to] facilitate agreement." (August 29, 2011 Senate Floor Analysis of AB 646, as amended June 22, 2011, p. 5.)

Additionally, in August 2011, the Department of Finance explicitly advised Governor Brown that the bill allowed employee organizations to request fact-finding and that "*local employer[s] would be required to participate in the fact-finding panel*." (August 1, 2011

Department of Finance Bill Analysis of AB 646, as amended June 22, 2011, p. 1 [emphasis added].) By contrast, now faced with a test claim that would affect the State Budget, the Department now argues that AB 646 did not create mandatory factfinding procedures and that local agencies bear the financial responsibility for these procedures which it previously conceded were required by the statute. This approach is disingenuous at best, and is unquestionably inconsistent with its unadulterated analysis in 2011. Courts have similarly found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19 [other citations omitted].) The Commission must therefore consider the Department's analysis as indicative of the Legislature's and Governor's intent when enacting AB 646; the Department cannot exploit this body to advance contrary positions in order to avoid reimbursing the City's mandated costs.

It is undisputable that this additional evidence supports the City's contention that the Legislature intended to require public agencies, such as the City, to participate in factfinding procedures at the sole request of employee organizations. Further, the Department of Finance, as the Governor's chief fiscal policy advisor, counseled Governor Brown as much before he signed AB 646 into law in October 2011.

c. The Plain Language of Section 3505.4 Does Not Clearly Permit the City to Voluntarily Participate or Decline to Participate in Factfinding

The Proposed Decision states that the plain language of the test claim statute is unambiguous, arguing AB 646 fails to "make mediation or factfinding mandatory or... require factfinding in the absence of mediation." (Proposed Decision, p. 29.) But the Legislature cannot reasonably anticipate every factual scenario that will be applied to any particular statute in the future. While AB 646 required factfinding at an employee organization's request, it was not precise enough to cover a factual scenario in which an organization requested factfinding in the event that mediation had not occurred. The Commission should read Government Code section 3505.4, as it was amended in 2012 by AB 1606 and which was, in fact, the governing statute that existed when the City acted. The Commission should also read section 3505.4, as it was amended in 2012 in context with the remainder of the MMBA. In doing so, it has no other choice but to conclude that the City was required to engage in factfinding, in all circumstances, at the employee organization's timely request, as the Legislature intended it to mean.

Even statutory language that appears clear and unambiguous on its face, as the Proposed Decision argues 2011's Section 3505.4 is, may be shown to have a latent ambiguity when some extrinsic factor creates a need for interpretation or a choice between two or more possible meanings. (*Varshock v. California Dep't of Forestry & Fire Prot.* (2011) 194 Cal.App.4th 635, 644; *Sutter County v. Board of Administration* (1989) 215 Cal.App.3d 1288, 1295 [ambiguity arises if more than one construction "is semantically permissible... given the context and applicable rules of usage."].) A latent ambiguity *requires* examination of extrinsic matters to

make the judgment whether the claim is tenable. If a reasonable ambiguity is established, it requires harmonization of the comprehensive legislative scheme to avoid conflict. (*City of Sacramento v. Public Employees' Retirement System* (1994) 22 Cal.App.4th 786, 795 [citations omitted].) A latent ambiguity exists where, for example, a literal interpretation of a statute would frustrate rather than promote the purpose of the statute or would produce absurd consequences the Legislature did not intend. (*Varshock, supra,* 194 Cal.App.4th at 644.)

The Proposed Decision acknowledges the difficulties in interpreting AB 646, describing both PERB's adoption of emergency regulations in order to implement AB 646 and the Legislature's subsequent clean-up bill in AB 1606. (Proposed Decision, pp. 17-22.) However, the Proposed Decision summarily concludes AB 646 cannot be harmonized with these examples because doing so would add terms "which the Legislature has not enacted." (Proposed Decision, p. 30.) It further rejects PERB's reading of AB 646, to the extent PERB relied upon committee reports and other legislative history, because the alleged unambiguous plain language governs instead. (Proposed Decision, p. 31.)

First, PERB is the expert public sector labor relations agency recognized by the California Legislature and the Courts as having exclusive initial jurisdiction to interpret and administer the provisions of the MMBA, including Section 3505.4, in order to effectuate the purposes of the Act. Thus, courts generally defer to PERB's construction of labor law provisions within its jurisdiction. (Gov. Code, § 3509; *Los Angeles County v. Los Angeles County Employee Relations Comm.* (2013) 56 Cal.4th 905, 922; *San Diego Municipal Employees Ass'n. v. Superior Court* (2012) 206 Cal.App.4th 1447, 1456-1458 [PERB is the expert administrative agency in California established to administer collective bargaining for government employees].) Hence, courts and administrative bodies should follow PERB's interpretation unless it is clearly erroneous. (*Los Angeles County, supra,* 56 Cal.4th at 922.) As described below, PERB's interpretation is not erroneous. The Commission should adopt PERB's conclusion that mandatory factfinding in all situations is consistent with the legislative intent.

Second, the Proposed Decision incorrectly interprets PERB's harmonization of Government Code sections 3505.4 with 3505.7. Although AB 646's revisions omitted previous language describing when an employer could implement its last, best, and final offer (LBFO), PERB acutely recognized that the revised language in Section 3505.7 showed that factfinding was a mandatory step in the process preceding an employer's ability to implement its LBFO. (*See,* Proposed Decision, pp. 20-21.) More specifically, PERB held that the MMBA now "provided that implementation of an LBFO may occur only '[a]fter any *applicable* mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5.'" (Commission Exhibit E, Public Employment Relations Board's Response to the Request for the Rulemaking Files, pages 124-125 (Letter from Les Chisholm, PERB, to Peggy J. Gibson, Office of Administrative Law, dated December 28, 2011, pages 1-2.)

The Proposed Decision finds that the term "applicable" means only that, if a procedure is applicable, it must be exhausted, and, if it is not applicable, it need not be exhausted. The Proposed Decision further alleges that PERB's interpretation of Section 3505.7 would similarly require mandatory mediation contrary to Section 3505.2, which described mediation as voluntary. (Proposed Decision, pp. 30-31.) Such analysis misconstrues PERB's reasoning.

The Assembly described Assembly Member Atkins's intent to implement mandatory mediation procedures, allowing *either* the public employer or employee organization to request mediation. (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 1.) It acknowledged, however, that existing law "[a]uthorize[d] a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA." (*Id.*, p. 2.) Accordingly, this bill also:

> 10) Specifie[d] that the parties [were] still able to utilize their own negotiated and mutually agreed upon factfinding procedure, in which case, cost will be borne equally by the parties.
>
> 11) Allow[ed] an employer to implement their last, best and final offer once any applicable mediation and factfinding procedures have been exhausted. (*Id.*, pp. 1-2.)

AB 646, as drafted on March 23, 2011, thus proposed to amend Section 3505.2 as follows: "*Either* party may request that [PERB] appoint a mediator for the purpose of assisting them in reconciling their differences...." (*See,* Redline Comparison of AB 646, as amended March 23, 2011 [Section 3505.2(a)(2)], with AB 646, Stat. 2011, Ch. 680, as chaptered October 9, 2011 [emphasis added].) Importantly, this earlier version further added Section 3505.7, which, as proposed, read:

> *After any applicable mediation and factfinding procedures have been exhausted,* a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer.... (*Id.*)

But opponents of AB 646 argued that it "undermined a local agency's authority to establish local rules for resolving impasse." (May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011, p. 2.) As a result of these and other concerns, Assembly Member Atkins agreed to a series of amendments. The Committee memorialized the changes, including, in relevant part, that the revisions would "*[r]emove all of the provisions related to mediation*, making no changes to existing law." (*Id.*, p. 3.) AB 646 was then amended to dispense with the proposed mandatory mediation procedures that *either* party could implement.

The Legislature, however, failed to revise Section 3505.7, which the author originally drafted with the intent that the parties would be required to complete: (1) Section 3505.2's then-mandatory mediation and, consequently, factfinding procedures, or (2) other applicable impasse rules that had been negotiated locally. This drafting error, in harmony with Assembly Member Atkins' consistent argument that she intended to enact mandatory impasse procedures, embedded a latent defect that created confusion and required subsequent interpretation by both PERB and the Legislature.

Third, the Commission must account for AB 1606, which the Proposed Decision ignored. AB 1606 significantly impacts this test claim because the Legislature explicitly drafted the clean-up legislation to ***clarify AB 646's latent ambiguities***. The sponsors of AB 1606 clearly acknowledged the ambiguities "in the drafting" of AB 646. (March 27, 2012 Assembly Committee Analysis of AB 1606, as introduced February 7, 2012, pp. 1 [Perea], 2 [sponsor of both AB 646 and 1606, stating "AB 646 *was drafted* in a manner that" created ambiguity].) AB 1606 ***proclaimed and clarified the Legislature's intent for AB 646*** to create mandatory factfinding procedures "available to employee organizations *in all situations*, regardless of whether the employer and employee engaged in mediation." (November 13, 2012 Senate Floor Analysis of Assembly Bill 1606, as amended May 17, 2012, p. 2 [emphasis added].)

The Proposed Decision cannot ignore AB 1606's clarification of Section 3505.4, which was in effect when the City first incurred costs. The present forum is an appropriate place to address the amended provisions, the language of which was presented in the City's original Test Claim and upon which the City actually acted. (*Bjornestad v. Hulse* (1991) 229 Cal.App.3d 1568, 1578 [citation omitted]; *see also,* June 2, 2016 Test Claim, pp. 19-21.) It would not be in the interest of administrative economy to reject the City's Test Claim only to require another public agency to prepare and file a second test claim, which would inevitably be subject to this Commission's review in a subsequent matter. The City has submitted its Test Claim, attaching to it the relevant supporting evidence, including the statutory language enacted by AB 1606; the issues are of continuing public interest; and they are likely to affect the future rights of the parties. (*See generally, Bjornestad, supra,* 229 Cal.App.3d at 1578–79.)

The Proposed Decision's narrow reading of Section 3505.4 and AB 646 is in tension with the statutory scheme as a whole. Thus, in order to (1) give effect to the legislative intent clearly demonstrated within the record, (2) provide a reasonable and common sense interpretation of the statute, and (3) harmonize it with the legislative history and statutory scheme, the Commission should consider the extrinsic evidence presented above. Upon doing so, there can be no doubt that Section 3505.4, as it existed in 2015, creates a reimbursable state mandate.

2. Holding That Government Code Section 3505.4's Factfinding Procedures Are Discretionary Would Create an Absurd Result

Even assuming, *arguendo*, the Commission finds that the plain and unambiguous terms of Section 3505.4 demonstrate that mediation procedures and, consequently, factfinding are

discretionary, it must still interpret the statute to avoid absurd results. The language of a statute should not be given its literal meaning if doing so would yield absurd results or consequences that the Legislature did not intend. (*People v. Albillar* (2010) 51 Cal.4th 47, 55; *In re Michele D., supra,* 29 Cal.4th at 606.) The plain meaning of words in a statute may also be disregarded when that meaning is "repugnant to the general purview of the act," or for some other compelling reason. (*Spielman v. Ex'pression Center for New Media* (2010) 191 Cal.App.4th 420, 428–29.) The Proposed Decision suggests that Section 3505.4's factfinding procedures were discretionary based on obsolete statutory language as it existed in 2012 (*See,* AB 646, Stat. 2011, Ch. 680) and a narrow reading of the City's Test Claim, which the Proposed Decision suggests excludes any reference to the current statutory language enacted 2013. Such statutory construction produces an absurd result that contravenes the legislative intent supporting Section 3505.4

First, there is no judicial authority that supports such an interpretation of the statute. Neither does the Proposed Decision explain the logic of its analysis. In fact, the administrative and judicial authorities that address this issue support the conclusion that employee organizations may require public agencies to participate in factfinding before the agency may impose its LBFO. (*San Diego Housing Commission v. Public Employment Relations Board* (2016) 246 Cal.App.4th 1, 9 [interpreting mandatory impasse procedures wrought by AB 646]; *County of Contra Costa* (2014) PERB Order No. Ad-410-M, pp.48-49 [38 PERC ¶ 154] [upholding administrative determination regarding mandatory factfinding procedures].)

Second, the record clearly demonstrates that AB 1606 "clarified" AB 646 in 2013. The Legislature was clear: it did not overturn or rescind the provisions enacted by AB 646; it clarified that it had intended for AB 646 to establish mandatory factfinding procedures. Additionally, the City incurred factfinding costs beginning in *June 2015*. The City did not act in accordance with then-obsolete statutory language from 2012, as the Proposed Decision's literal interpretation suggests. The City instead acted in accordance with the mandatory factfinding procedures under Section 3505.4, *as it has existed since 2013*, with or without the occurrence of mediation. (*See,* AB 1606, Stat. 2012, Ch. 314; *see also,* June 2, 2016 Test Claim, pp. 19-21 [City submitted the clarifying statutory provisions for the Commission's consideration with its initial Test Claim].) The Commission must not endorse such absurdity; Section 3505.4 can only be interpreted as compulsory. This is the only approach which would promote the legislative intent to develop mandatory factfinding procedures.

III. CONCLUSION

This Proposed Decision takes the obsolete version of Section 3505.4 (Stat. 2011) at face value, without consideration of the current version (Stat. 2012). However, an absurdity would result if the Proposed Decision were confirmed. As explained above, the Legislature clearly intended that AB 646 created mandatory impasse procedures. Once the employee organization requests factfinding, the local agency has no choice but to engage in factfinding. Since there is no situation where the local agency has any discretion over whether to participate in factfinding, there is no other logical conclusion than factfinding is mandatory for the local agency. That the

Legislature did not anticipate the latent ambiguities that developed during the drafting process should not lead to a result that denies the City reimbursement for bargaining responsibilities mandated by the statute.

Therefore, the City respectfully requests that the Commission avoid this absurd result by amending the proposed decision to find a reimbursable state mandate with regard to factfinding procedures.

Very Truly Yours

LIEBERT CASSIDY WHITMORE

Erik M. Cuadros

EMC:brm

cc: Melanie L. Chaney

Enclosures:
Exhibit A – May 3, 2011 Assembly Committee Analysis of AB 646, as amended March 23, 2011
Exhibit B – August 29, 2011 Senate Floor Analysis of AB 646, as amended June 22, 2011
Exhibit C – August 1, 2011 Department of Finance Bill Analysis of AB 646, as amended June 22, 2011
Exhibit D – September 1, 2011 Assembly Floor Analysis of AB 646, as amended June 22, 2011
Exhibit E – March 27, 2012 Assembly Committee Analysis of AB 1606, as introduced February 7, 2012
Exhibit F – June 25, 2012 Department of Finance Bill Analysis of AB 1606, as amended May 17, 2012
Exhibit G – November 13, 2012 Senate Floor Analysis of Assembly Bill 1606, as amended May 17, 2012
Exhibit H – AB 1606, Stat. 2012, Ch. 314
Exhibit I – Redline Comparison of AB 646, as amended March 23, 2011, with AB 646, Stat. 2011, Ch. 680, as chaptered October 9, 2011

DECLARATION

I, Erik Cuadros, am an attorney with the law firm of Liebert Cassidy Whitmore, Claimant City of Glendora's designated representative in this matter. I declare under penalty of perjury that the statements made in these Comments in Response to the Commission on State Mandate's November 16, 2016 Draft Proposed Decision are true and complete to the best of my knowledge, information and belief and that this declaration was executed on December 7, 2016 at 400 Capitol Mall, Suite 1260, Sacramento, California.

Erik M. Cuadros

EXHIBIT A

Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY
Warren T. Furutani, Chair
AB 646 (Atkins) – As Amended: March 23, 2011

SUBJECT: Local public employee organizations: impasse procedures.

SUMMARY: Establishes additional processes, including mediation and factfinding, that local public employers and employee organizations may engage in if they are unable to reach a collective bargaining agreement. Specifically, this bill:

1) Allows either party, if after a reasonable time they fail to reach agreement, to request that the Public Employment Relations Board (PERB) appoint a mediator to assist the parties in reconciling differences. If PERB determines that an impasse exists, it is required to appoint a mediator within five working days after receipt of the request at PERB's expense.

2) Specifies that the parties are still able to utilize their own negotiated and mutually agreed-upon mediation procedure, in which case, PERB would not appoint a mediator, as specified.

3) Authorizes either party to request a factfinding panel to investigate the issues if the mediator is unable to settle the matter and declares factfinding is appropriate.

4) Specifies that the factfinding panel consist of one member selected by each party and a chairperson selected by PERB or by agreement of the parties.

5) Authorizes the factfinding panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of witnesses.

6) Requires any state agency, the California State University, or any political subdivision of the state to furnish requested information to the factfinding panel, as specified.

7) Specifies the criteria the factfinding panel should be guided by in arriving at their finding and recommendations.

8) Requires the factfinding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties being made available to the public.

9) Requires the costs of the chairperson of the factfinding panel to be paid for by PERB if PERB selected the chairperson. If the chairperson was mutually selected by the parties, the costs will be divided equally between the parties. Any other costs incurred will be borne equally by the parties, as specified.

10) Specifies that the parties are still able to utilize their own negotiated and mutually agreed-upon factfinding procedure, in which case, cost will be borne equally by the parties.

11) Allows an employer to implement their last, best and final offer once any applicable mediation and factfinding procedures have been exhausted.

EXISTING LAW, as established by the Meyers-Milias-Brown Act (MMBA):

1) Contains various provisions intended to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.

2) Provides that if, after a reasonable amount of time, representatives of the public agency and the employee organization fail to reach agreement, the two parties may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach impasse, the public agency is not required to proceed to interest arbitration and may implement its last, best and final offer.

3) Authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA.

4) Delegates jurisdiction over the employer-employee relationship to the Public Employment Relations Board (PERB) and charges PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

FISCAL EFFECT: Unknown.

COMMENTS: According to the author, "Currently, there is no requirement that public agency employers and employee organizations engage in impasse procedures where efforts to negotiate a collective bargaining agreement have failed. Without impasse procedures, negotiations may not be fully effective, and bargaining may break down before all avenues for agreement are explored. Many municipalities and public agencies promulgate local rules which include impasse rules and procedures. However, this requirement is not uniform, and the lack of uniformity may serve to create confusion and uncertainty.

"The creation of mandatory impasse procedures is likely to increase the effectiveness of the collective bargaining process, by enabling the parties to employ mediation and fact-finding in order to assist them in resolving differences that remain after negotiations have been unsuccessful. Mediators are often useful in restarting stalled negotiations, by encouraging dialogue where talks have broken down; identifying potential areas where agreement may be reached; diffusing tension; and suggesting creative compromise proposals. Fact-finding panels can also help facilitate agreement, by making objective, factual determinations that can help the parties engage in productive discussions and reach reasonable decisions."

Opponents state, "AB 646 undermines a local agency's authority to establish local rules for resolving impasse and the requirement that a local agency engage in factfinding may delay rather than speed the conclusion of contract negotiations." Opponents go on to say they are not aware of any abuses or short-comings of the current process and question the need for making such an important change in the process of reaching a collective bargaining agreement.

Opponents conclude, "Most importantly, the provisions in AB 646 could lead to significant delays in labor negotiations between public employers and employee organizations and result in additional costs to public employers at a time when public agencies are struggling to address budget shortfalls and maintain basic services for their residents. AB 646 would provide a disincentive for employee organizations to negotiate in good faith when there exists the option of further processes under the PERB that will prolong negotiations. Most collectively bargained contracts are stalled due to cost-saving measures being sought by the public agency in a downturned economy; requiring mediation and factfinding prior to imposing a last, best and final offer would simply add costs and be unhelpful to both the employer and the employees."

The Committee is informed the author will be offering amendments in Committee that do the following:

1) Remove all of the provisions related to mediation, making no changes to existing law.

2) Remove the requirements that an employer and employee organization submit their differences to a fact-finding panel and instead provides employees organizations with the option to participate in the fact-finding process established in Government Section 3505.4, which is added by this measure.

3) Clarify the existing requirement for a public employer to conduct a public impasse hearing prior to imposing its last, best, and final offer.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (Sponsor)
California Labor Federation

Opposition

Association of California Healthcare Districts
California Association of Sanitation Agencies
California State Association of Counties
Desert Water Agency
East Valley Water District
El Dorado Irrigation District
Placer County Board of Supervisors
Regional Council of Rural Counties
Sacramento Municipal Utility District

Analysis Prepared by: Karon Green / P.E., R. & S.S. / (916) 319-3957

EXHIBIT B

SENATE RULES COMMITTEE AB 646
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 646
Author: Atkins (D)
Amended: 6/22/11 in Senate
Vote: 21

SENATE PUBLIC EMPLOYMENT & RETIRE. COMM.: 3-2, 6/27/11
AYES: Negrete McLeod, Padilla, Vargas
NOES: Walters, Gaines

SENATE APPROPRIATIONS COMMITTEE: 6-3, 8/25/11
AYES: Kehoe, Alquist, Lieu, Pavley, Price, Steinberg
NOES: Walters, Emmerson, Runner

ASSEMBLY FLOOR: 50-25, 6/1/11 - See last page for vote

SUBJECT: Local public employee organizations: impasse procedures

SOURCE: American Federation of State, County and Municipal Employees, AFL-CIO

DIGEST: This bill allows local public employee organizations to request fact-finding if a mediator is unable to effect a settlement of a labor dispute within 30 days of appointment, and defines certain responsibilities of the fact-finding panel and interested parties, and makes specified exemptions from its provisions.

ANALYSIS: Existing law, as established by the Meyers-Milias-Brown Act (MMBA):

1. Contains various provisions intended to promote full communication between public employers and their employees by providing a

CONTINUED

reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.

2. Provides that if, after a reasonable amount of time, representatives of the public agency and the employee organization fail to reach agreement, the two parties may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach impasse, the public agency is not required to proceed to interest arbitration and may implement its last, best and final offer.

3. Authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA.

4. Delegates jurisdiction over the employer-employee relationship to the Public Employment Relations Board (PERB) and charges the PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

This bill:

1. Allows an employee organization to request fact-finding when a mediator has been unsuccessful at effectuating a resolution to a labor dispute within 30 days of appointment.

2. Specifies that the fact-finding panel consist of one member selected by each party and a chairperson selected by the PERB or by agreement of the parties.

3. Requires the fact-finding panel to meet with the parties within 10 days after appointment, and take other steps it deems appropriate.

4. Authorizes the panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of witnesses.

CONTINUED

5. Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.

6. Specifies the criteria the fact-finding panel should be guided in by arriving at their findings and recommendations.

7. Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties before being made available to the public.

8. Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson. Any other costs incurred will be borne equally by the parties, as specified;.

9. Allows an employer to implement its last, best and final offer, excluding implementation of a Memorandum of Understanding, once any applicable mediation and fact-finding procedures have been exhausted.

10. Allows a recognized employee organization the right each year to meet and confer, despite the implementation of the best and final offer.

11. Exempts a charter city, charter county, or a charter city and county that has a procedure, as specified, that applies if an impasse has been reached between the public agency and a bargaining unit regarding negotiations to which the impasse procedure applies.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

Major Provisions	2011-12	2012-13	2013-14	Fund
Admin. expenses	$75	$150	$150	General
Fact finding expenses	unknown, potentially significant not reimbursable			Local

CONTINUED

SUPPORT: (Verified 8/29/11)

American Federation of State, County and Municipal Employees, AFL-CIO, (source)
District Council 36
California State Employees Association
California Labor Federation
California Nurses Association
City of Los Angeles Councilmember Paul Koretz
Orange County Labor Federation
Peace Officers Research Association of California
San Diego and Imperial Counties Labor Council'

OPPOSITION: (Verified 8/29/11)

Association of California Healthcare Districts
Association of California Water Agencies
California Association of Sanitation Agencies
California Municipal Utilities Association
California Special Districts Association
California State Association of Counties
Cities of Brea, Cerritos, Cloverdale, Costa Mesa, Fountain Valley, Fresno, Healdsburg, Huntington Park, Kingsburg, Livingston, Long Beach, Merced, Murrieta, Red Bluff, Rocklin, San Diego, San Mateo, Santa Rosa, Torrance, Tulare, Vista, Wasco and Whittier
Counties of Los Angeles, Orange, Placer, Sacramento, San Diego and Solano
County Sanitation Districts of Los Angeles County
Cucamonga Valley Water District
Department of Finance
Desert Water Agency
Dublin San Ramon Services District
East Valley Water District
El Dorado Irrigation District
Helix Water District
Howard Jarvis Taxpayers Association
League of CA Cities
Office of Mayor Antonio R. Villaraigosa
Placer County Water Agency
Regional Council of Rural Counties
Sacramento Municipal Utilities District

CONTINUED

Stockton East Water District
Three Valleys Municipal Water District
Urban Counties Caucus
Valley Center Municipal Water District
Vista Irrigation District

ARGUMENTS IN SUPPORT: According to the author, "Although the MMBA requires employers and employees to bargain in good faith, some municipalities and agencies choose not to adhere to this principle and instead, attempt to expedite an impasse in order to unilaterally impose their last, best, and final offer when negotiations for collective bargaining agreements fail. This creates an incentive for surface bargaining in which local governments rush through the motions of [a] meet-and-confer process to unilaterally meet the goal of the agency's management. Although some municipalities have elected to include local impasse rules and procedures, no standard requirement exists for using impasse procedures. This lack of uniformity causes confusion and uncertainty for workers. Fact-finding is an effective tool in labor relations because it can facilitate agreement through objective determinations that help the parties engage in productive discussions and reach reasonable decisions."

According to the sponsor of the bill, the American Federation of State, County and Municipal Employees, AFL-CIO, "Impasse procedures are crucial parts of the collective bargaining process and without them, negotiations may not be fully effective, and bargaining may break down before all avenues of agreement have been explored. Fact-finding panels facilitate agreement through their objective determinations that can help the parties engage in productive discussions and reach reasonable decisions. If a public agency has already promulgated its own impasse procedures, [this bill] will not prevent that public agency from using those procedures, as long as the procedures are agreed upon by the employee organization."

ARGUMENTS IN OPPOSITION: Opponents contend that, "[This bill] removes local authority by giving full discretion to public employee unions to request fact-finding once an impasse is reached. The significant costs that will be imposed on agencies for a process that is at the sole discretion of a local bargaining unit and not the agency is financially impractical for cities. In addition, there is limited funding available to allow PERB to meet this measurable mandate. [This bill] undermines a local agency's authority to establish local rules for resolving impasse; delays the conclusion of contract negotiations – which inevitably will create more adversarial relations

CONTINUED

between the negotiating parties; could lead to significant delays in labor negotiations between public employers and employee organizations, and could provide a disincentive for employee organizations to negotiate in good faith when a subsequent option exists."

Opponents further contend that they provide impasse procedures in collective bargaining, bargain in good faith with their respective employee organizations, and that they are unaware of any problems with the current process such that a change is necessary.

ASSEMBLY FLOOR: 50-25, 6/1/11
AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Galgiani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Perea, Portantino, Skinner, Solorio, Swanson, Torres, Wieckowski, Williams, John A. Pérez
NOES: Achadjian, Bill Berryhill, Conway, Cook, Donnelly, Fletcher, Beth Gaines, Grove, Hagman, Halderman, Harkey, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nestande, Nielsen, Norby, Olsen, Silva, Smyth, Valadao, Wagner
NO VOTE RECORDED: Garrick, Gorell, Jeffries, V. Manuel Pérez, Yamada

CPM:do 8/29/11 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

EXHIBIT C

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 22, 2011
POSITION: Oppose
SPONSOR: American Federation of State, County and Municipal Employees

BILL NUMBER: AB 646
AUTHOR: T. Atkins

BILL SUMMARY: Local Public Employee Organizations: Impasse Procedures

This bill would allow local public employee organizations to request a fact-finding panel to address a dispute with their local employer if a mediator is unable to reach a settlement within 30 days. The local employer would be required to participate in the fact-finding panel. This bill also defines the responsibilities of the fact-finding panel and makes specified exemptions from its provisions.

FISCAL SUMMARY

Based on a January 1, 2012 implementation of this bill, the Public Employment Relations Board (PERB) indicates they would require $75,000 General Fund (GF) in 2011-12 and $150,000 GF in 2012-13 for a staff counsel and part time office technician. PERB indicates this staffing may not be necessary on an ongoing basis if anticipated workload does not materialize. The legislative analysis by the Assembly Committee on Appropriations estimates costs of $100,000 GF in 2011-12 and $200,000 GF in 2012-13 and ongoing based on a higher estimate of the workload required to oversee the fact-finding process.

The bill specifies that costs to fund the fact-finding panel chairperson, including per diem, and any other mutually incurred costs shall be shared equally between the local public employee organization and the local employer. Any separately incurred costs for the panel member selected by each party shall be paid for by that party. While this bill does not indicate that it would result in a state-mandated local cost, if local public employee organizations request a fact-finding panel that would require participation and shared costs with a local government entity, these costs could be considered a reimbursable state-mandated local cost.

The California Constitution requires the state to reimburse local entities for increased costs associated with any new program or higher level of service imposed by the state on local entities if the Commission on State Mandates determines that the new program or higher level of service is reimbursable and a state mandate.

COMMENTS

The Department of Finance is opposed to this bill because it could generate additional General Fund workload and increase the number of state employees when the state is dealing with significant fiscal challenges and has been working towards decreasing the size of government. In addition, it could create a reimbursable state mandate that could result in costs that are not included in the Administration's current fiscal plan.

Existing law specifies that if a public agency and an employee organization fail to reach agreement, the two parties may agree on the appointment of a mediator at shared cost. If the parties reach impasse, the public agency may implement its last, best, and final offer. PERB currently oversees a fact-finding process for higher education and public education employers and employee organizations.

(Continued)

Analyst/Principal	Date	Program Budget Manager	Date
(0932) K. Martone		Diana Ducay	

Department Deputy Director — Date

Governor's Office: By: Date: Position Approved / Position Disapproved

COMMENTS (continued)

This bill would:

- Allow local public employee organizations to request a fact-finding panel to address a dispute if a mediator is unable to reach a settlement within 30 days.
- Specify that the fact-finding panel shall consist of one member selected by each party and a chairperson selected by PERB or by agreement of the parties.
- Specify the terms of the fact-finding panel's authority including conducting investigations, holding hearings, issuing subpoenas, and requiring the parties to furnish the panel with documentation.
- Specify the criteria the fact-finding panel should use to arrive at their finding and recommendations.
- Require the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days.
- Allow an employer to implement their last, best, and final offer once any applicable mediation and fact-finding procedures have been exhausted.
- Exempt specified local government charter cities or counties from the requirements of this bill if the charter entity has a procedure that applies to an impasse between the public charter entity and a bargaining unit and that procedure includes a process for binding arbitration.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	2011-2012	FC	2012-2013	FC	2013-2014	Fund Code
8320/Employ Rel	SO	No	---------- See Fiscal Summary ----------						0001
8885/Comm St Mndt	LA	No	---------- See Fiscal Summary ----------						0001

EXHIBIT D

CONCURRENCE IN SENATE AMENDMENTS
AB 646 (Atkins)
As Amended June 22, 2011
Majority vote

ASSEMBLY: 50-25 (June 1, 2011) SENATE: 23-14 (August 31, 2011)

Original Committee Reference: P.E.,R.& S.S.

SUMMARY: Allows local public employee organizations to request fact-finding if a mediator is unable to reach a settlement within 30 days of appointment, defines certain responsibilities of the fact-finding panel and interested parties, and makes specified exemptions from these provisions. Specifically, this bill:

1) Requires the fact-finding panel shall meet with the parties within 10 days after appointment and take other steps it deems appropriate. Specifies that the fact-finding panel consist of one member selected by each party and a chairperson selected by the Public Employment Relations Board (PERB) or by agreement of the parties.

2) Authorizes the fact-finding panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of witnesses.

3) Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.

4) Specifies the criteria the fact-finding panel should be guided by in arriving at their findings and recommendations.

5) Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties before being made available to the public.

6) Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson. Any other costs incurred will be borne equally by the parties, as specified.

7) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.

8) Exempts a charter city, charter county, or a charter city and county that has a procedure, as specified, that applies if an impasse has been reached between the public agency and a bargaining unit regarding negotiations to which the impasse procedure applies.

The Senate amendments exempt a charter city, charter county, or a charter city and county that has a procedure, as specified, that applies if an impasse has been reached between the public

agency and a bargaining unit regarding negotiations to which the impasse procedure applies.

EXISTING LAW, as established by the Meyers-Milias-Brown Act (MMBA):

1) Contains various provisions intended to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.

2) Provides that if, after a reasonable amount of time, representatives of the public agency and the employee organization fail to reach agreement, the two parties may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach impasse, the public agency is not required to proceed to interest arbitration and may implement its last, best and final offer.

3) Authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA.

4) Delegates jurisdiction over the employer-employee relationship to PERB and charges PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

AS PASSED BY THE ASSEMBLY, this bill was substantially similar to the version approved by the Senate.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

1) Based on the staffing that PERB estimated was necessary to administer the bill, the fiscal impact of administering the provisions of this bill is approximately $200,000.

2) There could be substantial state mandated reimbursement of local costs. The amount would depend on the number of requests for fact finding. PERB staff raised the possibility of exceeding 100 cases annually in the first years of the program. Assuming an individual case is likely to cost around $5,000, with the local agency footing half the bill, reimbursable costs could exceed $2.5 million. The Commission on State Mandates has approved a test claim for any local government subject to the jurisdiction of PERB that incurs increased costs as a result of a mandate, meaning their costs are eligible for reimbursement. Increasing the waiting time before fact finding can begin should reduce the costs slightly.

COMMENTS: According to the author, "Currently, there is no requirement that public agency employers and employee organizations engage in impasse procedures where efforts to negotiate a collective bargaining agreement have failed. Without impasse procedures, negotiations may not be fully effective, and bargaining may break down before all avenues for agreement are explored. Many municipalities and public agencies promulgate local rules which include impasse rules and procedures. However, this requirement is not uniform, and the lack of uniformity may serve to create confusion and uncertainty.

"The creation of mandatory impasse procedures is likely to increase the effectiveness of the collective bargaining process, by enabling the parties to employ mediation and fact-finding in order to assist them in resolving differences that remain after negotiations have been unsuccessful. Mediators are often useful in restarting stalled negotiations, by encouraging dialogue where talks have broken down; identifying potential areas where agreement may be reached; diffusing tension; and, suggesting creative compromise proposals. Fact-finding panels can also help facilitate agreement, by making objective, factual determinations that can help the parties engage in productive discussions and reach reasonable decisions."

Opponents state, "AB 646 undermines a local agency's authority to establish local rules for resolving impasse and the requirement that a local agency engage in factfinding may delay rather than speed the conclusion of contract negotiations." Opponents go on to say they are not aware of any abuses or short-comings of the current process and question the need for making such an important change in the process of reaching a collective bargaining agreement.

Opponents conclude, "Most importantly, the provisions in AB 646 could lead to significant delays in labor negotiations between public employers and employee organizations and result in additional costs to public employers at a time when public agencies are struggling to address budget shortfalls and maintain basic services for their residents. AB 646 would provide a disincentive for employee organizations to negotiate in good faith when there exists the option of further processes under the PERB that will prolong negotiations. Most collectively bargained contracts are stalled due to cost-saving measures being sought by the public agency in a downturned economy; requiring mediation and fact finding prior to imposing a last, best and final offer would simply add costs and be unhelpful to both the employer and the employees."

Analysis Prepared by: Karon Green / P.E., R. & S.S. / (916) 319-3957

FN: 0002141

EXHIBIT E

Date of Hearing: March 28, 2011

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY
Warren T. Furutani, Chair
AB 1606 (Perea) – As Introduced: February 7, 2012

SUBJECT: Local public employee organizations: impasse procedures.

SUMMARY: Clarifies impasse procedures governing local public agencies and employee organizations. Specifically, this bill:

1) Authorizes the employee organization to request that the parties differences be submitted to a fact-finding panel if the parties are unable to effect settlement of the controversy within 30 days after the appointment of a mediator, or if the dispute was not submitted to mediation within 30 days after the date that either party provided the other with written notice of a declaration of impasse.

EXISTING LAW, as established by the Meyers-Milias-Brown Act (MMBA):

1) Contains various provisions intended to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.

2) Allows, as established by AB 646 (Atkins), Chapter 680, Statutes of 2011, local public employee organizations to request fact-finding if a mediator is unable to reach a settlement within 30 days of appointment.

3) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and, despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.

4) Delegates jurisdiction over the employer-employee relationship to the Public Employment Relations Board (PERB) and charges PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

FISCAL EFFECT: Unknown.

COMMENTS: According to the author, "Ambiguity in the drafting of AB 646 has called into question whether an employer can forgo all impasse procedures, including mediation and fact-finding. In fact, several local government employers argue that AB 646 does not require fact-finding if the parties do not engage in mediation.

"Last December, PERB adopted emergency regulations to implement the provisions of AB 646. The adopted regulations provide that, if the parties opt to mediate, a fact-finding request can be filed not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator. In cases where a dispute is not submitted to a mediator, the request for fact-finding

must occur within 30 days following the date that either party provided the other with written notice of declaration of impasse.

"However, the issue whether AB 646 requires that mediation occur as a precondition to an employee organization's ability to request fact-finding remains unresolved. AB 1606 would clarify that fact-finding is available to employee organizations in all situations, regardless of whether the employer and employee have engaged in mediation."

Supporters state, "During the PERB rulemaking process, it became apparent that AB 646 was drafted in a manner that called into question whether mediation was a precondition to an employee organization's ability to request factfinding. Numerous employers and employee organizations provided public comments on the issue. The majority of interested parties, both employer and labor representatives, urged a reading of AB 646 that provides for a factfinding request whether mediation occurs or not. In December 2011, PERB adopted emergency regulations that implemented the majority opinion, allowing factfinding to be requested in all circumstances, because they found it to be the most efficient was to implement the entirety of AB 646 and accurately reflect the intent of the Legislature.

"AB 1606 seeks to provide a final, statutory clarification of this question, by revising the Government Code to allow factfinding in all circumstances in which a local public employer and its employees have reached an impasse in their negotiations. AB 1606 properly reflects the intent of the Legislature to strengthen collective bargaining by ensuring employers and employees operate in good faith and work collaboratively to deliver government services in a fair, cost-efficient manner."

Opponents state, "While it is indicated that this bill is intended to be technical and clarifying of existing law, the language states that the panel shall consider different items when reaching their decision. It is believed these factors take more and more discretion away from the Board (i.e., the financial ability of the public agency, consumer price index, etc.) and puts it into the hands of the fact finding panel. While it is not mentioned in the bill's text, the decision of the fact finding panel will be made public so it could also have political implications.

"This bill would be applicable to both formal contract negotiations and any Meet and Confer process involving changes to departmental operations that have an impact to the wages, hours or working conditions of employees. The fact finding panel would be required to consider, weigh, and be guided by the criteria outlines in arriving at their findings and recommendations. The broad criteria allows for the panel to consider factors normally not considered by the County as being relevant to operations. The costs of this process or revenue impacts are unknown at this time. However, many County agencies/departments implement operational changes to gain efficiencies and/or lower costs that require a Meet and Confer process to address impacts to employees. This bill could significantly impact the proposed changes which could be implemented."

On December 8, 2011, PERB approved amendments to three regulation sections and the adoption of two new regulation sections as emergency regulations necessary for the implementation of the provisions of AB 646. The emergency rulemaking package was submitted to the Office of Administrative Law (OAL) on December 19, 2011. On December 29, 2011, OAL approved the emergency regulatory action, effective on January 1, 2012. Below is the relevant excerpt from those new regulations:

32802. Request for Factfinding Under the MMBA.

(a) An exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or

(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (Co-Sponsor)
Peace Officers Research Association of California (Co-Sponsor)
California Professional Firefighters (Co-Sponsor)
Service Employees International Union (Co-Sponsor)
Laborers' Locals 777 & 792

Opposition

County of Orange Board of Supervisors

Analysis Prepared by: Karon Green / P.E., R. & S.S. / (916) 319-3957

EXHIBIT F

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 05/17/2012
POSITION: Neutral
SPONSOR: American Federation of State, County, and Municipal Employees (AFSCME)

BILL NUMBER: AB 1606
AUTHOR: Perea, Henry

BILL SUMMARY: Local public employee organizations: impasse procedures.

This bill would clarify that mediation is not required as a precondition for a factfinding panel to address collective bargaining disputes between local public employee organizations and their local government employers.

FISCAL SUMMARY

The Public Employment Relations Board (PERB) states that no additional costs are needed to implement this bill, and Finance concurs.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the original version include the following significant amendment, which does not change our position:

- Adds that an employee organization's right to request factfinding cannot be expressly or voluntarily waived.

COMMENTS

Finance is neutral on this bill because it does not generate additional costs for PERB. This bill is a policy matter concerning local government collective bargaining and does not affect or amend statutes or provisions relating to the Ralph C. Dills Act, which governs state employer-employee relations.

This bill makes changes to Chapter 680, Statutes of 2011 (AB 646), which allowed local government employees to request factfinding through PERB before a local government employer could impose a last, best, and final offer. Though the author's office and supporters contend this bill is a technical clean-up, this bill would clarify a substantive dispute between labor and some local governments that arose during the rule-making process in late 2011 for implementing AB 646.

Specifically, the bill makes clear that mediation is not required before parties can pursue resolution through a PERB factfinding panel. AB 646 may have suggested that factfinding can occur only after mediation efforts have been exhausted. Because some local government entities do not utilize mediation services as a matter of practice or policy during negotiations, the drafting of AB 646 left it unclear if public employees in non-mediation cities, counties, and districts could still seek redress from a factfinding panel.

In adopting emergency regulations through the Office of Administrative Law, PERB took the view that mediation should not be required as a precondition of factfinding. PERB is in the process of formalizing those rules. This bill conforms to the regulations and adds certainty to the impasse procedure.

In addition to AFSCME, several other labor organizations are co-sponsoring this legislation.

Analyst/Principal (0933) K.Martone	Date	Program Budget Manager Diana Ducay	Date
Department Deputy Director			Date
Governor's Office:	By:	Date:	Position Approved Position Disapproved
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

BILL ANALYSIS--(CONTINUED) **Form DF-43**

AUTHOR	**AMENDMENT DATE**	**BILL NUMBER**
Perea, Henry	05/17/2012	AB 1606

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	2011-2012 FC	2012-2013 FC	2013-2014	Fund Code
8320/Employ Rel	SO	No		----- No/Minor Fiscal Impact -----			0001

EXHIBIT G

SENATE RULES COMMITTEE AB 1606
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1606
Author: Perea (D), et al.
Amended: 5/17/12 in Senate
Vote: 21

SENATE PUBLIC EMPLOYMENT & RETIRE. COMM.: 3-2, 5/7/12
AYES: Negrete McLeod, Padilla, Vargas
NOES: Walters, Gaines

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 46-24, 4/23/12 - See last page for vote

SUBJECT: Local public employee organizations: impasse procedures

SOURCE: American Federation of State, County and Municipal Employees
California Professional Firefighters
Peace Officers Research Association of California
Service Employees International Union

DIGEST: This bill authorizes the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. This bill also authorizes an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Lastly, it specifies that its provisions are intended to be technical and clarifying of existing law.

CONTINUED

ANALYSIS: According to the author, ambiguity in the drafting of AB 646 (Atkins), Chapter 680, Statutes of 2011, has called into question whether an employer can forgo all impasse procedures, including mediation and fact-finding. Several local governments argue that AB 646 does not require fact-finding if the parties do not engage in mediation. The author notes that the Public Employment Relations Board (PERB) adopted emergency regulations to implement AB 646 and the regulations provide if the parties opt to mediate, a fact-finding request can be filed not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator. The regulations also provide in cases where a dispute is not submitted to a mediator, the request for fact-finding must occur within 30 days.

However, the author argues that whether AB 646 requires that mediation is a necessary precondition to request fact-finding remains unresolved. The author states that AB 1606 clarifies that fact-finding is available to employee organizations in all situations, regardless of whether the employer and employee have engaged in mediation.

Background

In December 2011, PERB adopted emergency regulations allowing fact-finding to be requested in all circumstances, because the board found it to be the most efficient way to implement the entirety of AB 646 and accurately reflect the intent of the Legislature. The Office of Administrative Law approved the emergency regulatory action, effective on January 1, 2012.

During the PERB rulemaking process, it became apparent that AB 646 was drafted in a manner that called into question whether mediation was a precondition to an employee organization's ability to request fact-finding. The emergency regulations allow employee organizations to request fact-finding, regardless if mediation has occurred. PERB adopted this interpretation for the regulations to eliminate any uncertainty for employees and employers about when fact-finding could be requested.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/21/12)

American Federation of State, County and Municipal Employees (co-source)
California Professional Firefighters (co-source)

CONTINUED

Peace Officers Research Association of California (co-source)
Service Employees International Union (co-source)
California Labor Federation
California Teachers Association
Laborers' Local 777 & 792

OPPOSITION: (Verified 5/21/12)

Orange County Board of Supervisors

ARGUMENTS IN SUPPORT: Supporters state that during the PERB rulemaking process, it became apparent that AB 646 was drafted in a manner that called into question whether mediation was a precondition to an employee organization's ability to request fact-finding. Supporters conclude that numerous employers and employee organizations provided public comments on the issue and the majority of interested parties, both employer and labor representatives, urged a reading of AB 646 that provides for a fact-finding request whether mediation occurs or not.

ARGUMENTS IN OPPOSITION: Orange County states, "While it is indicated that this bill is intended to be technical and clarifying of existing law, the language states that the panel shall consider different items when reaching their decision. It is believed these factors take more and more discretion away from the Board (i.e., the financial ability of the public agency, consumer price index, etc.) and puts it into the hands of the fact finding panel. While it is not mentioned in the bill's text, the decision of the fact finding panel will be made public so it could also have political implications."

ASSEMBLY FLOOR: 46-24, 4/23/12
AYES: Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Buchanan, Butler, Campos, Carter, Chesbro, Dickinson, Eng, Feuer, Fong, Fuentes, Galgiani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mendoza, Mitchell, Monning, Pan, Perea, V. Manuel Pérez, Portantino, Skinner, Solorio, Swanson, Torres, Wieckowski, Williams, John A. Pérez
NOES: Achadjian, Bill Berryhill, Conway, Donnelly, Beth Gaines, Garrick, Gorell, Grove, Hagman, Halderman, Harkey, Jeffries, Jones, Knight, Logue, Mansoor, Miller, Morrell, Nielsen, Norby, Olsen, Silva, Valadao, Wagner

CONTINUED

NO VOTE RECORDED: Brownley, Charles Calderon, Cedillo, Cook, Davis, Fletcher, Furutani, Nestande, Smyth, Yamada

DLW:m:n 11/13/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

EXHIBIT H

AB-1606 Local public employee organizations: impasse procedures. (2011-2012)

Date Published:

Assembly Bill No. 1606

CHAPTER 314

An act to amend Section 3505.4 of the Government Code, relating to public employment.

[Approved by Governor September 14, 2012. Filed with Secretary of State September 14, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1606, Perea. Local public employee organizations: impasse procedures.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations.

Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer. Existing law further authorizes the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the parties' differences be submitted to a factfinding panel.

This bill would instead authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would specify that the procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived. The bill would also specify that its provisions are intended to be technical and clarifying of existing law.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3505.4 of the Government Code is amended to read:

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences

be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

SEC. 2. The Legislature finds and declares that the amendments to Section 3505.4 of the Government Code made by this act are intended to be technical and clarifying of existing law.

EXHIBIT I

California LEGISLATIVE INFORMATION

AB-646 Local public employee organizations: impasse procedures. (2011-2012)

Current Version: 10/09/11 - Chaptered **Compared to Version:** 03/23/11 - Amended Assembly ▼ Compare Versions ⓘ

~~**SEC. 3.**~~ ***SECTION 1.*** Section 3505.4 of the Government Code is repealed.

SEC. ~~**4.**~~ ***2.*** Section 3505.4 is added to the Government Code, to read:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within ~~15~~ *30* days after his or her ~~appointment pursuant to Section 3505.2, and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other party, request that their~~ *appointment, the employee organization may request that the parties'* differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel. ~~The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3505.2.~~

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the ~~fact finders~~ *factfinders* shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

SEC. ~~**5.**~~ ***3.*** Section 3505.5 is added to the Government Code, to read:

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be ~~borne by the board.~~ *equally divided between the parties.*

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's ~~resume~~ *résumé* on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

SEC. ~~7.~~ ***4.*** Section 3505.7 is added to the Government Code, to read:

3505.7. After any applicable mediation and factfinding procedures have been exhausted, *but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5,* a public agency that is not required to proceed to interest arbitration ~~may~~ *may, after holding a public hearing regarding the impasse,* implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

~~**SECTION 1.** Section 3505 of the Government Code is amended to read:~~

~~**3505.** The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.~~

~~"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year.~~

~~**SEC. 2.** Section 3505.2 of the Government Code is amended to read:~~

~~**3505.2.** (a) If after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization or recognized employee organizations may do one of the following:~~

~~(1) The parties may agree upon the appointment of a mediator mutually agreeable to the parties, in which case, the costs of mediation shall be divided one-half to the public agency and one-half to the recognized employee organization or recognized employee organizations.~~

~~(2) Either party may request that the Public Employment Relations Board appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms that are mutually acceptable. If the board determines that an impasse exists, it shall appoint a mediator within five working days after its receipt of the request. The mediator shall meet with the parties or their representatives, either jointly or separately, as soon as practicable, and shall take any other steps he or she deems appropriate in order to persuade the parties to resolve their differences and reach a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties.~~

~~(b) Nothing in this section shall be construed to prevent the parties from utilizing their own negotiated and mutually agreed upon mediation procedure. If the parties agree to utilize their own mediation procedure, the board shall not appoint its own mediator unless failure to do so would be inconsistent with the policies of this chapter. If the parties have negotiated and agreed upon their own mediation procedure, the cost of the services of any appointed mediator, including per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.~~

~~SEC. 6.~~ ~~Section 3505.6 is added to the Government Code, to read:~~

~~3505.6.~~ ~~Nothing in Sections 3505.4 and 3505.5 shall be construed to prevent the parties from utilizing their own negotiated and mutually agreed upon factfinding procedure in lieu of the factfinding procedure set forth in those sections. If the parties have negotiated and agreed upon their own factfinding procedure, any associated costs shall be borne equally by the parties.~~

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

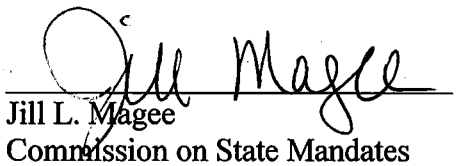
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 7, 2016, I served the:

Claimant Comments on the Draft Proposed Decision
Local Agency Employee Organizations: Impasse Procedures, 15-TC-01
Government Code Sections 3505.4, 3505.5, and 3505.7;
Statutes 2011, Chapter 680 (AB 646)
City of Glendora, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 7, 2016 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/22/16

Claim Number: 15-TC-01

Matter: Local Agency Employee Organizations: Impasse Procedures

Claimant: City of Glendora

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Cristina Bardasu, Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
cristina.bardasu@csm.ca.gov

Harmeet Barkschat, *Mandate Resource Services,LLC*
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

Erlinda Bernabe, *Liebert Cassidy Whitmore*
6033 West Century Blvd, Suite 500, Los Angeles, CA 90045
Phone: (310) 381-2000
ebernabe@lcwlegal.com

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
cityclerk@cityofsthelena.org

Danielle Brandon, Budget Analyst, *Department of Finance*

915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

Keith Bray, General Counsel, CSBA Director, ELA, *California School Boards Association*
3251 Beacon Boulevard, West Sacramento, CA 95691
Phone: (916) 669-3270
kbray@csba.org

Mike Brown, *School Innovations & Advocacy*
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Melanie Chaney, *Liebert Cassidy Whitmore*
Claimant Representative
6033 West Century Blvd, Suite 500, Los Angeles, CA 90045
Phone: (310) 981-2000
mchaney@lcwlegal.com

Annette Chinn, *Cost Recovery Systems,Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

J. Felix De La Torre, General Counsel, *Public Employment Relations Board (D-12)*
1031 18th Street, Sacramento, CA 95811

Phone: (916) 322-3198
fdelatorre@perb.ca.gov

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Executive Director, *California Peace Officers' Association*
555 Capitol Mall, Suite 1495, Sacramento, CA 95814
Phone: (916) 263-0541
cpoa@cpoa.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Adrianna Guzman, *Liebert Cassidy Whitmore*
6033 West Century Blvd, Suite 500, Los Angeles, CA 90045
Phone: (310) 981-2000
aguzman@lcwlegal.com

Mary Halterman, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@dof.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Dorothy Holzem, Legislative Representative, *California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Amy Howard, Legislative Director, *California Professional Firefighters*
1780 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
Phone: (916) 921-9111
ahoward@cpf.org

Justyn Howard, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Paul Lukacs, Senior Commission Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
paul.lukacs@csm.ca.gov

Hortensia Mato, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Molly McGee Hewitt, Executive Director, *California Association of School Business Official*
1001 K Street, 5th Floor, Sacramento, CA 95814
Phone: (916) 447-3783
molly@casbo.org

Steven McGinty, *Department of Industrial Relations*
Division of Administration, 320 W. Fourth St., Suite 600, Los Angeles, CA 90013
Phone: (213) 576-7725
smcginty@dir.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Dennis Meyers, *California School Boards Association*
3251 Beacon Boulevard, West Sacramento, CA 95691
Phone: (916) 508-2272
dmeyers@csba.org

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

June Overholt, Finance Director - City Treasurer, *City of Glendora*
116 E. Foothill Boulevard, Glendora, CA 91741-3380
Phone: (626) 914-8241
jOverholt@ci.glendora.ca.us

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Nick Romo, Policy Analyst, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Amy Tang-Paterno, Educational Fiscal Services Consultant, *California Department of Education*
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento , CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov