

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

197



FROM: Human Resources Department

SUBMITTAL DATE:
April 10, 2014

SUBJECT: Opposition of Assembly Bill 2126 (Bonta), which would make mandatory mediation and factfinding application changes to the Meyers-Millias Brown Act. [District- All] [Total Cost -None] [SOURCE OF FUNDS-N/A]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Oppose AB 2126, which proposes to make mandatory mediation changes and factfinding application expansion to the Meyers-Millias Brown Act; and
2. Direct the Executive Office to engage our legislative advocates to monitor and advocate our opposition to AB 2126, consistent with the California State Association of Counties position opposing AB 2126.

BACKGROUND:

Summary

Assembly Bill 2126, proposes to make changes to Government Code section 3500 et seq., more commonly known as the Meyers-Millias-Brown Act (MMBA). Government Code section 3500 et seq., promotes 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.

Michael T. Stock
Asst. County Executive Officer/
Human Resources Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$	\$	\$	\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	
SOURCE OF FUNDS:				Budget Adjustment: No	
				For Fiscal Year: 2013/14	

C.E.O. RECOMMENDATION:

APPROVE

BY: *Samuel Wong* 4/14/14
Samuel Wong

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District: All

Agenda Number:

3 - 26

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Opposition of Assembly Bill 2126 (Bonta), which would make mandatory mediation and
factfinding application changes to the Meyers-Millias Brown Act. [District- All] [Total Cost -None]
[SOURCE OF FUNDS-N/A]**

DATE: April 10, 2014

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

Government Code section 3505 currently requires that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, meet and confer, in good faith, regarding wages, hours and other terms and conditions of employment with representatives of such recognized employee organizations. Government Code section 3505 et seq. provides that if the parties reach an impasse on issues regarding wages, hours and other terms and conditions of employment, then either party may submit the differences to a factfinding panel.

In addition, the MMBA also allows for mediation when agreed upon and requested by both parties.

Passage of Assembly Bill 2126 will expand the scope of what may be presented to the factfinding panel, causing the County of Riverside to expend unnecessary time and resources on issues unrelated to bargaining.

In addition, passage of Assembly Bill 2126 will impose mandatory mediation if only one party requests it, requiring the County of Riverside to expend unnecessary time and resources even if it is not in favor of said mediation. Assembly Bill 2126 will remove the County's discretion in these matters.

Impact on Residents and Businesses

There is no impact on residents and businesses.

ATTACHMENTS:

- A. Assembly Bill 2126**
- B. California State Association of Counties letter dated March 28, 2014 opposing AB 2126**

AMENDED IN ASSEMBLY MARCH 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2126

Introduced by Assembly Member Bonta
(Principal coauthor: Senator Beall)

February 20, 2014

An act to amend ~~Section 3505.2~~ *Sections 3505.2 and 3505.4* of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2126, as amended, Bonta. Meyers-Milias-Brown Act: mediation.

The Meyers-Milias-Brown Act requires the governing body of a local public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of a recognized employee organization. The act requires, if a tentative agreement is reached and the governing body adopts the tentative agreement, that the parties prepare jointly a non binding written memorandum of understanding of the agreement. Under existing law, if representatives of the public employee agency and the recognized employee organization fail to reach agreement, the parties may agree together upon the appointment of a mutually agreeable mediator.

This bill instead would permit either party to request mediation and would require the parties to agree upon a mediator. If the parties cannot agree upon a mediator, the bill would authorize either party to request the board to ~~mapoint a mediator~~ *appoint a mediator*. The bill would require the board to appoint a mediator within 5 days after receipt of the party's request, as prescribed.

The Meyers-Milias-Brown Act requires the Public Employment Relations Board to determine in disputed cases whether a particular

item is within or without the scope of representation. Existing law requires the governing body of a local public agency, or those boards, commissions, administrative officers, or other representatives as may be properly designated by law or by a governing body, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Existing law authorizes an 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. Existing law authorizes an employee organization, if the dispute was not submitted to a 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. Existing law prohibits an employee organization's procedural right to request a factfinding panel from being waived expressly or voluntarily.

This bill would authorize differences under these provisions to include those differences that arise from any dispute over any matter within the scope of representation as to which an obligation to meet and confer exists, and are not limited to negotiations after impasse after collective bargaining for a new or successor memorandum of understanding. The bill would limit the criteria that the factfinders would be required to consider to those criteria that the factfinders deem relevant to the dispute. The bill would authorize an employee organization to voluntarily waive the right to request a factfinding panel, in writing. The bill would include legislative findings and declarations that certain of these amendments are clarifying and declaratory of existing law.

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

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

- 1 SECTION 1. Section 3505.2 of the Government Code is
- 2 amended to read:
- 3 3505.2. If after a reasonable period of time, representatives of
- 4 the public agency and the recognized employee organization fail
- 5 to reach agreement, either the public agency or the recognized
- 6 employee organization or recognized employee organizations may

1 request mediation. Within five days of a request by one of the
2 parties, both of the parties shall agree upon the appointment of a
3 mediator mutually agreeable to the parties. If the parties fail to
4 agree upon the selection of a mediator within five days, either
5 party may request that the board appoint a mediator. No later than
6 five days after the receipt of either party's request, the board shall
7 appoint a mediator in accordance with the rules prescribed by the
8 board. Costs of mediation shall be divided one-half to the public
9 agency and one-half to the recognized employee organization or
10 recognized employee organizations.

11 *SEC. 2. Section 3505.4 of the Government Code is amended*
12 *to read:*

13 3505.4. (a) (1) The employee organization may request that
14 the parties' differences be submitted to a factfinding panel not
15 sooner than 30 days, but not more than 45 days, following the
16 appointment or selection of a mediator pursuant to the parties'
17 agreement to mediate or a mediation process required by a public
18 agency's local rules. If the dispute was not submitted to mediation,
19 an employee organization may request that the parties' differences
20 be submitted to a factfinding panel not later than 30 days following
21 the date that either party provided the other with a written notice
22 of a declaration of impasse. Within five days after receipt of the
23 written request, each party shall select a person to serve as its
24 member of the factfinding panel. The Public Employment Relations
25 Board shall, within five days after the selection of panel members
26 by the parties, select a chairperson of the factfinding panel.

27 (2) *For purposes of paragraph (1), differences between the*
28 *parties that are subject to a request by the employee organization*
29 *for submission to a factfinding panel may include differences that*
30 *arise from any dispute over any matter within the scope of*
31 *representation as to which an obligation to meet and confer exists*
32 *under Section 3505 and are not limited to negotiations after*
33 *impasse after collective bargaining for a new or successor*
34 *memorandum of understanding.*

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

38 (c) The panel shall, within 10 days after its appointment, meet
39 with the parties or their representatives, either jointly or separately,
40 and may make inquiries and investigations, hold hearings, and

1 take any other steps it deems appropriate. For the purpose of the
2 hearings, investigations, and inquiries, the panel shall have the
3 power to issue subpoenas requiring the attendance and testimony
4 of witnesses and the production of evidence. Any state agency, as
5 defined in Section 11000, the California State University, or any
6 political subdivision of the state, including any board of education,
7 shall furnish the panel, upon its request, with all records, papers,
8 and information in their possession relating to any matter under
9 investigation by or in issue before the panel.

10 (d) In arriving at their findings and recommendations, the
11 factfinders shall consider, weigh, and be guided by all the following
12 criteria *that the factfinders deem to be relevant to the dispute*:

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

14 (2) Local rules, regulations, or ordinances.

15 (3) Stipulations of the parties.

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

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

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

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

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

34 (e) The procedural right of an employee organization to request
35 a factfinding panel ~~cannot be expressly or voluntarily waived~~ *may*
36 *be voluntarily waived, in writing, by the organization.*

37 *SEC. 3. The Legislature finds and declares that the amendments*
38 *made by this act to subdivisions (a) and (d) of Section 3505.4 of*

- 1 *the Government Code are clarifying and declaratory of existing*
- 2 *law.*

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California State Association of Counties



March 28, 2014

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The Honorable Rob Bonta, Chair
Assembly Public Employees, Retirement and Social Security Committee
1020 N Street, Room 153
Sacramento, California 95814

**RE: AB 2126 (Bonta) – Meyers-Milias-Brown Act: mediation.
As Amended on March 26, 2014 – OPPOSE
Set for hearing on April 2, 2014 – Assembly Public Employees, Retirement and
Social Security Committee**

Dear Assembly Member Bonta:

On behalf of the California State Association of Counties, I write to express our **opposition** to your AB 2126, which would ignore decades of local rulemaking on collective bargaining procedures. By allowing either the employer or employee to request mediation after failing to reach agreement during the meet and confer process and providing that factfinding can be requested from any dispute over any matter within the scope of representation where there is an obligation to meet and confer, AB 2126 runs contrary to the central premise of the Meyers-Milias-Brown Act (MMBA), the collective bargaining law that has governed local public agencies since 1968 and permits each to enact its own reasonable rules and regulations for governing employee relations.

MANDATORY MEDIATION

Impasse procedures are usually provided for in mutually-agreed upon rules and regulations that guide collective bargaining between a local agency and its employee representatives. Those procedures are put in place after consulting in good faith with employee organizations. Such collaboration fosters a positive and mutually beneficial relationship – AB 2126, by eradicating the requirement for both parties to agree to mediation, undermines the facilitation of a constructive bargaining process between the parties. We believe the decision whether to enter into mediation should remain a joint decision; if both parties agree to mediation, it is usually because they believe the process can productively resolve a dispute; requiring an unwilling party to go through a mediation process will likely be unsuccessful as that party knows it has already moved as far as possible toward agreement.

Making mediation mandatory upon one party's request will also lead to further delays in the conclusion of labor negotiations. Delays are generally sought when employers are seeking concessions and employees want to preserve the status quo. It is an unfortunate reality that county budgets continue to be strained and concessionary bargaining remains the norm. AB 2126 follows the passage of AB 646 (Chapter 680, Statutes of 2012), which established the right of employees to request factfinding. Factfinding and mediation will add 90 days or more each to the bargaining timeline, a process that can already take six months or longer.

Further, AB 2126 carries significant administrative and cost burdens for local agencies, employee bargaining units and the state. There are 58 counties, 482 cities, and over 2000 special districts, many with dozens of bargaining units. While some use mediators now, it is unlikely that there are enough mediators in the state to be appointed within five days of request as suggested by the bill, but more importantly, what would soon develop is a backlog of agencies waiting for a mediator.

The Public Employment Relations Board (PERB) would need additional staff and parties would be forced to hire private mediators because the alternative would be further delaying the conclusion of negotiations. Private mediators routinely charge \$1200 per day. Principles of economics suggest those rates will go higher with the increased demand for the services. Counties do not believe lengthy, drawn-out negotiation periods and employees working with expired contracts will promote full communication between public employers and their employees as intended by the MMBA.

FACTFINDING APPLICATION EXPANSION

AB 2126 additionally broadens the application of factfinding to anything within the scope of representation where there is an obligation to meet and confer. Not only does this proposal take issues that are non-economic in nature that won't benefit from factfinding out of the hands of management, it would drastically increase delays in the bargaining process. Currently, since the effective date of AB 646 factfinding provisions, the average length of time between PERB's appointment of a factfinding chair and the issuance of a decision by the factfinding panel is **85 days**, due to the formalization of the factfinding process by unions, and the lack of schedule flexibility for the available PERB factfinders. The superior courts in both the *Riverside County v. PERB* and the *San Diego Housing Commission v. PERB* cases ruled against PERB in its assertion that factfinding should expand beyond contract negotiations. The decisions in these cases are not final, and AB 2126 runs contrary to the judicial process, and the legislative history and intent of AB 646, by attempting to place this expansion in statute governing MMBA.

Due to serious policy concerns and cost increases for both the state and counties, we ask for your "**NO**" vote on AB 2126. Should you have any questions about our position, please contact me at 916/650-8117 or fconley@counties.org

Sincerely,



Faith Conley
Legislative Representative

cc: Members and Consultant, Assembly Public Employees, Retirement and Social Security Committee