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April 1, 2011

MOU Fiscal Analysis Bargaining Units 9 and 10

LEGISLATIVE ANALYST'S OFFICE

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, about 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.

☑ ***MOUs for Two State Unions Now Before Lawmakers.*** The MOUs addressed in this analysis apply to two bargaining units that include rank-and-file professional engineers and scientists. The term for both MOUs would be April 1, 2011 through July 1, 2013.

☑ ***MOUs for Two Other State Unions Will Be Before Lawmakers Soon.*** The administration has negotiated tentative agreements with the final two bargaining units with expired MOUs. One of these agreements applies to the second largest bargaining unit (Unit 6), represented by the California Correctional Peace Officers Association (CCPOA). The other agreement applies to a small bargaining unit (Unit 13), represented by the International Union of Operating Engineers.

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Bargaining Units at a Glance

- ☑ ***Unit 9.*** Unit 9 represents more than 11,000 rank-and-file state professional engineers. About two-thirds of Unit 9 full-time equivalent employees work at the Department of Transportation. Unit 9 employees are represented by the Professional Engineers in California Government.

- ☑ ***Unit 10.*** Unit 10 represents more than 2,600 rank-and-file state scientists. The five departments that employ the most Unit 10 employees are the Department of Fish and Game, Department of Public Health, Toxic Substances Control, Water Resources Control Board, and the California Waste Management Board. Unit 10 employees are represented by the California Association of Professional Scientists.

Current MOUs

☑ ***Bargaining Unit Contracts Have Expired.*** Both bargaining units' MOUs expired in 2008. Generally speaking, the provisions of an expired MOU continue in effect until new MOUs are approved pursuant to the "evergreen" provision of the Dills Act (Section 3517.8 [a] of the Government Code).

☑ ***Both MOUs Provided Salary Increases.*** Employees in both bargaining units received pay increases under their current MOUs. The last pay increase for Unit 9 was in 2008 and the last pay increase for Unit 10 was in 2007.

- ***Salary Parity for Unit 9.*** Unit 9's MOU required the Department of Personnel Administration (DPA) to conduct annual salary surveys of Unit 9 counterparts in California's larger local agencies and the University of California. These salary surveys were used to "eliminate the lag" between the salaries of Unit 9 employees and their counterparts. The salary parity provision of the MOU led to significant pay increases for Unit 9 employees from 2005 to 2008 (ranges depend on classification): between 4 percent and 7.7 percent in 2005, 7.4 percent and 12.4 percent in 2006, 11.3 percent and 14.1 percent in 2007, and 7.7 percent and 10.1 percent in 2008.

- ***Pay Increases for Unit 10.*** All Unit 10 employees received a 3.5 percent general salary increase in 2006 and a 3.4 percent cost-of-living adjustment in 2007. In 2007, 33 classifications also received between a 2.5 percent and 10 percent labor market adjustment to the top pay step to address recruitment and retention concerns. The approximately 82 percent of Unit 10 employees who did not receive a labor market adjustment received a one-time $1,000 bonus in 2007.

Current MOUs *(Continued)*

☑ ***State Automatically Increases Contributions to Employee Health Care.*** The state's contribution to both units' health care premium costs is based on a formula where the state pays a specified portion of average premium costs. Since 2006, the state has contributed to Unit 9 employee health care based on the 85/80 formula (the state pays 85 percent of the average employee premium plus 80 percent of the average additional premiums for dependents). Since 2007, the state's contribution to Unit 10 employee health care has been based on the 80/80 formula (the state pays 80 percent of the average employee premium plus 80 percent of the average additional premiums for dependents). The formulas used to determine the state's contribution to Unit 9 and 10 employees' health care are established by statute (Government Code Sections 22871.6 and 22871.9 respectively).

☑ ***Most Employees Are Miscellaneous.*** More than 98 percent of Unit 9 and 10 employees are in the miscellaneous retirement category of California Public Employees' Retirement System (CalPERS).

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

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Proposed MOUs—Personal Leave Program

☑ ***One Day of Unpaid Leave Each Month for 12 Months.*** The proposed MOUs would establish a 12-month personal leave program (PLP). For the first 12 months of the MOUs, 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 MOUs would end the three-day-per-month furlough program that the prior administration imposed—through Executive Order S-12-10—on nearly all Unit 9 and 10 employees. (About 160 Unit 9 and 10 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 MOUs specify that the state shall not impose a furlough program on Unit 9 and 10 employees. The state could reinstate a furlough program on Unit 9 and 10 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 MOUs—Pay and Employee Pension Contribution Increases

- ☑ ***Pay Increase to Top Step in 2013-14.*** The proposed MOUs specify that all Unit 9 and 10 classifications shall be adjusted by increasing the top step by 3 percent effective July 1, 2013.

- ☑ ***All Employees Contribute Larger Share Towards Pension.*** All employees would contribute an additional 3 percent of their monthly pay towards their pension beginning in April 2011. Figure 1 summarizes how each classification would be affected by the increased contribution rates.

Figure 1

Current and Proposed Employee Pension Contributions

(Percent of Monthly Pay[a])

Retirement Category	Current Contributions	Contributions Under Proposed MOUs
Miscellaneous/Industrial	5%	8%
Safety	6	9

[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.

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Proposed MOUs—Professional Development

- ☑ ***Two Days Off for "Professional Development."*** Both MOUs would provide employees two days off per fiscal year (without loss of compensation) for "professional development." The DPA informs us that these days functionally would be the same as the "professional development days" granted under the MOUs ratified in 2010. These days could be used by employees for any professional or personal purpose.

Proposed MOUs—Health Care and Other Financial Provisions

- ***Preserve Formulas to Determine State Contribution Towards Employee Health Care.*** The MOUs would maintain the current formulas by which the state contribution towards employee health care is determined (85/80 for Unit 9 employees and 80/80 for Unit 10 employees).

- ***Continuous Appropriations.*** The administration and unions agree to seek legislative approval for the economic terms of these agreements to be continuously appropriated for the duration of these agreements. Such a continuous appropriation would protect these employees from having wages lowered to the federal minimum during budget impasses, but it could also restrict legislative flexibility.

- ***Contract Protection Clause.*** The proposed MOUs include 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 MOUs, then Units 9 and 10 would (with some exceptions) receive the difference between the agreements.

- ***Changes in Holidays and Overtime.*** The MOUs would eliminate Columbus Day and Lincoln's Birthday from the list of holidays granted to Units 9 and 10 employees. The MOUs also would prohibit any days off as being counted as "time worked" by an employee for purposes of computing cash compensation for overtime. Both of these provisions align the MOUs with Chapter 4, Statutes of 2009, Third Extraordinary Session (SBX3 8, Ducheny).

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DPA Fiscal Estimate

Figure 2

Department of Personnel Administration's (DPA) 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)	-$5.3	-$132.5	—	—	—	—	—	—
Personal leave program (first 12 months)	-0.7	-16.8	-$2.1	-$50.3	—	—	—	—
3 percent employee pension contribution	-0.3	-7.7	-1.2	-31.3	-$1.3	-$32.5	-$1.3	-$33.2
Two days of professional development	—	—	—	—	—	—	—	—
3 percent increase to top step	—	—	—	—	—	—	1.4	34.9
Subtotals Units 9 and 10 Costs(+)/Savings(-)	(-$6.3)	(-$157.0)	(-$3.3)	(-$81.6)	(-$1.3)	(-$32.5)	($0.1)	($1.6)
State contribution to health care	$0.6	$11.0	$1.1	$22.6	$1.6	$34.6	$1.8	$39.8
Totals	**-$5.8**	**-$145.9**	**-$2.2**	**-$59.0**	**$0.3**	**$2.1**	**$1.9**	**$41.4**

[a] We adjusted the numbers we received from DPA to reflect cumulative costs and savings in each year.

GF = General Fund; AF = all funds.

☑ ***Savings in 2010-11 and 2011-12.*** As shown in Figure 2, the administration's fiscal estimates indicate that the state would experience savings in Unit 9 and 10 employee compensation in 2010-11 and 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 Unit 9 and 10 employee compensation costs (including health care) would increase annually. As Figure 2 shows, in 2012-13, DPA estimates that these costs would increase by $2.1 million ($294,000 General Fund). After the pay increase to the top step goes into effect on July 1, 2013, DPA estimates that the net costs in 2013-14 grow to about $41.4 million ($1.9 million General Fund).

LAO Comments—DPA Fiscal Estimate

- ☑ ***DPA's Estimate Includes Savings and Costs Attributable to Current Law.*** As shown in Figure 2, DPA's estimate includes the state's savings from the furloughs established in 2010-11. The DPA's estimate also includes, as a separate item, the state's increased costs to provide health care coverage to Units 9 and 10 employees pursuant to existing law. In comparison, our fiscal analysis (discussed later in this anlaysis) focuses only on the savings and costs that would result from ratification of the proposed MOUs.

- ☑ ***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 MOUs propose to end these furloughs (established by Executive Order S-12-10) and implement new employment policies. In its fiscal estimate, 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 MOUs. Compared with current law—including Executive Order S-12-10—the MOUs would result in increased costs (from the termination of the furlough program) offset by the net savings attributable to the proposed provisions in the MOUs.

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LAO Comments—DPA Fiscal Estimate
(Continued)

☑ ***DPA's Estimate Does Not Show Costs Associated for PLP or Professional Development Days.*** Under the MOUs, employees are granted a variety of leave days, including days off for vacation, state holidays, the PLP, and professional 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 (under these MOUs) do not have cash value and employees are not compensated for unused time when they terminate employment. In the view of DPA, the state incurs a cost only when it grants a leave day with cash value. Thus, DPA's fiscal estimate shows no costs related to the PLP or the two new professional development days.

☑ ***DPA's Estimate Does Not Reflect Its Recent Agreement With CCPOA.*** During the same week that DPA finalized its agreement with Units 9 and 10, DPA agreed with CCPOA to make a change in the PLP for the six bargaining units with expired MOUs, including Units 9 and 10. Specifically, DPA agreed to issue a Personnel Management Liaison Memo—a memo sent to human resource officers to implement or clarify new personnel policies—that would give cash value to unused PLP days. This provision of the proposed CCPOA MOU would allow employees to cash out unused PLP days upon termination of employment with the state. Given DPA's customary policy of reflecting costs for proposed leave days with cash value, DPA's fiscal estimate for Units 9 and 10 is no longer up to date. That is, DPA does not show that the state incurs any cost associated with employees cashing out unused PLP days.

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LAO Fiscal Estimate: Costs Compared With Current Law

Figure 3

LAO Cost Estimate (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)	$2.0	$49.7	—	—	—	—	—	—
Personal leave program (first 12 months)	-0.7	-16.8	-$2.1	-$50.3	—	—	—	—
3 percent employee pension contribution	-0.3	-7.7	-1.2	-31.3	-$1.3	-$32.5	-$1.3	-$33.2
Costs for professional development and PLP days	UK	UK	UK	UK	UK	UK	UK	UK
3 percent increase to top step	—	—	—	—	—	—	1.4	34.9
Units 9 and 10 Total Costs (+)/Savings (-)	**$1.0**	**$25.2**	**-$3.3**	**-$81.6**	**-$1.3**	**-$32.5**	**$0.1**	**$1.6**

[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 MOUs terminate the furlough program for Unit 9 and 10 employees beginning April 2011. As a result, Unit 9 and 10 employees would not be furloughed or experience furlough-related pay reductions for nine days in spring 2011. As shown in Figure 3, this decrease in furlough days—a change from current law—increases state employee compensation costs. After accounting for other provisions in the MOUs, we estimate that they would erode assumed savings in 2010-11 by $25.2 million ($1 million General Fund).

☑ ***Unknown Cost Associated With Days Off.*** As we discuss in more detail later, we disagree with the administration's finding that there is no cost associated with the professional development or PLP days, but it is difficult to place a specific estimate on their cost impact.

☑ ***Net Cost Beginning 2013-14.*** Based on current law, the MOUs would result in net cost beginning in 2013-14.

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LAO Comments—Days Off

☑ ***MOUs Provide More Days Off Than Most Employees Could Use.*** As Figure 4 shows, a new employee hired at the beginning of the term of the MOUs 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 MOUs continue to provide a large (but significantly reduced after the PLP ends) number of days off throughout the remainder of their term. In our view, it is unlikely that Unit 9 and 10 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 4

Number of Days Off for a New Unit 9 or 10 Employee Under the Proposed MOUs From April 2011 Through April 2012

Type of Day Off	First 12 Months
Vacation leave	10.5
Professional development	4.0[a]
Holidays	11.0
Personal holiday	1.0
Personal leave program	12.0
Total Days Off Available	**38.5**
Total Weeks Off	**7.7**

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

MOU = memorandum of understanding.

LAO Comments—Days Off *(Continued)*

- ☑ ***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 (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 these MOUs likely would result in an out-year state fiscal liability. If we assume that Unit 9 and 10 employees cash out the four professional development days and 12 PLP days provided during the first 12 months of the MOU (either directly or indirectly by banking a similar amount of vacation time), then the cost to the state for these days would be more than $60 million.

- ☑ ***Professional 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 MOUs, Unit 9 and 10 employees would receive two days that are functionally the same as the "professional development days" granted under the 2010 MOUs. These days could be used by employees for any purpose. We again recommend that, in the future, the administration refer to these days off as "personal holidays" to reduce confusion and promote transparency.

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). The proposed MOUs for Units 9 and 10 would result in significantly lower savings (around 6 percent), falling short of the assumed savings target by $63 million ($3 million General Fund). The proposed Units 2 and 7 MOUs (currently pending before the Legislature) also would result in significantly lower savings. If Units 2, 7, 9, and 10's MOUs were all ratified, achieving the General Fund savings assumed in the 2011-12 budget through collective bargaining would require the remaining two bargaining units to agree to contracts with General Fund savings averaging 11 percent. At this time, we have not reviewed the proposed MOUs for the remaining two 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.