



COUNCIL AGENDA: 08-23-11  
ITEM: 2.15

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Dennis Hawkins, CMC  
City Clerk

**SUBJECT: SEE BELOW**

**DATE:** 08-17-11

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**SUBJECT: SB 931 (VARGAS) – PUBLIC EMPLOYEE ORGANIZATIONS**

**RECOMMENDATION**

As recommended by the Rules and Open Government Committee on August 17, 2011 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, approve an oppose position for SB 931 (Vargas) – Public Employee Organizations.



Subject: **SB 931 (Vargas)**  
**Public Employee Organizations**

**RULES COMMITTEE: 8-17-11**  
**ITEM: D.1.b**

**Recommend Position: OPPOSE**

<b>City Council Action Request</b>			
<b>Department:</b> OER	<b>DATE:</b> 08/10/11	<b>Coordination:</b> <ul style="list-style-type: none"> <li>▪ City Mgr</li> <li>▪ City Atty</li> <li>▪ Legis. Rep in Sacramento</li> </ul>	<b>CMO Approval:</b> 8/11/11 <b>Dept. Approval:</b> ALEX GUNZ
<b>RECOMMENDED ACTION:</b>			
<ol style="list-style-type: none"> <li>1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, approve opposition for SB 931 (Vargas).</li> <li>2. Recommend a one-week turnaround to the City Council so that the City's legislative staff can advocate the City's opposition for SB 931.</li> </ol>			
<b>BILL SYNOPSIS:</b>			
<p>The Meyers-Milias-Brown Act and various other acts each provide for negotiations concerning wages, hours, and other terms and conditions of employment between a state or local public employer and representatives of recognized employee organizations. Those acts prohibit public employers from, among other things, intimidating, coercing, or discriminating against employees because of their exercise of rights guaranteed under the acts, as specified.</p> <p>SB 931 would prohibit public agencies from using public funds to pay outside consultants or legal advisors for the purpose of counseling the public employer about ways to minimize or deter the exercise of rights guaranteed under this chapter.</p>			
<b>IMPACTS TO CITY OF SAN JOSÉ:</b>			
<p><b>SB 931 is an unreasonable and impermissible interference with attorney-client privilege and right to counsel.</b> The City should be able to seek outside counsel as needed and freely communicate thoughts and ideas with its counsel in order to best determine its rights and obligations under the law; rights and obligations that are not always clearly defined. SB 931 would allow the City to seek advice only after legal proceedings have commenced. Additionally, the only way to determine whether a communication between the City and outside counsel did not involve "ways to minimize or deter the exercise of rights guaranteed in this chapter," is through the disclosure of confidential attorney-client communications, a result the entire concept of attorney-client privilege exists to prevent in the first place.</p> <p><b>SB 931 may create additional financial strains on the City.</b> If the City is not able to seek legal advice, it may (1) not take any action at all, or (2) take action which results in litigation; either result may create more of a financial burden on the City. Without the freedom to seek legal counsel, the City may continue costly practices which may legally be changed, or the City discontinues a practice only to discover it was illegal to do so and now must instead suffer the consequences of litigation.</p>			

**POLICY ALIGNMENT:**

The legislation would impair the City's ability to comply with the City Charter which dictates that the City adopts a budget for each fiscal year within the specified time frames. Additionally, the legislation is unnecessary because Employer-Employee Resolution No. 39367 is consistent with the MMBA and provides well-established procedures regarding impasse.

**SUPPORTERS/OPPONENTS:**

**Support: (not an exhaustive list)**

- American Federation of State, County and Municipal Employees (Sponsor)
- California Conference Board of the Amalgamated Transit Union
- California Conference of Machinists
- California Federation of Teachers
- California Labor Federation
- California Nurses Association
- California Teamsters Public Affairs Council
- Communication Workers of America (CWA)
- Professional and Technical Engineers, Local 21
- University Professional and Technical Employees, CWA, Local 9119

**Opposed: (not an exhaustive list)**

- Association of California Healthcare Districts
- Association of California School Administrators
- Association of California Water Agencies
- California Association of Sanitation Agencies
- California Association of Joint Powers Authorities
- California County Superintendents Educational Services Association
- California Hospital Association
- California Municipal Utilities Association
- California School Boards Association
- California Special Districts Association
- California State Association of Counties
- California State University (Unless Amended)
- City of Benicia
- City of Burbank
- City of Cerritos
- City of Cloverdale
- City of Encinitas
- City of Fountain Valley
- City of Fremont
- City of Fullerton
- City of Hayward
- City of Healdsburg
- City of Lodi
- City of Montclair
- City of Pasadena
- City of Red Bluff
- City of Salinas
- City of San Luis Obispo
- City of Santa Maria
- City of Santa Rosa
- City of Thousand Oaks
- City of Turlock
- City of Vista Contra Costa County Superintendent of Schools
- Fortuna Union Elementary School District
- Humboldt County Office of Education
- Inland Personnel Council
- Irvine Unified School District
- Kern County Superintendent of Schools
- League of California Cities
- Orange County Department of Education
- Orange County Superintendents' Association
- Regional Council of Rural Counties
- Rio Dell Elementary School District
- Riverside County School Superintendents' Association
- Sacramento County Board of Supervisors
- San Bernardino Community College District
- San Bernardino County District Advocates for Better Schools
- San Diego County Office of Education
- Santa Clara County Office of Education
- Savanna School District
- School Employers Association of California
- School Services of California
- Sonoma County Superintendent of Schools
- University of California

HONORABLE MAYOR AND CITY COUNCIL

08-17-11

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<b>STATUS OF BILL:</b>
Ordered to third reading in Assembly.
<b>FOR QUESTIONS, CONTACT: The Office of Employee Relations – 535-8150</b>