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March 25, 2011

MOU Fiscal Analysis Bargaining Unit 7 (Protective Services and Public Safety)

L E G I S L A T I V E   A N A L Y S T ' S   O F F I C E

Presented to:

The California Legislature

Pursuant to Section 19829.5 of the Government Code

Background on the State Memorandum of Understanding (MOU) Process

- ***Ralph C. Dills Act Provides for State Employee Collective Bargaining.*** With passage of the Dills Act in 1977, the Legislature authorized collective bargaining between unions representing rank-and-file state employees and the administration. Currently, around 200,000 state workers belong to one of the state's 21 bargaining units.

- ***Legislature and Employees Must Ratify MOUs.*** Fiscal provisions of MOUs must be ratified by the Legislature and MOUs must be approved by bargaining unit members in order to take effect. In addition, under the Dills Act, the Legislature annually may choose whether to appropriate funds in the budget to continue the financial provisions of each MOU.

- ***Fiscal Analysis Required by State Law.*** Section 19829.5 of the Government Code—approved by the Legislature in 2005—requires the Legislative Analyst's Office (LAO) to issue a fiscal analysis of proposed MOUs.

- ***MOU for Unit 7 Now Before Legislature.*** The MOU addressed in this analysis applies to Unit 7 employees who are represented by the California Statewide Law Enforcement Association (CSLEA). The term of the proposed MOU would be April 1, 2011 through July 1, 2013.

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Bargaining Unit 7 at a Glance

☑ ***Unit 7 Represents More Than 7,500 Employees.*** The more than 7,500 employees (6,500 full time equivalents) in Unit 7 are exclusively represented by CSLEA. Unit 7 employees protect state lands and buildings, issue licenses or permits, conduct investigations, and, in some cases, arrest individuals.

☑ ***Employees Work in Many Departments.*** The CSLEA members work in many departments to ensure public safety. Among the largest classifications are California Highway Patrol dispatchers, Department of Motor Vehicles licensing-registration examiners, Department of Justice (DOJ) special agents, Department of Mental Health (DMH) hospital police officers, park rangers, and Department of Consumer Affairs automotive repair program representatives. Figure 1 lists the eight departments with the most Unit 7 full-time equivalent positions.

Figure 1

Unit 7 Full-Time Equivalent (FTE) Positions by Department

Department	FTE
California Highway Patrol	1,084
Justice	997
Motor Vehicles	786
Parks and Recreation	536
Consumer Affairs	332
Fish and Game	272
Insurance	207
Mental Health	190
Other	2,143
Total	**6,547**

Current MOU

- ☑ ***Term Expired in 2008.*** The term of the current MOU was from July 1, 2005 to June 30, 2008. Under the "evergreen" provision of the Dills Act (Government Code Section 3517.8 [a]), terms of an expired MOU continue to be in effect until a new MOU replaces the expired MOU.

- ☑ ***Most Employees Received Pay Increases.*** The MOU provided a general salary increase of 3.5 percent in 2006-07 for all Unit 7 employees. It provided additional pay for about 62 percent of Unit 7 employees in specified classifications (many with recruitment and retention difficulties) and a one-time $1,000 bonus for the other Unit 7 employees. Effective July 1, 2007, all Unit 7 employees (except Special Agent [DOJ], Fish and Game Warden, State Park Peace Officer, and Public Safety Dispatcher and Communications Operators classes) received a 3.4 percent cost-of-living adjustment.

- ☑ ***State Pays a Fixed Amount Toward Employee Health Premiums.*** Under the MOU, the state agreed to pay a fixed amount toward employee health, dental, and vision premiums. In 2006, the flat dollar amount was set to be equivalent to the amount provided under the state's 85/80 benefit formula (85 percent of the average employee premium plus 80 percent of the average additional premiums for dependents). Beginning January 1, 2007 and then again in 2008, the state's flat dollar contribution to employee health premiums was set to be equivalent to the 80/80 formula (80 percent of the average employee premium plus 80 percent of the average additional premiums for dependent coverage). There have been no increases to the state's flat dollar contribution since 2008.

Current MOU *(Continued)*

- ☑ ***Largest Group of Employees Are Safety.*** Of the Unit 7 employees who are eligible for a pension through California Public Employees' Retirement System (CalPERS), almost 60 percent are in the safety retirement category of CalPERS. Almost all of the remaining employees are included in the Peace Officer and Firefighter category (with less than 1 percent in the miscellaneous category). Almost 1,000 (about 13 percent) of Unit 7 employees are ineligible for CalPERS because they are retired annuitants or seasonal employees.

- ☑ ***State Donates Hours for Union Time.*** Under the expired MOU, the state donates hours to the Union Release Time Bank from which Unit 7 members can use hours for CSLEA organization activities. The state donates up to 5,859 hours to the time bank each year: 4,149 for the CSLEA president and vice president to be granted full release and an additional 1,700 hours. The DPA informs us that CSLEA has never used more than the 5,859 hours provided by the bank.

- ☑ ***More Details at Department of Personnel Administration (DPA) Website.*** This analysis does not describe every provision of the current or proposed MOU. Summaries and text of MOUs are available at DPA's website: http://www.dpa.ca.gov/bargaining/contracts/index.htm

Proposed MOU—Personal Leave Program

- ***One Day of Unpaid Leave Each Month for 12 Months.*** The proposed MOU would establish a 12-month personal leave program (PLP). For the first 12 months of the MOU, the PLP provides every employee eight hours of unpaid leave each month, resulting in a 4.6 percent pay reduction. Unused leave under the PLP accrues on a monthly basis, and (unlike the PLP provided in the MOUs ratified in 2010) does not expire.

- ***No Furloughs During PLP.*** The MOU would end the three-day-per-month furlough program that the prior administration imposed—through Executive Order S-1210—on about two-thirds of Unit 7 employees. (About 2,300 Unit 7 employees were not subject to furloughs, either because they work for a constitutional officer who chose to reduce costs without furloughing employees or because the executive order establishing the furlough program specifically exempted their department from the furlough program.) During the 12-month PLP, the proposed MOU specifies that the state shall not impose a furlough program on Unit 7 employees. The state could reinstate a furlough program on Unit 7 employees after the PLP has expired.

- ***Reduced Take-Home Pay Does Not Affect Retirement Benefits.*** Although employee and employer pension contributions to CalPERS are based on the lower pay levels for employees, the PLP would not reduce the amount of final compensation used to determine employee pension benefit levels.

Proposed MOU—Leave Days

- ☑ ***Union Release Time Bank.*** The MOU would modify the terms of the union release time bank from what is provided by the expired MOU. The state would no longer contribute time—instead, employees would contribute their own time for the bank. Each April, Unit 7 employees would be required to give 1.5 hours of vacation/annual leave to the time bank. Only employees designated by CSLEA would be able to use time from the bank for union-related activities. The CSLEA president and one other Unit 7 employee would be granted full release time under the time bank.

- ☑ ***Two "Personal Development Days."*** The proposed MOU would provide to all Unit 7 employees two non-accumulating days per fiscal year (without loss of compensation) that are intended to be used for activities that "promote professional and/or personal growth" and "enhance professional and/or personal goals." The MOU specifically states that the "choice of activity is at the employee's discretion" and that the days shall be requested and approved in the same manner as vacation/annual leave and used in full-day increments.

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Proposed MOU—Pay and Employee Pension Contribution Increases

☑ ***Pay Increase to Top Step in 2013-14.*** The proposed MOU specifies that all Unit 7 classifications shall be adjusted by increasing the top step by either 2 percent (peace officer/firefighter classifications) or 3 percent (miscellaneous and safety classifications) effective July 1, 2013.

☑ ***All Employees Contribute Larger Share Towards Pension.*** All employees would contribute a larger share of their monthly pay towards their pension beginning in April 2011. Figure 2 summarizes how each classification would be affected by the increased contribution rates.

Figure 2

Current and Proposed Employee Pension Contributions

(Percent of Monthly Pay[a])

Retirement Category	Current Contributions	Contributions Under Proposed MOU
Miscellaneous/Industrial	5%	8%
Safety	6	9
Peace Officer/Firefighter	8	10

[a] A small portion of monthly pay is excluded from the calculation. In some cases, different contributions are applicable for employees not subject to Social Security.

Proposed MOU—Health Care and Other Financial Provisions

- ☑ ***Proposed Continuous Appropriations for Duration of MOU.*** The administration and CSLEA agreed to present to the Legislature, as part of the legislation implementing the proposed MOU, a provision allowing for a continuous appropriation to cover the economic terms for the MOU through July 1, 2013.

- ☑ ***State Would Increase Flat Dollar Contribution to Health Care.*** The proposed MOU increases the flat dollar state contribution to employee health care to be equivalent to the 80/80 formula. The state's flat dollar contribution would be adjusted to maintain the 80/80 equivalency on April 1, 2011, January 1, 2012, and January 1, 2013. Absent subsequent action, there would be no further increase to the state contribution in subsequent years.

- ☑ ***Contract Protection Clause.*** The proposed MOU includes a contract protection provision. If any other bargaining unit were to enter into an agreement with the state that did not include pension reform or provided a greater value/total compensation package than the proposed MOU, then Unit 7 would (with some exceptions) receive the difference between the agreements.

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Proposed MOU—Changes in Holidays and Overtime Provisions

- ☑ ***Restores Premium Pay for Six Holidays.*** A February 2008 budget trailer bill—Chapter 4, Statutes of 2009, Third Extraordinary Session (SBX3 8, Ducheny)—reduced the number of state holidays (eliminating Lincoln's Birthday and Columbus Day) as a cost-savings measure. This legislation provided that state employees who worked on the remaining state holidays would receive "straight-time" pay, instead of premium pay. The proposed MOU for Unit 7 would restore premium pay—generally 150 percent of regular pay and up to eight hours of holiday credit—for all hours worked on six holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas.

- ☑ ***Specifies Hours Used to Calculate Overtime.*** Chapter 4 also added Section 19844.1 to the Government Code, which provides that various types of paid and unpaid leave "shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime." For example, if a worker takes leave on Monday (an eight-hour workday) and then works eight-hour days on Tuesday through Friday (32 work hours), she cannot count her first hour of work on that Saturday as the 41st weekly work hour and earn overtime pay at 150 percent of her regular pay rate. Section 19844.1 provides that if there is a conflict between its provisions and a future MOU, the MOU generally will be controlling. The proposed Unit 7 MOU specifies that overtime calculations for cash or compensated overtime will adhere to Section 19844.1.

- ☑ ***Eliminates Two Holidays.*** The MOU eliminates Columbus Day and Lincoln's Birthday from the list of holidays granted to Unit 7 employees. This provision aligns the MOU with Chapter 4.

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DPA Fiscal Estimates

Figure 3

Department of Personnel Administration's Cost Estimates[a]

(In Millions)

Proposal	2010-11 GF	2010-11 AF	2011-12 GF	2011-12 AF	2012-13 GF	2012-13 AF	2013-14 GF	2013-14 AF
24 furlough days (August 2010 through March 2011)	-$9.9	-$32.6	—	—	—	—	—	—
Personal leave program (first 12 months)	-1.3	-5.0	-$4.0	-$14.9	—	—	—	—
2 percent to 3 percent employee pension contribution	-0.5	-2.0	-2.2	-8.2	-$2.3	-$8.5	-$2.3	-$8.7
Increased state share of health care costs	0.6	2.1	3.0	11.1	4.3	16.1	4.9	18.3
Two days of personal development	—	—	—	—	—	—	—	—
Six holidays with premium time	—	—	—	—	—	—	—	—
Employees donate 1.5 hours vacation to Union Release Time Bank	-0.1	-0.3	-0.1	-0.3	-0.1	-0.3	-0.1	-0.3
2 percent to 3 percent increase to top step	—	—	—	—	—	—	2.2	8.7
Total Costs (+)/Savings(-)	**-$11.3**	**-$37.8**	**-$3.3**	**-$12.2**	**$2.0**	**$7.4**	**$4.7**	**$18.1**

[a] We adjusted the numbers we received from the Department of Personnel Administration to reflect costs and savings in each year compared with current law.
GF = General Fund; AF = all funds.

☑ ***Savings in 2010-11 and 2011-12.*** As shown in Figure 3, the administration's fiscal estimates for the proposed MOU indicate that the state would experience savings in 2010-11 and in 2011-12. Most of the savings DPA shows for 2010-11 reflect the furlough program that has been in effect since August 2010.

☑ ***Rising Costs Beginning 2012-13.*** The DPA estimates that the MOU would result in annual cost increases for the state relative to the expired MOU. As Figure 3 shows, in 2012-13, DPA estimates the proposed MOU would result in a net cost of $7.4 million ($2 million General Fund). After the pay increase to the top step goes into effect on July 1, 2013, the DPA estimates that the net costs in 2013-14 grow to over $18.1 million ($4.7 million General Fund).

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LAO Comments—DPA Fiscal Estimates

☑ ***Eliminating Furloughs Results in State Costs, Not Savings.*** In August 2010, the previous administration imposed an ongoing three-day-per-month furlough as part of its plan to achieve the savings specified in Control Section 3.91 of the *2010-11 Budget Act*. The MOU proposes to end these furloughs (established by Executive Order S-12-10) and implement new employment policies. In its fiscal estimate, the DPA includes the savings associated with the furloughs as well as the savings associated with the new MOU provisions. While DPA's estimate accurately reflects the impact of these policies on employees, it overstates the savings the state would realize in 2010-11 from adoption of the MOU. Compared with current law—including Executive Order S-12-10—the MOU would result in increased costs (from the termination of the furlough program), offset by the net savings attributable to the proposed provisions in the MOU.

LAO Estimates: Costs Compared With Current Law

Figure 4

LAO Cost Estimates (Relative to Current Law[a])

(In Millions)

	2010-11		2011-12		2012-13		2013-14	
Costing Proposal	**GF**	**AF**	**GF**	**AF**	**GF**	**AF**	**GF**	**AF**
Nine furlough days eliminated (April through June 2011)	$3.7	$12.2	—	—	—	—	—	—
Personal leave program (first 12 months)	-1.3	-5.0	-$4.0	-$14.9	—	—	—	—
2 percent to 3 percent employee pension contribution	-0.5	-2.0	-2.2	-8.2	-$2.3	-$8.5	-$2.3	-$8.7
Increased state share of health care costs	0.6	2.1	3.0	11.1	4.3	16.1	4.9	18.3
Two days of personal development	UK	UK	UK	UK	UK	UK	UK	UK
Employees donate 1.5 hours vacation to Union Release Time Bank	UK	UK	UK	UK	UK	UK	UK	UK
2 percent to 3 percent increase to top step	—	—	—	—	—	—	2.2	8.7
Total Costs (+)/Savings (-)	**$2.4**	**$7.3**	**-$3.2**	**-$12.0**	**$2.1**	**$7.7**	**$4.8**	**$18.4**

[a] For purposes of this analysis, current law is the continuing provisions of the expired MOUs, the *2010-11 Budget Act*, and the Executive Order establishing the three-day-per-month furlough.

GF = General Fund; AF = all funds; UK = unknown.

☑ ***Erosions to Current-Year Savings.*** The proposed MOU terminates the furlough program for Unit 7 employees beginning April 2011. As a result, Unit 7 employees would not be furloughed or experience furlough-related pay reductions for nine days in spring 2011. As shown in Figure 4, this decrease in furlough days—a change from current law—increases state employee compensation costs. After accounting for other provisions in the MOU, we estimate that it would erode assumed savings in 2010-11 by $7 million ($2.3 million General Fund).

☑ ***Unknown Cost Associated With Leave Days.*** As we discuss in more detail later, we disagree with the administration that there is no cost associated with these days, but it is difficult to place a specific estimate on their cost impact.

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LAO Comments—Days Off

- ***All Leave Days Are Not the Same.*** Under the MOU, employees are granted a wide variety of leave days, including days off for vacation, state holidays, the PLP, and personal development days. Vacation days have "cash value," meaning that the state compensates an employee for any unused time when he or she terminates employment. All other leave days do not have cash value, and the employee is not compensated for unused time when he or she terminates employment.

- ***DPA: Days Without Cash Value Have No Cost.*** In the view of the DPA, the state does not incur a cost when it grants a leave day without cash value. Thus, DPA's fiscal estimate shows no costs related to the two new personal development days, but shows savings resulting from the 1.5 hours of vacation leave donated by employees to the time bank.

- ***LAO: All Days Off Can Create an Out-Year State Fiscal Liability.*** Given the different financial treatment of leave days, employees typically use days without cash value first, and reserve or "bank" days with cash value. Thus, any action by the state to add a leave day that an employee does not use before he or she terminates employment can pose an out-year state fiscal liability. While we have not shown a cost associated with these days or savings from the leave bank (because of difficulties in determining when state employees would terminate employment and what their salaries would be at that time), the large number of leave days provided by this MOU likely would result in an out-year state fiscal liability. If we assume that days without cash value have the same cost to the state as days with cash value, the net current value of the days provided in the first 12 months of the MOU (four personal development days and 12 PLP days) offset by the savings from the donated time to the leave bank would be about $20 million dollars.

LAO Comments—Days Off *(Continued)*

☑ ***MOU Provides More Days Off Than Most Employees Could Use.*** As Figure 5 shows, a new employee hired at the beginning of the term of the MOU would have nearly eight weeks of days off during his or her first 12 months. More senior employees would have more leave time (because they are eligible for longer vacations). The MOU continues to provide a large (but reduced) number of days off throughout the remainder of its term. In our view, it is unlikely that Unit 7 employees would be able to take off all of this time. As a result, employees would likely reserve some of these days off for use in future years and cash the remainder out when they terminate state employment.

Figure 5

Number of Days Off for a New Unit 7 Employee Under the Proposed MOU From April 2011 Through April 2012

Type of Day Off	First 12 Months
Vacation leave	10.3
Personal development	4.0[a]
Holidays	11.0
Personal holiday	1.0
Personal leave program	12.0
Total Days Off Available	**38.3**
Total Weeks Off	**7.7**

[a] An employee would receive two personal development days in 2010-11. On July 1, 2011, these days expire, but the employee would get two new days for 2011-12, resulting in a one-time doubling up of personal development days.

MOU = memorandum of understanding.

LAO Comments—Days Off *(Continued)*

- ☑ ***Overtime Costs Associated With Days Off.*** The administration assumes that management will not allow employees to use personal development days or PLP if it would result in another employee working overtime. In our view, it is not realistic to assume that 14 days of lost work per employee over the next 12 months could result in no overtime costs. This assumption seems especially implausible for employees who work in 24-hour facilities. For example, Unit 7 represents hospital police officers who work in DMH hospitals. These positions are considered "posted positions," meaning that the department must backfill behind any absences with other hospital police officers working overtime. Days off (whether from PLP, personal development days, furloughs, or otherwise) likely would result in overtime costs.

- ☑ ***Personal Development Days or Personal Holidays?*** Under the MOUs ratified in 2010, employees received two annual non-accumulating leave days as "professional development days." Because these days can be used for any purpose, we have commented in the past that referring to these days as "professional development days" is confusing and misleading. Under the proposed Unit 7 MOU, these days would instead be referred to as "personal development days." This term—while a slight improvement over "professional development days"—still suggests that these days are something more than a personal holiday. We recommend that in the future, the administration refer to these days off as "personal holidays" to reduce confusion and promote transparency.

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LAO Bottom Line

☑ ***MOUs Complicate Effort to Achieve Expected Savings for 2011-12.*** The 2011-12 budget, as approved by the Conference Committee, assumes that the state will save 10 percent in employee compensation costs for the six bargaining units with expired contracts (Units 2, 6, 7, 9, 10, and 13). This proposed MOU would result in significantly lower savings (around 2.8 percent), falling short of the assumed savings target by $30 million ($8 million General Fund). The proposed Unit 2 MOU (currently pending before the Legislature) also would result in significantly lower savings. If both Unit 2 and Unit 7 MOUs were ratified, achieving the savings assumed in the 2011-12 budget through collective bargaining would require the remaining four bargaining units to agree to contracts with savings averaging 11.4 percent (all funds). At this time, we have not reviewed the proposed MOUs for the remaining four units, but, based on the contracts negotiated in 2010 and 2011, we have serious doubts that these remaining MOUs would result in this level of savings.