

AMENDED IN ASSEMBLY JUNE 29, 2016

AMENDED IN SENATE APRIL 27, 2016

AMENDED IN SENATE MARCH 31, 2016

**SENATE BILL**

**No. 950**

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**Introduced by Senator Nielsen**

February 4, 2016

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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 employee organization that represents 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 provide that a party to the arbitration has the right to have a certified shorthand reporter transcribe the proceeding and that the transcription would be the official record of the proceeding.* The bill would also require the losing party to bear the costs of arbitration, *including the cost of a certified shorthand reporter*, except that the bill would prohibit the arbitrator from ordering the excluded employee to pay the costs of arbitration and would prohibit the costs of arbitration from being passed on to the excluded employee. The bill 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~~ *could* 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:  
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10 CHAPTER 10.6. EXCLUDED EMPLOYEE ARBITRATION ACT  
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12 3539.75. This chapter shall be known, and may be cited, as the  
13 Excluded Employee Arbitration Act.

14 3539.76. For purposes of this chapter:

15 (a) "Department" means the Department of Human Resources  
16 (CalHR).

17 (b) "Excluded employee" means an excluded employee of the  
18 state, as defined in subdivision (b) of Section 3527.

19 (c) "Employee organization" means any organization that  
20 represents excluded employees of the State of California.

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

1 (e) “Arbitration” means the binding ruling that resolves an  
2 excluded employee grievance at the fifth level of the excluded  
3 employee grievance process.

4 3539.77. An employee organization representing an employee  
5 who has filed a grievance with the department may request  
6 arbitration of the grievance if all of the following conditions are  
7 met:

8 (a) The grievance alleges a violation of Title 2 of the California  
9 Code of Regulations.

10 (b) The grievance has not been resolved to the employee  
11 organization’s satisfaction after either of the following, as  
12 applicable, pursuant to regulations of the department governing  
13 grievances for excluded employees:

14 (1) The fourth level of review.

15 (2) In cases where there is no fourth level of review, the third  
16 level of review.

17 (c) The employee organization requests arbitration in writing,  
18 submitted to the department, within 21 days of a decision rendered  
19 in either of the following, as applicable:

20 (1) The fourth level of review.

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

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

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

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

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

1 *withdrawn shall not prevent the employee from pursuing other*  
2 *grievance procedures available by law.*

3 3539.79. (a) *A party to the arbitration shall have the right to*  
4 *have a certified shorthand reporter transcribe the proceeding. The*  
5 *transcript shall be the official record of the proceeding.*

6 (b) *The arbitrator shall apply California law to the facts. The*  
7 *arbitrator shall issue a decision for each grievance heard during*  
8 *the arbitration. The decision shall be based solely on the written*  
9 *record in the grievance, the grievance response, and the oral*  
10 *presentations made at the arbitration. The arbitrator's decision*  
11 *shall be legally binding.*

12 ~~(b)~~  
13 (c) *The arbitrator shall issue a written decision within 45 days*  
14 *of the conclusion of the hearing.*

15 ~~(e)~~  
16 (d) *The arbitrator shall order the nonprevailing party to pay the*  
17 *cost of the arbitration, including the cost of a certified*  
18 *shorthand reporter. The arbitrator shall not order the excluded*  
19 *employee to pay the cost of arbitration, arbitration or the cost of*  
20 *a certified shorthand reporter; and the cost of arbitration*  
21 *arbitration, including the cost of a certified shorthand reporter,*  
22 *shall not be passed on to the excluded employee.*