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AMENDED IN SENATE AUGUST 18, 2010
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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 827

**Introduced by Assembly Member De La Torre
(Principal coauthor: Assembly Member Feuer)
(Coauthor: Assembly Member Yamada)**

February 26, 2009

An act to ~~add Section 54957.05 to, and to add Chapter 10.1~~ (commencing with Section 3511.1) to Division 4 of Title 1 of the Government Code, relating to local public employees, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 827, as amended, De La Torre. Local public employees.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees. The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law requires all contracts of employment between an employee and a local agency employer to include a provision which provides that regardless of the term of the

contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with a maximum of 18 months.

This bill would, ~~notwithstanding that provision,~~ on and after January 1, 2011, *additionally* prohibit an employment contract for a local excluded employee, as defined, from including any clause that provides for an automatic renewal, an automatic compensation increase, ~~a severance payment greater than 12 months' salary, as specified,~~ or an automatic ~~raise~~ *compensation increase* in excess of a cost-of-living adjustment. The bill would also require *the local agency, as defined, to complete* a performance review of any ~~unrepresented individual who is or will be employed by, and report directly to, the legislative body of the local agency,~~ *excluded employee, as defined,* before a ~~raise an increase in compensation~~ in excess of a cost-of-living adjustment may be implemented for that individual. The bill would ~~also require the vote to increase that person's salary in excess of a cost-of-living adjustment to be made in open session~~ *also specify that those records, procedures, and actions shall conform to the requirements of law, including, but not limited to, the Public Records Act and the Ralph M. Brown Act.* By expanding the duties of local officials, this bill would impose a state-mandated local program.

The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, the procedures for the appointment and compensation of excluded employees are an issue of statewide concern and that, therefore, all counties and cities, including charter counties, charter cities, and charter cities and counties, would be subject to the provisions of the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Chapter 10.1 (commencing with Section 3511.1)
2 is added to Division 4 of Title 1 of the Government Code, to read:

3
4 CHAPTER 10.1. EXCLUDED LOCAL PUBLIC EMPLOYEES
5

6 ~~3511.1. For the purposes of this chapter, “excluded employee”~~
7 ~~means any unrepresented individual who is or will be employed~~
8 ~~by, and report directly to, the legislative body of the local agency.~~
9 ~~“Excluded employee” includes any person contracted with the~~
10 ~~local agency as well as any person who is considered an at-will~~
11 ~~employee.~~

12 ~~3511.2. For any contract executed or renewed on or after~~
13 ~~January 1, 2011, an excluded employee’s employment contract~~
14 ~~shall not include any clause that provides for any of the following:~~

- 15 ~~(a) An automatic renewal.~~
- 16 ~~(b) An automatic raise in excess of a cost-of-living adjustment.~~
- 17 ~~(c) An automatic compensation increase, including any increase~~
18 ~~that is linked to a third-party contract.~~
- 19 ~~(d) Notwithstanding Section 53260, a severance payment greater~~
20 ~~than 12 months’ salary.~~

21 *3511.1. As used in this chapter, the following definitions apply:*

- 22 *(a) “Compensation” means any of the following:*
 - 23 *(1) Annual salary or stipend.*
 - 24 *(2) Local agency payments to the filer’s deferred compensation*
25 *or defined benefit plans.*
 - 26 *(3) Automobile and equipment allowances.*
 - 27 *(4) Supplemental incentive and bonus payments.*
 - 28 *(5) Local agency payments to the filer that are in excess of the*
29 *standard benefits that the local agency offers for all other*
30 *employees.*
- 31 *(b) “Cost-of-living” means the Consumer Price Index that*
32 *applies to a local agency, as calculated by the Department of*
33 *Finance using a formula developed by the Department of Industrial*
34 *Relations.*
- 35 *(c) “Excluded employee” means any person who is or will be*
36 *employed by, and report directly to, the legislative body of a local*
37 *agency and who is not subject to the Meyers-Milias-Brown Act*
38 *(Chapter 10 (commencing with Section 3500)), Chapter 5*

1 (commencing with Section 45100) of Part 25 of Division 3 of Title
 2 2 of the Education Code, or Chapter 4 (commencing with Section
 3 88000) of Part 51 of Division 7 of Title 3 of the Education Code.
 4 “Excluded employee” includes any person who performs
 5 governmental duties for a local agency pursuant to a contract with
 6 that local agency and any person who is considered an at-will
 7 employee.

8 (d) “Local agency” means a county, city, whether general law
 9 or chartered, city and county, town, school district, municipal
 10 corporation, district, political subdivision, or any board,
 11 commission or agency thereof, or other local public agency.

12 3511.2. On or after January 1, 2011, no contract executed or
 13 renewed between a local agency and an excluded employee shall
 14 provide for any of the following:

- 15 (a) An automatic renewal of the contract.
- 16 (b) An automatic increase in compensation that exceeds a
 17 cost-of-living adjustment.
- 18 (c) An automatic increase in compensation that is linked to
 19 another contract, including an agreement entered into pursuant
 20 to the Meyers-Milias-Brown Act (Chapter 10 (commencing with
 21 Section 3500)), Chapter 5 (commencing with Section 45100) of
 22 Part 25 of Division 3 of Title 2 of the Education Code, or Chapter
 23 4 (commencing with Section 88000) of Part 51 of Division 7 of
 24 Title 3 of the Education Code.

25 (d) A maximum cash settlement that exceeds the amounts
 26 determined pursuant to Article 3.5 (commencing with Section
 27 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.

28 3511.3. (a) Before a local agency may increase the
 29 compensation of an excluded employee, the local agency shall
 30 complete a performance review of the excluded employee.

31 (b) The records, procedures, and actions shall conform to the
 32 requirements of law, including, but not limited to, the Public
 33 Records Act (Chapter 3.5 (commencing with Section 6250) of
 34 Division 7) and the Ralph M. Brown Act (Chapter 9 (commencing
 35 with Section 54950) of Part 1 of Division 2 of Title 5).

36 (c) This section does not apply to cost-of-living adjustments to
 37 compensation.

38 ~~SEC. 2.—Section 54957.05 is added to the Government Code,~~
 39 ~~to read:~~

1 54957.05.—(a) For any unrepresented individual who is or will
2 be employed by, and report directly to, the legislative body of the
3 local agency, before implementing a raise in excess of a
4 cost-of-living adjustment, the following requirements shall be met:

5 (1) A performance review of that individual shall be completed.
6 A completed summary of the performance review shall be
7 discussed at open session. The performance review shall be
8 publicly available upon request.

9 (2) The vote to implement the raise in excess of a cost-of-living
10 adjustment shall be conducted in an open session meeting.

11 (b) For the purposes of this section, the board shall use the
12 Bureau of Labor Statistics' Consumer Price Index to determine
13 the cost-of-living adjustment each year.

14 *SEC. 2. The Legislature finds and declares that the fiscal*
15 *integrity and stability of local governmental agencies in this state,*
16 *including charter cities and charter counties, have a direct impact*
17 *on the long-term well-being of all the residents of this state. The*
18 *likelihood of businesses locating to or staying in the state is*
19 *affected by the perception of a functioning, transparent, and*
20 *practical governmental structure in the local governmental bodies*
21 *in California. Therefore, the Legislature finds and declares that*
22 *to ensure the statewide integrity of local government, the*
23 *procedures for the appointment and compensation of excluded*
24 *employees are an issue of statewide concern. Therefore, this act*
25 *shall apply to all counties and cities, including charter counties,*
26 *charter cities, and charter cities and counties.*

27 *SEC. 3. If the Commission on State Mandates determines that*
28 *this act contains costs mandated by the state, reimbursement to*
29 *local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code.*

32 *SEC. 4. This act is an urgency statute necessary for the*
33 *immediate preservation of the public peace, health, or safety within*
34 *the meaning of Article IV of the Constitution and shall go into*
35 *immediate effect. The facts constituting the necessity are:*

36 *In order to preserve fiscal integrity and stability of local*
37 *government agencies in this state and the perception of a*
38 *functioning, transparent, and practical governmental structure in*

- 1 *the local government bodies in California at the earliest possible*
- 2 *time, it is necessary for this measure to take effect immediately.*

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