



COUNCIL AGENDA: 08-23-11  
ITEM: 2.16

# 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: AB 646 (ATKINS) – LOCAL PUBLIC EMPLOYEE ORGANIZATIONS:  
IMPASSE PROCEDURES**

## 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 AB 646 (Atkins) – Local Public Employee Organizations: Impasse Procedures.



Subject: AB 646 (Atkins)  
 Local Public Employee Organizations:  
 Impasse Procedures

RULES COMMITTEE: 8-17-11  
 ITEM: D.1.c

Recommend Position: OPPOSE

**City Council Action Request**

Department: OER	DATE: 08/10/11	Coordination: <ul style="list-style-type: none"> <li>▪ City Mgr</li> <li>▪ City Atty</li> <li>▪ Legis. Rep in Sacramento</li> </ul>	CMO Approval: <i>[Signature]</i> 8/11/11
			Dept. Approval: <i>[Signature]</i> ALEX GUNZA

**RECOMMENDED ACTION:**

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, approve opposition for AB 646 (Atkins).
2. Recommend a one-week turnaround to the City Council so that the City's legislative staff can advocate the City's opposition for AB 646.

**BILL SYNOPSIS:**

The Meyers-Millas-Brown Act (MMBA) contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board (PERB) to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The MMBA requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer.

AB 646 would amend the MMBA by:

- Authorizing the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a fact-finding panel; half of the costs associated with the panel are to be borne by the City.
- Requiring that the fact-finding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties.
- Authorizing the fact-finding panel to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, and subsequently issue "advisory" recommendations for settlement.
- Prohibiting the public agency from implementing its last, best and final offer until 10 days after the panel issues its "advisory" decision and after a public meeting regarding the impasse.

### IMPACTS TO CITY OF SAN JOSÉ:

The City bargains in good faith and currently provides for impasse procedures via Employer-Employee Resolution No. 39367. Please note that AB 646 only exempts those Charter Cities that provide, at minimum, binding arbitration to its employee organizations as part of the impasse procedures.

**AB 646 adds additional layers and costs beyond the City's existing procedures triggered at the sole discretion of the bargaining unit.** AB 646 gives an employee organization the sole discretion to request fact-finding once impasse has been reached. Accordingly, AB 646 may create disincentives for bargaining units to bargain in good faith given the existence of a subsequent layer to the process via fact-finding, and this will ostensibly prolong the negotiation process.

**AB 646 will create unnecessary and untenable delays to the conclusion of negotiations.** AB 646 states that the fact-finding panel is to make findings of fact and recommend terms of settlement for "advisory" purposes only. However, even though the panel's recommendations are "advisory," the City is prohibited from implementing its last, best and final offer until at least 10 days after the panel's written findings of fact and recommendations for settlement are issued, and only after a public hearing on the impasse has been held. While there are specific time constraints placed on the City, there are no such timetables on the panel to render and issue an "advisory" decision that would enable the City to take any action. As a result, the conclusion of negotiations may be delayed until a panel renders an "advisory" decision at an unspecified time.

**PERB does not have the resources to implement AB 646.** AB 646 places the onus on PERB to meet the measure's mandates, and it is questionable whether PERB would have the resources to fully implement the fact-finding requirements of AB 646. This would create further delays since the body responsible for the fact-finding panel may not have the resources to implement a fact-finding panel, and the City cannot take action until the panel issues a decision.

**AB 646 creates additional financial burdens on the City.** AB 646 states that half of any costs associated with a fact-finding panel are to be borne by the City, an impractical result given the current fiscal situation. As a result, AB 646 has already created additional expenses to the City, (1) triggered at the sole discretion of a bargaining unit, (2) before the City can even make decisions relying on the outcome of negotiations which may be delayed indefinitely, and (3) even before the panel issues an "advisory" opinion that may negatively impact the City's budget.

### 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:**

- American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, Sponsor
- California Labor Federation (CLF)
- California Nurses Association (CNA)
- California State Employees Association (CSEA)
- Orange County Labor Federation (OCLF)
- Peace Officers Research Association of California (PORAC)
- San Diego and Imperial Counties Labor Council, AFL-CIO

**Opposed:**

- Association of California Healthcare Districts (ACHD)
- Association of California Water Agencies (ACWA)
- California Association of Sanitation Agencies (CASA)
- California Municipal Utilities Association (CMUA)
- California Special Districts Association (CSDA)
- California State Association of Counties (CSAC)
- City of Cerritos
- City of Cloverdale
- City of Healdsburg
- City of Kingsburg
- City of Murrieta
- City of Red Bluff
- City of San Mateo
- City of Torrance
- City of Vista
- County of San Diego
- Desert Water Agency (DWA)
- East Valley Water District (EVWD)
- El Dorado Irrigation District (EID)
- League of California Cities (LCC)
- Orange County Board of Supervisors
- Placer County Board of Supervisors
- Regional Council of Rural Counties (RCRC)
- Sacramento County Board of Supervisors
- Sacramento Municipal Utility District (SMUD)
- Sanitation District of Los Angeles County
- Solano County Board of Supervisors

**STATUS OF BILL:**

Passed out of the Assembly. Amended and re-referred to the Senate Appropriations Committee.

**FOR QUESTIONS, CONTACT: The Office of Employee Relations – 535-8150**