

AMENDED IN SENATE MARCH 31, 2016

SENATE BILL

No. 950

Introduced by Senator Nielsen

February 4, 2016

An act to add Chapter 10.6 (commencing with Section 3539.75) to Division 4 of Title 1 of the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 950, as amended, Nielsen. Excluded employees: arbitration.

The Bill of Rights for State Excluded Employees permits, among other things, excluded employee organizations to represent their excluded members in their employment relations, including grievances, with the state. That law defines excluded employees as all managerial employees, confidential employees, supervisory employees, and specified employees of the Department of Personnel Administration, the Department of Finance, the Controller's office, the Legislative Counsel Bureau, the Bureau of State Audits, the Public Employment Relations Board, the Department of Industrial Relations, and the State Athletic Commission.

This bill would enact the Excluded Employee Arbitration Act to permit ~~an excluded employee who has filed a grievance with the California Human Resources Administration (CALHR), or an employee organization that represents that employee,~~ *an excluded employee who has filed certain grievances with the Department of Human Resources (CalHR)* to request arbitration of the grievance if specified conditions are met. The bill would require the designation of a standing panel of arbitrators, and, under specified circumstances, the provision of arbitrators from the California State Mediation and Conciliation Service

within the Department of Industrial Relations. The bill would then require the arbitrator to be chosen in a specified manner, and would prescribe the duties of that arbitrator. The bill would also require the losing party to bear the costs of arbitration, and would make a statement of legislative intent with regard to the above.

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. It is the intent of the Legislature that state
2 excluded employees shall have the right to arbitration as a fifth
3 step to the excluded employee grievance procedure. The present
4 grievance procedure leaves too many grievances unresolved. This
5 lack of resolution has caused more cases to be filed in California's
6 courts, which should have been resolved at a lower level.

7 SEC. 2. Chapter 10.6 (commencing with Section 3539.75) is
8 added to Division 4 of Title 1 of the Government Code, to read:

9
10 CHAPTER 10.6. EXCLUDED EMPLOYEE ~~MEDIATION~~ ARBITRATION
11 ACT
12

13 3539.75. This chapter shall be known, and may be cited, as the
14 Excluded Employee Arbitration Act.

15 3539.76. For purposes of this chapter:

16 (a) "Department" means the ~~California~~ Department of Human
17 Resources ~~Administration (CALHR)~~. (*CalHR*).

18 (b) ~~"Employee"~~ "*Excluded employee*" means an excluded
19 employee of the state, as defined in subdivision (b) of Section
20 3527.

21 (c) "Employee organization" means any organization that
22 represents excluded employees of the ~~state~~. *State of California*.

23 (d) "Employer" means the State of California.

24 (e) "Arbitration" means the binding ruling that resolves an
25 excluded employee grievance at the fifth level of the excluded
26 employee grievance process.

27 3539.77. ~~An employee who has filed a grievance with the~~
28 ~~department or an employee organization representing that employee~~
29 *an employee who has filed a grievance with the department may*

1 request arbitration of the grievance if all of the following conditions
2 are met:

3 (a) The grievance alleges a violation of Title 2 ~~or 15~~ of the
4 California Code of Regulations, ~~this code, the Labor Code, or a~~
5 ~~federal statute relating to employer-employee relations.~~
6 *Regulations.*

7 (b) The grievance has not been resolved to the ~~employee's or~~
8 employee organization's satisfaction after ~~the third or fourth level~~
9 ~~of review~~ *either of the following, as applicable*, pursuant to
10 regulations of the department governing grievances for excluded
11 ~~employees.~~ *employees:*

12 (1) *The fourth level of review.*

13 (2) *In cases where there is no fourth level of review, the third*
14 *level of review.*

15 (c) ~~The employee or employee organization requests arbitration~~
16 in writing, submitted to the department, within 21 days of a
17 decision rendered in ~~the third or fourth level of review.~~ *either of*
18 *the following, as applicable:*

19 (1) *The fourth level of review.*

20 (2) *In cases where there is no fourth level of review, the third*
21 *level of review.*

22 3539.78. (a) After a request for arbitration is made, the
23 department and the employee organization shall designate a
24 standing panel of at least 20 arbitrators who shall be available for
25 arbitration under this chapter.

26 (b) If there are fewer than three arbitrators available, then the
27 employee organization or the employer may obtain the names of
28 an additional five arbitrators from the California State Mediation
29 and Conciliation Service within the Department of Industrial
30 Relations.

31 (c) From that standing panel, the employee organization and
32 the employer may consecutively strike any arbitrator from that
33 panel until the name of one arbitrator is agreed upon, or, if no
34 agreement is made, the last remaining person on the panel shall
35 be designated the arbitrator. The name of that arbitrator shall be
36 submitted in writing to the department.

37 (d) If the employee organization does not submit its choice of
38 an arbitrator within 45 days after requesting arbitration, the request
39 for arbitration shall be considered withdrawn.

1 3539.79. (a) The arbitrator shall issue a decision for each
2 grievance heard during the arbitration. The decision shall be based
3 solely on the written record in the grievance, the grievance
4 response, and the oral presentations made at the arbitration. The
5 arbitrator's decision shall be legally binding.

6 (b) The arbitrator shall issue a written decision within 45 days
7 of the conclusion of the hearing.

8 (c) The arbitrator shall order the nonprevailing party to pay the
9 cost of the arbitration.

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