

AMENDED IN SENATE AUGUST 18, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 276**

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**Introduced by Assembly Member Alejo**

February 7, 2011

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An act to amend Sections ~~12463, 53890, and 53895~~ of, and to repeal Sections ~~53892.1, 53895.5, and 53895.7~~ of, the Government Code, relating to local government. *Section 1164 of, and to repeal Section 1164.11 of, the Labor Code, relating to agricultural labor relations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 276, as amended, Alejo. Local government: financial reports.

*Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Under existing law, the declaration may be filed 90 days after a renewed demand to bargain where the parties have failed to reach agreement for at least one year, the employer committed an unfair labor practice, and the parties have not previously had a binding contract between them or 180 days after an initial request to bargain.*

*This bill would repeal the provision specifying the conditions necessary for making a renewed demand to bargain and would instead provide that the declaration may be filed 180 days after any request to bargain.*

~~(1) Existing law requires the officer of each local agency, who has charge of the financial records of the agency, to furnish to the Controller~~

a report of all the financial transactions of the local agency during the next preceding fiscal year within 90 days of the close of each fiscal year, as specified. Existing law defines local agency, for purposes of these financial reports to mean any city, county, district, and specified community redevelopment agencies.

~~This bill would also include within the definition of local agency any joint powers agency, formed pursuant to the Joint Exercise of Powers Act, that issues conduit revenue bonds, and would require these joint powers agencies to furnish the Controller with the required financial reports.~~

~~(2) Existing law provides that an officer of a local agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller forfeits to the state \$1,000 in the case of a local agency with total revenue, in the prior year, of less than \$100,000; \$2,500 in the case of a local agency with total revenue, in the prior year, of at least \$100,000 but less than \$250,000; and \$5,000 in the case of a local agency with total revenue in the prior year of at least \$250,000. Existing law raises these amounts in the case of a community redevelopment agency, and a joint powers agency that issues conduit revenue bonds in the second and third consecutive year.~~

~~This bill would raise the forfeiture amounts for all local agencies to \$2,500 in the case of a local agency with total revenue, in the prior year, of less than \$100,000; \$5,000 in the case of a local agency with total revenue, in the prior year, of at least \$100,000 but less than \$250,000; and \$10,000 in the case of a local agency with total revenue, in the prior year, of at least \$250,000. The bill would double these fines if the agency fails to submit the report to the Controller for 2 consecutive years, and would triple the fines if the agency fails to submit the report to the Controller for 3 consecutive years. The bill would also require the Controller to conduct an audit, as specified, of the local agency if the local agency fails to provide the financial reports for 3 consecutive years.~~

~~(3) Existing law requires the Superintendent of Public Instruction to make available to the Controller, on an as-needed basis, data and other matters required to permit the compilation of the financial transactions of school districts by the Controller.~~

~~This bill would repeal this provision.~~

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

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

1     SECTION 1. Section 1164 of the Labor Code is amended to  
2 read:

3     1164. (a) An agricultural employer or a labor organization  
4 certified as the exclusive bargaining agent of a bargaining unit of  
5 agricultural employees may file with the board, at any time  
6 following ~~(1) 90 days after a renewed demand to bargain by an~~  
7 ~~agricultural employer or a labor organization certified prior to~~  
8 ~~January 1, 2003, which meets the conditions specified in Section~~  
9 ~~1164.11 or (2) 180 days after an initial request to bargain by an~~  
10 ~~agricultural employer or a labor organization certified after January~~  
11 ~~1, 2003~~ 180 days after any request to bargain by an agricultural  
12 employer or a certified labor organization, a declaration that the  
13 parties have failed to reach a collective bargaining agreement and  
14 a request that the board issue an order directing the parties to  
15 mandatory mediation and conciliation of their issues. “Agricultural  
16 employer,” for purposes of this chapter, means an agricultural  
17 employer, as defined in subdivision (c) of Section 1140.4, who  
18 has employed or engaged 25 or more agricultural employees during  
19 any calendar week in the year preceding the filing of a declaration  
20 pursuant to this subdivision.

21     (b) Upon receipt of a declaration pursuant to subdivision (a),  
22 the board shall immediately issue an order directing the parties to  
23 mandatory mediation and conciliation of their issues. The board  
24 shall request from the California State Mediation and Conciliation  
25 Service a list of nine mediators who have experience in labor  
26 mediation. The California State Mediation and Conciliation Service  
27 may include names chosen from its own mediators, or from a list  
28 of names supplied by the American Arbitration Association or the  
29 Federal Mediation Service. The parties shall select a mediator from  
30 the list within seven days of receipt of the list. If the parties cannot  
31 agree on a mediator, they shall strike names from the list until a  
32 mediator is chosen by process of elimination. If a party refuses to  
33 participate in selecting a mediator, the other party may choose a  
34 mediator from the list. The costs of mediation and conciliation  
35 shall be borne equally by the parties.

36     (c) Upon appointment, the mediator shall immediately schedule  
37 meetings at a time and location reasonably accessible to the parties.  
38 Mediation shall proceed for a period of 30 days. Upon expiration

1 of the 30-day period, if the parties do not resolve the issues to their  
2 mutual satisfaction, the mediator shall certify that the mediation  
3 process has been exhausted. Upon mutual agreement of the parties,  
4 the mediator may extend the mediation period for an additional  
5 30 days.

6 (d) Within 21 days, the mediator shall file a report with the  
7 board that resolves all of the issues between the parties and  
8 establishes the final terms of a collective bargaining agreement,  
9 including all issues subject to mediation and all issues resolved by  
10 the parties prior to the certification of the exhaustion of the  
11 mediation process. With respect to any issues in dispute between  
12 the parties, the report shall include the basis for the mediator's  
13 determination. The mediator's determination shall be supported  
14 by the record.

15 (e) In resolving the issues in dispute, the mediator may consider  
16 those factors commonly considered in similar proceedings,  
17 including:

18 (1) The stipulations of the parties.

19 (2) The financial condition of the employer and its ability to  
20 meet the costs of the contract in those instances where the employer  
21 claims an inability to meet the union's wage and benefit demands.

22 (3) The corresponding wages, benefits, and terms and conditions  
23 of employment in other collective bargaining agreements covering  
24 similar agricultural operations with similar labor requirements.

25 (4) The corresponding wages, benefits, and terms and conditions  
26 of employment prevailing in comparable firms or industries in  
27 geographical areas with similar economic conditions, taking into  
28 account the size of the employer, the skills, experience, and training  
29 required of the employees, and the difficulty and nature of the  
30 work performed.

31 (5) The average consumer prices for goods and services  
32 according to the California Consumer Price Index, and the overall  
33 cost of living, in the area where the work is performed.

34 *SEC. 2. Section 1164.11 of the Labor Code is repealed.*

35 ~~1164.11. A demand made pursuant to paragraph (1) of~~  
36 ~~subdivision (a) of Section 1164 may be made only in cases which~~  
37 ~~meet all of the following criteria: (a) the parties have failed to~~  
38 ~~reach agreement for at least one year after the date on which the~~  
39 ~~labor organization made its initial request to bargain, (b) the~~

1 employer has committed an unfair labor practice, and (c) the parties  
2 have not previously had a binding contract between them.

3 ~~SECTION 1. Section 12463 of the Government Code is~~  
4 ~~amended to read:~~

5 ~~12463. (a) The Controller shall compile and publish reports~~  
6 ~~of the financial transactions of each county, city, special district,~~  
7 ~~and joint powers agency formed pursuant to the Joint Exercise of~~  
8 ~~Powers Act (Article 1 (commencing with Section 6500) of Chapter~~  
9 ~~5 of Division 7 of Title 1) that issues conduit revenue bonds,~~  
10 ~~respectively, within this state, together with any other matter he~~  
11 ~~or she deems of public interest. The reports shall include the~~  
12 ~~appropriations limits and the total annual appropriations subject~~  
13 ~~to limitation of the counties, cities, and special districts. The reports~~  
14 ~~to the Controller shall be made in the time, form, and manner~~  
15 ~~prescribed by the Controller.~~

16 ~~(b) Effective January 1, 2005, the Controller shall compile and~~  
17 ~~publish reports of the financial transactions of each county, city,~~  
18 ~~and special district pursuant to subdivision (a) on or before August~~  
19 ~~1, September 1, and October 1 respectively, of each year following~~  
20 ~~the end of the annual reporting period. The Controller shall make~~  
21 ~~data collected pursuant to this subdivision available upon request~~  
22 ~~to the Legislature and its agents, on or before April 1 of each year.~~

23 ~~(c) As used in this section, "special district" means any of the~~  
24 ~~following:~~

25 ~~(1) A special district as defined in Section 95 of the Revenue~~  
26 ~~and Taxation Code.~~

27 ~~(2) A commission provided for by a joint powers agreement~~  
28 ~~pursuant to Chapter 5 (commencing with 6500) of Division 7 of~~  
29 ~~Title 1.~~

30 ~~(3) A nonprofit corporation that is any of the following:~~

31 ~~(A) Was formed in accordance with the provisions of a joint~~  
32 ~~powers agreement to carry out functions specified in the agreement.~~

33 ~~(B) Issued bonds, the interest on which is exempt from federal~~  
34 ~~income taxes, for the purpose of purchasing land as a site for, or~~  
35 ~~purchasing or constructing, a building, stadium, or other facility,~~  
36 ~~that is subject to a lease or agreement with a local public entity.~~

37 ~~(C) Is wholly owned by a public agency.~~

38 ~~SEC. 2. Section 53890 of the Government Code is amended~~  
39 ~~to read:~~

1 53890. As used in this article, “local agency” means any city,  
2 county, any district, any community redevelopment agency  
3 required to furnish financial reports pursuant to Section 12463.1  
4 or 12463.3, and a joint powers agency formed pursuant to the Joint  
5 Exercise of Powers Act (Article 1 (commencing with Section 6500)  
6 of Chapter 5 of Division 7 of Title 1) that issues conduit revenue  
7 bonds.

8 SEC. 3. Section 53892.1 of the Government Code is repealed.

9 SEC. 4. Section 53895 of the Government Code is amended  
10 to read:

11 53895. (a) An officer of a local agency who fails or refuses to  
12 make and file his or her report within 20 days after receipt of a  
13 written notice of the failure from the Controller shall forfeit to the  
14 state:

15 (1) Two thousand five hundred dollars (\$2,500), in the case of  
16 a local agency with total revenue, in the prior year, of less than  
17 one hundred thousand dollars (\$100,000), as reported in the  
18 Controller’s annual financial reports.

19 (2) Five thousand dollars (\$5,000), in the case of a local agency  
20 with total revenue, in the prior year, of at least one hundred  
21 thousand dollars (\$100,000) but less than two hundred fifty  
22 thousand dollars (\$250,000), as reported in the Controller’s annual  
23 financial reports.

24 (3) Ten thousand dollars (\$10,000), in the case of a local agency  
25 with total revenue, in the prior year, of at least two hundred fifty  
26 thousand dollars (\$250,000), as reported in the Controller’s annual  
27 financial reports.

28 (b) (1) Upon the request of the Controller, the Attorney General  
29 shall prosecute an action for the forfeiture in the name of the people  
30 of the State of California.

31 (2) Upon a satisfactory showing of good cause, the Controller  
32 may waive the penalties for late filing provided in this section.

33 (c) If an officer of a local agency fails or refuses to make and  
34 file his or her report within 20 days after receipt of a written notice  
35 pursuant to subdivision (a) for two consecutive years, the forfeiture  
36 or fine assessed pursuant to paragraphs (1), (2), and (3) of  
37 subdivision (a) in the second year shall be doubled.

38 (d) (1) If an officer of a local agency fails or refuses to make  
39 and file his or her report within 20 days after receipt of a written  
40 notice pursuant to subdivision (a) for three consecutive years, the

1 forfeiture or fine assessed pursuant to paragraphs (1), (2), and (3)  
2 of subdivision (a) in the third year shall be tripled. The Controller  
3 shall also conduct or cause to be conducted an independent  
4 financial audit report. In the case of a community redevelopment  
5 agency, the audit report shall be consistent with the requirements  
6 of Section 33080.1 of the Health and Safety Code, and in the case  
7 of a joint powers agency, the audit report shall be consistent with  
8 Section 6505. The agency shall reimburse the Controller for the  
9 cost of complying with this subdivision.

10 (2) A redevelopment agency shall not use any of the funds in  
11 the Low and Moderate Income Housing Fund to fund any forfeiture  
12 or fine assessed pursuant to this section.

13 (e) An agency that makes a forfeiture or payment pursuant to  
14 this section shall still file the report required pursuant to Section  
15 53891.

16 SEC. 5. Section 53895.5 of the Government Code is repealed.

17 SEC. 6. Section 53895.7 of the Government Code is repealed.