

No. A127292

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOR THE FIRST APPELLATE DISTRICT  
DIVISION 2

---

CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION,

Plaintiff/Real Party in Interest,

vs.

ARNOLD SCHWARZENEGGER, in his capacity as  
Governor of the State of California, *et al.*,

Defendants/Petitioners.

JOHN CHIANG, in his capacity as the Controller of the State of California

Defendant/Real Party in Interest

---

On Petition for Writ of Mandate Challenging Order and Writ of Mandate of  
Alameda Superior Court, Case No. RG-09-441544  
Honorable Frank Roesch  
Department 31 (510) 268-5105

---

**REAL PARTY IN INTEREST CCPOA'S  
MOTION TO TAKE JUDICIAL NOTICE  
(EVID. CODE §§ 451 and 459; CRC § 8.252)**

---

Gregg McLean Adam, No. 203436  
Jonathan Yank, No. 215495  
Gonzalo C. Martinez, No. 231724  
**CARROLL, BURDICK &  
McDONOUGH LLP**  
44 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Telephone: 415.989.5900  
Facsimile: 415.989.0932  
Email: [gadam@cbmlaw.com](mailto:gadam@cbmlaw.com)

Daniel M. Lindsay, No. 142895  
**CALIFORNIA CORRECTIONAL  
PEACE OFFICERS' ASSOCIATION**  
755 Riverpoint Drive, Suite 200  
West Sacramento, CA 95605-1634  
Telephone: 916.372.6060  
Facsimile: 916.340.9372  
E-Mail: [dan.lindsay@ccpoa.org](mailto:dan.lindsay@ccpoa.org)

*Attorneys for Real Party in Interest  
California Correctional Peace Officers' Association*

## I

### MOTION TO TAKE JUDICIAL NOTICE

In support of Real Party in Interest California Correctional Peace Officers' Association's ("CCPOA") Opposition to Petition for Writ of Mandate, and pursuant to Evidence Code sections 451 and 459 and Rule 8.252 of the California Rules of Court, CCPOA asks the Court to take judicial notice of:

1. Senate Bill No. 65 (2001-2002 Reg. Sess.), which was signed into law by the Governor on January 15, 2002. This document is attached as Exhibit 1 to the Declaration of Jonathan Yank in Support of Motion for Judicial Notice (below).

2. Senate Bill No. 1110 (2003 - 2004 Reg. Sess.), which was signed into law by the Governor on August 11, 2004. This document is attached as Exhibit 2 to the Declaration of Jonathan Yank in Support of Motion for Judicial Notice (below).

## II

### MEMORANDUM OF POINTS AND AUTHORITIES

#### **Authority:**

Evidence Code section 451(a) mandates that judicial notice shall be taken of "the decisional, constitutional, and public statutory law of this state." (Evid. Code § 451(a).) Pursuant to Evidence Code section 459(a), the Court of Appeal "shall take judicial notice of each matter the trial court

was required to notice under section 451.” (Evid. Code § 459(a).)

Pursuant to these provisions, judicial notice is appropriately taken of these two Senate Bills, which are “public statutory law of this state.” (*Estate of Joseph* (1998) 17 Cal.4th 203, 201 n. 1 [“We must, of course, judicially notice California statutory law.”]) This matter was not submitted for judicial notice before the trial court and does not relate to proceedings that occurred after the order that is the subject of this Petition for Writ of Mandate.

**Relevance:**

These facts are relevant to demonstrate that the California Legislature ratified the current wage rates for State Bargaining Unit 6 (“Unit 6”) members. The required wage rates of employees in Unit 6 are at the heart of the underlying controversy, which relates to a Writ of Mandate issued by the Superior Court directing full payment of Unit 6 employees’ salaries.

**III**

**DECLARATION OF JONATHAN YANK  
IN SUPPORT OF THE MOTION FOR JUDICIAL NOTICE**

I, Jonathan Yank, declare as follows:

1. I am an attorney licensed to practice law in all of the courts of the State of California. I have personal knowledge of the following facts and could testify to them if called as a witness.

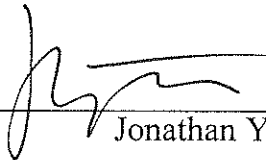
2. Attached hereto as Exhibit 1 is a true and correct copy of Senate Bill No. 65 (2001-2002 Reg. Sess.). I obtained this document from the Official California Legislative Information website, located at:

[http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb\\_0051-0100/sb\\_65\\_bill\\_20020116\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0051-0100/sb_65_bill_20020116_chaptered.pdf).

3. Attached hereto as Exhibit 2 is a true and correct copy of Senate Bill No. 1110 (2003 - 2004 Reg. Sess.). I obtained this document from the Official California Legislative Information website, located at:

[http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1101-1150/sb\\_1110\\_bill\\_20040811\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1101-1150/sb_1110_bill_20040811_chaptered.pdf)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28<sup>th</sup> day of April, 2010, at San Francisco, California.



---

Jonathan Yank

IV

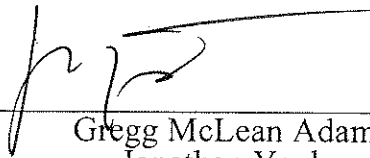
CONCLUSION

For the foregoing reasons, CCPOA respectfully asks this Court to judicially notice the above-referenced items.

Dated: April 28, 2010

CARROLL, BURDICK & McDONOUGH LLP

By



Gregg McLean Adam

Jonathan Yank

Gonzalo C. Martinez

Attorneys for Real Party in Interest

California Correctional Peace Officers' Association

# **EXHIBIT 1**

Senate Bill No. 65

CHAPTER 1

An act to amend Sections 3517.61, 18903, 19056.5, 19141, 19142, 19771, 19774, 19786, 19798, 19816.2, 19827, 19841, 19994, 19994.1, 19994.2, 19997, 19997.3, 19997.4, 19997.5, 19997.6, 19997.7, 19997.8, 19997.11, 19997.13, 20677.2, 20677.3, 20683.1, 20683.2, 20687, 20687.3, 22790 of, to add Section 21363.4 to, to add and repeal Sections 20035.1 and 20687.4 of, to repeal Sections 18523.1, 19170.1, 19173.4, 19175.7, 19818.7, 19818.11, and 19826.1 of, and to repeal Article 2.1 (commencing with Section 19817) of Chapter 1 of Part 2.6 of Division 5 of Title 2 of, the Government Code, and to amend Section 1808.4 of the Vehicle Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor January 15, 2002. Filed with  
Secretary of State January 16, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 65, Burton. State employees: State Bargaining Unit 6.

(1) Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions that require the expenditure of funds of a memorandum of understanding entered into between the state employer and State Bargaining Unit 6 (California Correctional Peace Officers Association), and would provide that the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

This bill would also provide that provisions of the memorandum of understanding approved by this bill that require the expenditure of funds on or after July 1, 2001, may not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would provide that if funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected

employee organization shall meet and confer to renegotiate the affected provisions.

(2) Existing law contains various provisions relating to civil service and employer-employee relations between the state and its employees and contains comparable provisions, that apply to state employees in State Bargaining Unit 6, with respect to general reemployment lists; reinstatements; probationary periods; rejection of probationers; relocation; transfers; use of broadband classifications; personnel classification plans; demonstration projects on classifications, compensation, and related projects; salary ranges; layoffs; demotions; seniority; and demotions in lieu of layoffs. Existing law also establishes procedures for the adoption of regulations by the Department of Personnel Administration and contains comparable provisions that apply only to state employees in State Bargaining Unit 6.

This bill would delete those comparable provisions and would instead make the general provisions applicable to state employees in State Bargaining Unit 6.

(3) Existing law provides that in any case where specified provisions of the State Civil Service Act and related statutory provisions are in conflict with the provisions of a memorandum of understanding reached between the state employer and a recognized employee organization, the memorandum of understanding shall be controlling without further legislative action.

This bill would additionally make that provision applicable to specified provisions of the State Civil Service Act relating to military leaves of absence and layoffs.

(4) Existing law declares that it is the policy of the state to pay state traffic officers compensation that is comparable to that paid to officers employed by the police departments of Los Angeles, San Diego, Oakland, and San Francisco.

This bill would require the state to compensate sworn members of the California Highway Patrol who are rank-and-file members of State Bargaining Unit 5 to be paid the estimated average total compensation, as defined, for each corresponding rank for those police departments, unless otherwise agreed by the state and the exclusive representative in the collective bargaining process. The bill would require the state and the exclusive representative to jointly survey annually and calculate the estimated average total compensation, as specified.

(5) The Public Employees' Retirement Law defines "final compensation" for purposes of calculating retirement benefits.

This bill would provide that, for patrol members in State Bargaining Unit 5 and specified excluded patrol members, who retire or die between July 1, 2001, and June 30, 2004, or between July 1, 2004, and June 30,

2006, the member's final compensation shall be increased by a specified percentage based on the member's contribution rate.

(6) Existing law provides that the contribution rates for state miscellaneous, state industrial, and state safety members of the Public Employees' Retirement System in State Bargaining Units 7, 8, 10, 12, 13, 16, 18, and 19 shall be reduced by 2½% during the period from August 31, 2001, to June 30, 2002, and by an additional 2½% during the period from July 1, 2002, to June 30, 2003, inclusive.

This bill would make those contribution rate reductions inapplicable to state miscellaneous and state industrial members in State Bargaining Unit 13 and would make other technical and clarifying changes.

(7) Existing law provides that contribution rates for specified state peace officer/firefighter members of the Public Employees' Retirement System shall be reduced by 2½% during the period from August 31, 2001, to June 30, 2002, and by an additional 2½% during the period from July 1, 2002, to June 30, 2003, inclusive.

This bill would make those contribution rate reductions also applicable to state peace officer/firefighter members of the system employed by the legislative branch of state government who are not members of civil service and to state peace officer/firefighter members who are supervisors within the boards and departments of the Youth and Adult Correctional Agency or correctional supervisors within the State Department of Mental Health and would make other technical and clarifying changes to those provisions. The bill would also authorize the Department of Personnel Administration to set different employee contribution rates for other specified peace officer/firefighter members excluded from collective bargaining.

(8) Existing law prescribes a 2½% at age 55 or a 3% at age 55 retirement formula for state peace officer/firefighter members.

This bill would prescribe a 3% at age 50 retirement formula for state peace officer/firefighter members who are members of State Bargaining Unit 6 and who retire or die on or after January 1, 2006.

(9) Existing law, the Public Employees' Medical and Hospital Care Act, authorizes the Board of Administration of the Public Employees' Retirement System to, among other things, approve health benefit plans offered by employee organizations, subject to specified conditions.

This bill would authorize the employee organization for State Bargaining Unit 6 to offer different medical plan designs with varying rates in different areas of the state.

(10) Existing law makes confidential the home address of any of a list of state officers and employees that appears in the Department of Motor Vehicles records, if the officer or employee requests it be kept confidential, with certain exemptions for information available to

specified governmental agencies. Violation of the confidentiality requirement is a felony.

This bill would add to that list state employees employed as Museum Security Officers and state employees in specified job classifications within the Department of Motor Vehicles and the California Highway Patrol. This bill, by adding persons to be covered by those confidentiality requirements, would expand the scope of a crime, thereby imposing a state-mandated local program.

(11) Existing provisions of the Budget Act of 2001 appropriate specified amounts from the General Fund, unallocated special funds, and unallocated nongovernmental cost funds for the augmentation of state employee compensation.

This bill would appropriate an additional \$15,421,000, as scheduled, from those funds, in augmentation of specified items of the Budget Act of 2001 for state employee compensation.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(13) This bill also would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to adopt an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and State Bargaining Unit 6, the California Correctional Peace Officers Association.

SEC. 2. The provisions of the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and State Bargaining Unit 6, the California Correctional Peace Officers Association, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. The provisions of the memorandum of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2001, and that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. If funds for these provisions are not specifically

appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 3517.61 of the Government Code is amended to read:

3517.61. Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires



legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 6. Section 18523.1 of the Government Code is repealed.

SEC. 7. Section 18903 of the Government Code is amended to read:

18903. (a) For each class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off or demoted in lieu of layoff.

(b) Within one year from the date of his or her resignation in good standing, or his or her voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general reemployment list with the consent of the appointing power and the board. The general reemployment list may also contain the names of persons placed thereon by the board in accordance with other provisions of this part.

SEC. 8. Section 19056.5 of the Government Code is amended to read:

19056.5. Notwithstanding any other provision in this part, if the appointment is to be made from a general reemployment list, the names of the three persons with the highest standing on the list shall be certified to the appointing power.

SEC. 9. Section 19141 of the Government Code is amended to read:

19141. (a) This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

(b) Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (1) accepted the appointment without a break in the continuity of state service, and (2) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

(c) The reinstatement may be requested by the employee only within the following periods of time:



(1) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(A) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(B) Section 2.1 of Article IX of the California Constitution.

(C) Section 22 of Article XX of the California Constitution.

(D) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(2) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (l) of Section 4 of Article VII of the California Constitution.

(3) Within four years after the effective date of an exempt appointment if appointed under any other authority.

(d) An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

(c) An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

(f) When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her seniority and eligibility for merit salary increases.

(g) If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

SEC. 10. Section 19142 of the Government Code is amended to read:

19142. (a) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(b) Upon reinstatement of a person any necessary separations are effected under the provisions of Section 19997.3 governing layoff and

demotion except that (A) an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13, and (B) seniority shall not be counted as provided in Section 19997.3 when this would result in the layoff of the person who has the reinstatement right. Under that circumstance, qualifying service in classes at substantially the same or higher salary level is the only state service that shall be counted for purposes of determining who is to be separated.

SEC. 11. Section 19170.1 of the Government Code is repealed.

SEC. 12. Section 19173.4 of the Government Code is repealed.

SEC. 13. Section 19175.7 of the Government Code is repealed.

SEC. 14. Section 19771 of the Government Code is amended to read:

19771. (a) Upon presentation of a copy of orders for active duty in the Armed Forces, the National Guard, or the Naval Militia, the appointing power shall grant a military leave of absence for the period of active duty specified in the orders, but not to exceed four years for a permanent, probationary, or exempt employee, or for the remainder of a limited-term employee's appointment or a temporary employee's appointment.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 15. Section 19774 of the Government Code is amended to read:

19774. (a) Employee members of reserve military units and the National Guard required to attend scheduled reserve drill periods or perform other inactive duty reserve obligations shall be granted military leave of absence without pay as provided by federal law.

(b) Notwithstanding subdivision (a) or any other provision of law, employee members may, at their option, elect to use vacation time or accumulated compensatory time off to attend scheduled reserve drill periods or perform other inactive duty reserve obligations.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not

become effective unless approved by the Legislature in the annual Budget Act.

SEC. 16. Section 19786 of the Government Code is amended to read:

19786. (a) When a civil service employee has been reinstated after military service in accordance with Section 19780, and any question arises relative to his or her ability or inability for any reason arising out of the military service to perform the duties of the position to which he or she has been reinstated, the board shall, upon the request of the appointing power or of the employee, hear the matter and may on its own motion or at the request of either party take any and all necessary testimony of every nature necessary to a decision on the question.

(b) If the board finds that the employee is not able for any reason arising out of the military service to carry out the usual duties of the position he or she then holds, it shall order the employee placed in a position in which the board finds he or she is capable of performing the duties in the same class or a comparable class in the same or any other state department, bureau, board, commission, or office under this part and the rules of the board covering transfer of an employee from a position under the jurisdiction of one appointing power to a position under the jurisdiction of another appointing power, without the consent of the appointing powers, where a vacancy may be made available to him or her under this part and the rules of the board, but in no event shall the transfer constitute a promotion within the meaning of this part and the rules of the board.

(c) If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3, provided that no civil service employee who was employed prior to September 16, 1940, shall be laid off as a result of the placing of an employee in the same class or a comparable class under this section.

(d) The board may order the civil service employee reinstated to the department, bureau, board, commission, or office from which he or she was transferred either upon request of the employee or the appointing power from which transferred. The reinstatement may be made after a hearing as provided in this section if the board finds that the employee is at the time of the hearing able to perform the duties of the position.

SEC. 17. Section 19798 of the Government Code is amended to read:

19798. In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected workforce will be the same after the

completion of a layoff, as it was before the layoff procedure was implemented.

SEC. 18. Section 19816.2 of the Government Code is amended to read:

19816.2. Notwithstanding any other provision of this part, regulations and other provisions pertaining to the layoff or demotion in lieu of layoff of civil service employees that are established or agreed to by the department shall be subject to review by the State Personnel Board for consistency with merit employment principles as provided for by Article VII of the California Constitution.

SEC. 19. Article 2.1 (commencing with Section 19817) of Chapter 1 of Part 2.6 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 20. Section 19818.7 of the Government Code is repealed.

SEC. 21. Section 19818.11 of the Government Code is repealed.

SEC. 22. Section 19826.1 of the Government Code is repealed.

SEC. 23. Section 19827 of the Government Code is amended to read:

19827. (a) (1) Notwithstanding any other provision of law to the contrary, in order to recruit and retain the highest qualified employees, the state shall pay sworn members of the California Highway Patrol who are rank-and-file members of State Bargaining Unit 5 the estimated average total compensation for each corresponding rank for the Los Angeles Police Department, Los Angeles County Sheriff's Office, San Diego Police Department, Oakland Police Department, and the San Francisco Police Department. Total compensation shall include base salary, educational incentive pay, physical performance pay, longevity pay, and retirement contributions made by the employer on behalf of the employee.

(2) The state and the exclusive representative shall jointly survey annually and calculate the estimated average total compensation based on projected average total compensation for the above-named departments as of July 1 of the year in which the survey is conducted. The state and the exclusive representative shall utilize the survey methodology outlined in the "Description of Survey Process Pursuant to Government Code 19827 Regarding the Recruitment and Retention of California Highway Patrol Officers" dated July 1, 2001, and maintained as a permanent agreement between the state and the exclusive representative.

(3) Any increase in total compensation resulting from this section shall be implemented through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1). Notwithstanding the foregoing, failure of the parties to reach agreement



for a memorandum of understanding pursuant to the Ralph C. Dills Act shall not relieve the state of the duty to compensate sworn represented members of the California Highway Patrol in accordance with the formula set forth in this section.

(4) The total compensation for represented sworn members of the California Highway Patrol may deviate from the survey results by mutual agreement between the exclusive representative and the state pursuant to the collective bargaining process.

(5) If the provisions of this subdivision are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(b) When determining compensation for state excluded sworn classifications of the California Highway Patrol, it is the policy of the state to consider total compensation for corresponding ranks within jurisdictions specified in subdivision (a), as well as other factors, including internal comparisons.

SEC. 24. Section 19841 of the Government Code is amended to read:

19841. (a) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both before and after and by reason of the change of residence. The maximum allowances for these expenses shall be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars (\$200). The maximum allowances may be exceeded where the director determines that the change of residence will result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(b) If a change of residence reasonably requires the sale of a residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the



lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 25. Section 19994 of the Government Code is amended to read:

19994. (a) When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency. Granting of seniority credit under this section is subject to review by the State Personnel Board pursuant to Section 19816.2.

(b) The department shall limit that determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and the seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California. This section is applicable to any function heretofore transferred to the state, whether by state action or otherwise, as well as to any future transfers of a function to the state, whether by state action or otherwise.

SEC. 26. Section 19994.1 of the Government Code is amended to read:

19994.1. (a) An appointing power may transfer any employee under his or her jurisdiction: (1) to another position in the same class; or (2) from one location to another whether in the same position, or in a different position as specified above in (1) or in Section 19050.5.



(b) When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer. Unless the employee waives this right, the appointing power shall provide to the employee 60 days prior to the effective date of the transfer a written notice setting forth in clear and concise language the reasons why the employee is being transferred.

(c) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 27. Section 19994.2 of the Government Code is amended to read:

19994.2. (a) When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 28. Section 19997 of the Government Code is amended to read:

19997. Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule. All layoff provisions and procedures established or agreed to under this article shall be subject to State Personnel Board review pursuant to Section 19816.2.

SEC. 29. Section 19997.3 of the Government Code is amended to read:

19997.3. (a) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time



state service regardless of when the service occurred. Department rules shall establish all of the following:

(1) The extent to which seniority credits may be granted for less than full-time service.

(2) The seniority credit to be granted for service in a class that has been abolished, combined, divided, or otherwise altered under the authority of Section 18802.

(3) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(4) Any other matters as are necessary or advisable to the operation of this chapter.

(b) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists. These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding incurs either present or future costs, or requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 30. Section 19997.4 of the Government Code is amended to read:

19997.4. (a) For the purposes of determining seniority pursuant to subdivision (a) of Section 19997.3, the term "state service" shall include all service that is exempt from state civil service.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 31. Section 19997.5 of the Government Code is amended to read:

19997.5. (a) Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In



making these separations, the regular method of determining the order of layoff shall be used unless this would result in the layoff of an employee who has been reinstated in the class and subdivision of layoff under Section 19780, and in the retention of an employee who was appointed in the class and subdivision of layoff during the time that a reinstated employee was on military leave. Under these circumstances, seniority shall not be counted as provided in Section 19997.3. Instead, service in the subdivision of layoff that qualifies under Section 19997.3 for credit is the only state service that shall be counted.

Whenever such a layoff results in the demotion to a lower class of an employee who has been reinstated after recognized military service as provided in Section 19780, the resulting layoff, if any, in the lower class shall be made as though that reinstated employee had been in that lower class at the time he or she went on military leave.

Any layoff occurring within one year after reinstatement of an employee after recognized military service shall be presumed to have been necessary by reason of reinstatement of an employee or employees under Section 19780 unless the department determines that the reason for layoff is clearly not related to the reinstatement.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 32. Section 19997.6 of the Government Code is amended to read:

19997.6. (a) A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency.

(b) Seniority credit for recognized military service shall be computed as if it were service in the class to which the employee was first given permanent civil service or exempt appointment after his or her entry into the state service following recognized military service.

(c) Seniority credit for recognized military service shall not exceed one year's credit if the veteran had no state service prior to entering the military service.

(d) This section shall become operative on July 1, 1993.

SEC. 33. Section 19997.7 of the Government Code is amended to read:



19997.7. (a) Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more of these employees who have the same score, veterans shall have preference in retention. Other ties shall be resolved according to department rule that shall take into consideration other matters of record before names are drawn by lot.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 34. Section 19997.8 of the Government Code is amended to read:

19997.8. (a) In lieu of being laid off an employee may elect demotion to: (1) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (2) a class in the same line of work as the class of layoff, but of lesser responsibility, if a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee shall notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(b) Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by this article and shall be made within the subdivisions approved by the department for this purpose. These subdivisions need not be the same as those used to determine the area of layoff under Section 19997.2.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 35. Section 19997.11 of the Government Code is amended to read:

19997.11. (a) The names of employees to be laid off or demoted shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off or demoted. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 36. Section 19997.13 of the Government Code is amended to read:

19997.13. (a) An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff and not more than 60 days after the date of the seniority computation. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 37. Section 20035.1 is added to the Government Code, to read:

20035.1. (a) For patrol members in State Bargaining Unit 5, patrol members excepted from the definition of "state employee" in subdivision (c) of Section 3513, and patrol members who are officers or employees of the executive branch of state government who are not members of the civil service, the member's final compensation shall be increased as follows:

(1) For a member who retires or dies on or after July 1, 2001, and prior to July 1, 2004, the member's final compensation for patrol service subject to Section 21362.2 shall be increased by one-half of the normal rate of contribution specified in subdivision (a) of Section 20681.

(2) For a member who retires or dies on or after July 1, 2004, and prior to July 1, 2006, the member's final compensation for patrol service

subject to Section 21362.2 shall be increased by the normal rate of contribution specified in subdivision (a) of Section 20681.

(b) This section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 20677.2 of the Government Code is amended to read:

20677.2. (a) Notwithstanding any provisions of Section 20677 to the contrary, the normal rate of contribution shall be the rate specified in this section for all of the following:

(1) State miscellaneous or state industrial members in State Bargaining Unit 10, 12, 16, 18, or 19.

(2) State miscellaneous or state industrial members excepted from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code.

(3) State miscellaneous or state industrial members who are officers or employees of the executive, legislative, or judicial branches of state government who are not members of the civil service.

(b) (1) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service is not included in the federal system, 3.5 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered during the period from August 31, 2001, to June 30, 2002, inclusive.

(2) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service is not included in the federal system, 1 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered during the period from July 1, 2002, to June 30, 2003, inclusive.

(3) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service has been included in the federal system, 2.5 percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered during the period from August 31, 2001, to June 30, 2002, inclusive.

(4) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service has been included in the federal system, zero percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered during the period from July 1, 2002, to June 30, 2003, inclusive.

(c) Subject to the provisions of subdivision (f) and notwithstanding any provisions of Section 21073.7 to the contrary, a member who elects to become subject to the benefits prescribed in Section 21354.1 and who is subject to this section shall be subject to the normal rate of contribution set forth in this section.

(d) This section does not apply to members employed by the California State University or the University of California.

(e) This section does not apply to state miscellaneous or state industrial members who are subject to Section 21076.

(f) This section shall apply to state employees in State Bargaining Unit 10, 12, 16, 18, or 19. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(g) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 39. Section 20677.3 of the Government Code is amended to read:

20677.3. (a) Notwithstanding any provisions of Section 20677 to the contrary, the normal rate of contribution for state miscellaneous or state industrial members in State Bargaining Unit 7 or 8 shall be the rate specified in this section.

(b) (1) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service is not included in the federal system, the normal rate of contribution shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered during the period from August 31, 2001, to June 30, 2002, inclusive.

(2) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service is not included in the federal system, the normal rate of contribution shall be 1 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered during the period from July 1, 2002, to June 30, 2003, inclusive.

(3) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service has been included in the federal system, the normal rate of contribution shall be 2.5 percent for the compensation in excess of five hundred thirteen dollars (\$513) per

month paid that member for service rendered during the period from August 31, 2001, to June 30, 2002, inclusive.

(4) Subject to the provisions of subdivision (f), for member described in subdivision (a) whose service has been included in the federal system, the normal rate of contribution shall be 0 percent for the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered during the period from July 1, 2002, to June 30, 2003, inclusive.

(c) Subject to the provisions of subdivision (f) and notwithstanding any provisions of Section 21073.7 to the contrary, a member who elects to become subject to the benefits prescribed in Section 21354.1 and who is subject to this section shall be subject to the normal rate of contribution set forth in this section.

(d) This section does not apply to members employed by the California State University or the University of California.

(e) This section does not apply to state miscellaneous or state industrial members who are subject to Section 21076.

(f) This section shall apply to state employees in State Bargaining Unit 7 or 8. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(g) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 40. Section 20683.1 of the Government Code is amended to read:

20683.1. (a) Notwithstanding any provisions of Section 20683 to the contrary, the normal rate of contribution shall be the rate specified in this section for all of the following:

(1) State safety members subject to Section 21369.1 in State Bargaining Unit 12, 16, 18, or 19.

(2) State safety members excepted from the definition of "state employee" in subdivision (c) of Section 3513.

(3) State safety members who are officers or employees of the executive branch of state government who are not members of the civil service.

(b) (1) Subject to the provisions of subdivision (e), from August 31, 2001, to June 30, 2002, inclusive, the normal rate of contribution for a

member described in subdivision (a) whose service is not included in the federal system shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered.

(2) Subject to the provisions of subdivision (e), from July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member described in subdivision (a) whose service is not included in the federal system shall be 1 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered.

(3) Subject to the provisions of subdivision (e), from August 31, 2001, to June 30, 2002, inclusive, the normal rate of contribution for a member described in subdivision (a) whose service is included in the federal system shall be 3.5 percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered.

(4) Subject to the provisions of subdivision (e), from July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member described in subdivision (a) whose service is included in the federal system shall be 1 percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered.

(c) This section does not apply to members employed by the California State University or the University of California.

(d) This section shall apply to state employees in State Bargaining Unit 12, 16, 18, or 19. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(e) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 41. Section 20683.2 of the Government Code is amended to read:

20683.2. Notwithstanding any provisions of Section 20683 to the contrary, the normal rate of contribution for state safety members subject to Section 21369.1 in State Bargaining Unit 7 or 8 shall be the rate specified in this section.

(b) (1) Subject to the provisions of subdivision (e), from August 31, 2001, to June 30, 2002, inclusive, the normal rate of contribution for a



member described in subdivision (a) whose service is not included in the federal system shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered.

(2) Subject to the provisions of subdivision (c), from July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member described in subdivision (a) whose service is not included in the federal system shall be 1 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered.

(3) Subject to the provisions of subdivision (c), from August 31, 2001, to June 30, 2002, inclusive, the normal rate of contribution for a member described in subdivision (a) whose service is included in the federal system shall be 3.5 percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered.

(4) Subject to the provisions of subdivision (c), from July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member described in subdivision (a) whose service is included in the federal system shall be 1 percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered.

(c) This section does not apply to members employed by the California State University or the University of California.

(d) This section shall apply to state employees in State Bargaining Unit 7 or 8. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(e) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 42. Section 20687 of the Government Code is amended to read:

20687. (a) The normal rate of contribution for state peace officer/firefighter members subject to Section 21363, 21363.1, 21363.3, or 21363.4 shall be 8 percent of the compensation in excess of two hundred thirty-eight dollars (\$238) per month paid to those members.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5

or pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) The Director of the Department of Personnel Administration may set a different normal rate of contribution for state peace officer/firefighter members in related managerial, supervisory, and confidential positions or officers or employees of the executive branch of state government who are not members of the civil service. The contribution rate change shall be effective as of the date indicated by the Director of the Department of Personnel Administration but shall be no earlier than the first day of the month following notification by the director to the board.

SEC. 43. Section 20687.3 of the Government Code is amended to read:

20687.3. (a) Notwithstanding Section 20687, the normal rate of contribution for state peace officer/firefighter members excepted from the definition of "state employee" in subdivision (c) of Section 3513, and state peace officer/firefighter members who are officers or employees of the executive or legislative branch of state government who are not members of the civil service is as follows:

(1) From August 31, 2001, to June 30, 2002, inclusive, for each peace officer/firefighter member subject to Section 21363.1, the normal rate of contribution shall be 5.5 percent of compensation in excess of the amount specified in subdivision (b).

(2) From July 1, 2002, to June 30, 2003, inclusive, for each peace officer/firefighter member subject to Section 21363.1, the normal rate of contribution shall be 3 percent of compensation in excess of the amount specified in subdivision (b).

(b) The normal rate of contribution, as applicable in subdivision (a), shall be applied to compensation in excess of the following amounts:

(1) For peace officer/firefighter members who are aligned, as determined by the Department of Personnel Administration, with State Bargaining Unit 6, eight hundred sixty-three dollars (\$863) per month paid those members for services rendered.

(2) For peace officer/firefighter members who are aligned, as determined by the Department of Personnel Administration, with State Bargaining Unit 7, five hundred thirteen dollars (\$513) per month paid those members for services rendered.

(3) For peace officer/firefighter members who are aligned as determined by the Department of Personnel Administration, with State

Bargaining Unit 8 or who are employees of the legislative branch of state government, two hundred thirty-eight dollars (\$238) per month paid those members for services rendered.

(c) This section shall not be applicable to members employed by the California State University or the University of California.

(d) This section shall become inoperative on July 1, 2003, and as of January 1, 2004, is repealed, at which time the members' retirement contribution rates shall be restored to the levels specified in Section 20687.

(e) The amendments to this section enacted during the second year of the 2001–02 Regular Session shall be operative on August 31, 2001.

SEC. 44. Section 20687.4 is added to the Government Code, to read:

20687.4. (a) Notwithstanding any provisions of Section 20687 or 20687.2 to the contrary, the normal rate of contribution for state peace officer/firefighter members who are supervisors within the boards and departments of the Youth and Adult Correctional Agency, or who are correctional supervisors within the State Department of Mental Health, is as follows:

(1) From August 31, 2001, to June 30, 2002, inclusive, for each peace officer/firefighter member subject to Section 21363.1, the normal rate of contribution shall be 5.5 percent of compensation in excess of eight hundred sixty-three dollars (\$863) per month paid that member for service rendered.

(2) From July 1, 2002, to June 30, 2003, inclusive, for each peace officer/firefighter member subject to Section 21363.1, the normal rate of contribution shall be 3 percent of compensation in excess of eight hundred sixty-three dollars (\$863) per month paid that member for service rendered.

(b) This section shall become inoperative on July 1, 2003, and as of January 1, 2004, is repealed, at which time the members' retirement contribution rates shall be restored to the levels specified in Section 20687.2 as it applied on August 30, 2001.

SEC. 45. Section 21363.4 is added to the Government Code, to read:

21363.4. (a) Upon attaining the age of 50 years or more, the combined current and prior service pension for a state peace officer/firefighter member described in subdivision (c) who retires or dies on or after January 1, 2006, is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his or her retirement to equal 3 percent of his or her final compensation at retirement, multiplied by the number of years of state peace officer/firefighter service, as defined

in subdivision (d), subject to this section with which he or she is credited at retirement.

(b) For state peace officer/firefighter members, with respect to service for all state employers under this section, the current service pension and the combined current and prior service pension under this section shall not exceed an amount that, when added to the service retirement annuity related to that service, equals 90 percent of final compensation. If the pension relates to service to more than one employer and would otherwise exceed that maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to that employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum.

(c) For purposes of this section, “state peace officer/firefighter member” means state peace officer/firefighter members under this part who, on or after January 1, 2006, are employed by the state and are members of State Bargaining Unit 6, and may include state peace officer/firefighter members in related managerial, supervisory, or confidential positions and officers or employees of the executive branch of state government who are not members of the civil service, provided the Department of Personnel Administration has approved their inclusion in writing to the board.

(d) For purposes of this section, “state peace officer/firefighter service” means service performed by a state peace officer/firefighter member while a member of State Bargaining Unit 6, and may include state peace officer/firefighter service in related managerial, supervisory, or confidential positions or as officers or employees of the executive branch of state government who are not members of the civil service, provided the Department of Personnel Administration has approved their inclusion in writing to the board.

(e) This section shall supersede Section 21363 or 21363.1, whichever is applicable, with respect to state peace officer/firefighter members and service as defined herein.

(f) The Legislature reserves, with respect to any member subject to this section, the right to provide for the adjustment of industrial disability retirement allowances because of earnings of a retired person and modification of the conditions and qualifications required for retirement for disability as it may find appropriate because of the earlier ages of service retirement made possible by the benefits under this section.

SEC. 46. Section 22790 of the Government Code is amended to read:

22790. (a) The board may contract with carriers for health benefits plans for employees and annuitants and major medical plans or approve health benefit plans offered by employce organizations, provided that the carriers have operated successfully in the prepaid hospital and medical care field prior to the contracting for or approval thereof. The plans may include hospital benefits, surgical benefits, in-hospital medical benefits, outpatient benefits, and obstetrical benefits, and benefits offered by a bona fide church, sect, denomination or organization whose principles include healing entirely by prayer or spiritual means. The board shall contract with a sufficient number of carriers and plans that provide chiropractic services so that every employee and annuitant shall have a reasonable opportunity to enroll in a plan that provides chiropractic services without prior referral by a physician. The board may contract with health maintenance organizations approved under Title XIII of the federal Public Health Services Act (42 U.S.C. Sec. 201 et seq.).

(b) Notwithstanding any other provision of this part, the board also may contract with health plans offering unique or specialized health services.

(c) (1) The board shall approve any employee association health benefits plan that was approved by the board in the 1987-88 contract year or any year prior to that date, provided the plan continues to meet the minimum standards prescribed by the board.

(2) The recognized employce organization for State Bargaining Unit 6 may offer different medical plan designs with varying rates in different areas of the state.

(d) The board shall provide and administer any health benefits or other coverage extended at county cost under Section 77208, upon receipt of a resolution from a county board of supervisors electing to come under the administrative provisions of this part for the coverage specified in the resolution.

SEC. 47. Section 1808.4 of the Vehicle Code is amended to read:

1808.4. (a) The home address of any of the following persons, that appears in any record of the department, is confidential, if the person requests the confidentiality of that information:

- (1) Attorney General.
- (2) State public defender.
- (3) Members of the Legislature.
- (4) Judges or court commissioners.
- (5) District attorneys.
- (6) Public defenders.



(7) Attorneys employed by the Department of Justice, the office of the State Public Defender, or a county office of the district attorney or public defender.

(8) City attorneys and attorneys who submit verification from their public employer that they represent the city in matters that routinely place them in personal contact with persons under investigation for, charged with, or convicted of, committing criminal acts, if those attorneys are employed by city attorneys.

(9) Nonsworn police dispatchers.

(10) Child abuse investigators or social workers, working in child protective services within a social services department.

(11) Active or retired peace officers, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(12) Employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority specified in Sections 20403 and 20405 of the Government Code.

(13) Nonsworn employees of a city police department, a county sheriff's office, the Department of the California Highway Patrol, federal, state, and local detention facilities, and local juvenile halls, camps, ranches, and homes, who submit agency verification that, in the normal course of their employment, they control or supervise inmates or are required to have a prisoner in their care or custody.

(14) County counsels assigned to child abuse cases.

(15) Investigators employed by the Department of Justice, a county district attorney, or a county public defender.

(16) Members of a city council.

(17) Members of a board of supervisors.

(18) Federal prosecutors and criminal investigators and National Park Service Rangers working in this state.

(19) Any active or retired city enforcement officer engaged in the enforcement of the Vehicle Code or municipal parking ordinances.

(20) Any employee of a trial court.

(21) Any psychiatric social worker employed by a county.

(22) Any police or sheriff department employee designated by the Chief of Police of the department or the sheriff of the county as being in a sensitive position. Any designation pursuant to this paragraph shall, for purposes of this section, remain in effect for three years subject to additional designations that, for purposes of this section, shall remain in effect for additional three-year periods.

(23) State employees in the following classifications:

(A) Licensing Registration Examiner, Department of Motor Vehicles.

(B) Motor Carrier Specialist 1, California Highway Patrol.



(C) Museum Security Officer and Supervising Museum Security Officer.

(24) (A) The spouse or child of any person listed in paragraphs (1) to (23), inclusive, regardless of the spouse's or child's place of residence.

(B) The surviving spouse or child of a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, if the peace officer died in the line of duty.

(b) The confidential home address of any of the persons listed in subdivision (a) shall not be disclosed to any person, except for any of the following:

(1) A court.

(2) A law enforcement agency.

(3) The State Board of Equalization.

(4) An attorney in a civil or criminal action that demonstrates to a court the need for the home address, if the disclosure is made pursuant to a subpoena.

(5) Any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(c) Any record of the department containing a confidential home address shall be open to public inspection, as provided in Section 1808, if the address is completely obliterated or otherwise removed from the record. The home address shall be withheld from public inspection for three years following termination of office or employment except with respect to retired peace officers, whose home addresses shall be withheld from public inspection permanently upon request of confidentiality at the time the information would otherwise be opened. The home address of the surviving spouse or child listed in subparagraph (B) of paragraph (24) of subdivision (a) shall be withheld from public inspection for three years following the death of the peace officer. The department shall inform any person who requests a confidential home address what agency the individual whose address was requested is employed by or the court at which the judge or court commissioner presides.

(d) A violation of subdivision (a) by the disclosure of the confidential home address of a peace officer, as specified in paragraph (11) of subdivision (a), a nonsworn employee of the city police department or county sheriff's office, or the spouses or children of these persons, including, but not limited to, the surviving spouse or child listed in subparagraph (B) of paragraph (24) of subdivision (a), that results in bodily injury to the peace officer, employee of the city police department or county sheriff's office, or the spouses or children of these persons is a felony.



SEC. 48. The sum of fifteen million four hundred twenty-one thousand dollars (\$15,421,000) is hereby appropriated for expenditure in the 2001–02 fiscal year in augmentation of, and for the purpose of state employee compensation as provided in, Items 9800-001-0001, 9800-001-0494, and 9800-001-0988 of Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), in accordance with the following schedule:

(a) Fifteen million three hundred twenty-five thousand dollars (\$15,325,000) from the General Fund in augmentation of Item 9800-001-0001.

(b) Sixty-one thousand dollars (\$61,000) from unallocated special funds in augmentation of Item 9800-001-0494.

(c) Thirty-five thousand (\$35,000) from other unallocated nongovernmental cost funds in augmentation of Item 9800-001-0988.

SEC. 49. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 50. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2001–02 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

# **EXHIBIT 2**

**Senate Bill No. 1110**

**CHAPTER 217**

An act to add Section 12811.3 to the Government Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1110, Cedillo. State employees: State Bargaining Unit 6.

(1) Existing law provides that if any provision of a memorandum of understanding (MOU) reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve an addendum to an MOU entered into between the state employer and State Bargaining Unit 6 (California Correctional Peace Officers Association).

This bill would also provide that provisions of any addendum to the memorandum of understanding approved by this bill that require the expenditure of funds on or after July 1, 2004, may not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would provide that if funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

This bill would appropriate, from any appropriate fund sources, the sum necessary to satisfy the economic requirements for employee compensation for employees in State Bargaining Unit 6 for the term of the Unit 6 MOU, which expires on July 2, 2006, as modified by the ratified addendum, and state the intent of the Legislature in that regard.

(2) Existing law contains various provisions relating to civil service and employer-employee relations between the state and its employees that apply to state employees generally and to State Bargaining Unit 6, with respect to, among other things, promotions, transfers, compensation, salary ranges, and entering into an MOU that provides for salary increases and other employee benefits.

This bill would authorize the Secretary of the Youth and Adult Correctional Agency, when he or she certifies in writing that it is

necessary to prevent or minimize employment actions, including, among other things, layoffs, demotions, reductions in time base, or involuntary transfers, to designate departments, boards, or commissions that are eligible to have their peace officer employees transfer to another department, board, or commission. The bill would also specify the criteria for making the transfer and any requirements or exceptions that may apply to a peace officer employee who desires to transfer to another department, board, or commission.

This bill would provide that provisions of the Unit 6 MOU, which expires July 2, 2006, as modified by the ratified addendum, relating to the release of copies of videotaped incidents, shall be subject to the California Public Records Act.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve an addendum to an agreement reached pursuant to Sections 3517 and 3517.5 of the Government Code entered into by the state employer and State Bargaining Unit 6.

SEC. 2. The provisions of the addendum to the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code, entered into by the state employer and State Bargaining Unit 6, the California Correctional Peace Officers Association, which requires the expenditure of funds, are hereby approved for the purposes of Sections 3517.6 and 3517.61 of the Government Code.

SEC. 3. The provisions of the addendum to the memorandum of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2004, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the provisions of the addendum to the memorandum of understanding.

SEC. 4. Notwithstanding Sections 3517.6 and 3517.61 of the Government Code, the provisions of any addendum to a memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the addendum are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 12811.3 is added to the Government Code, to read:



12811.3. (a) Notwithstanding any other provision of law and subject to the provisions of subdivision (i), any employee of a department, board, or commission under the jurisdiction of the Youth and Adult Correctional Agency, who is designated as a peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may transfer from his or her current position to another department, board, or commission under the jurisdiction of the Youth and Adult Correctional Agency.

(b) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a), and who is prohibited from carrying a firearm pursuant to paragraph (8) of subdivision (g) of Section 922 of Title 18 of the United States Code or Section 12021 of the Penal Code may not transfer to a department, board, or commission that requires the use of a firearm.

(c) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a) to a position requiring the ability to carry a firearm, as determined by the department, board, or commission, and who has not completed the required training pursuant to Section 832 of the Penal Code, shall successfully complete the required training before appointment to his or her new peace officer position.

(d) (1) Any peace officer who desires to transfer shall not be required to undergo a psychological screening pursuant to subdivision (f) of Section 1031 or subdivision (a) of Section 13601 of the Penal Code, unless the Secretary of the Youth and Adult Correctional Agency, or his or her designee, makes a determination that a peace officer is required to undergo all or a portion of a psychological screening as described in subdivision (f) of Section 1031 of this code or subdivision (a) of Section 13601 of the Penal Code.

(2) The Secretary of the Youth and Adult Correctional Agency shall promulgate emergency regulations in order to implement paragraph (1). Notwithstanding subdivision (b) of Section 11346.1, no showing of an emergency shall be necessary in order to adopt, amend, or repeal the emergency regulations required by this paragraph.

(e) Any peace officer who has successfully completed a course of training pursuant to Section 13602 of the Penal Code and who transfers to another department, board, or commission pursuant to subdivision (a) shall not be required to complete a new course of training pursuant to Section 13602 of the Penal Code. However, each department, board, or commission may prescribe additional training to be provided to an employee who transfers pursuant to subdivision (a) and shall provide that training within the first six months of appointment to his or her new peace officer position.

(f) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a) shall not be required to undergo a new background investigation pursuant to Section 1029.1.

(g) Nothing in this section shall affect an employee's seniority calculation as provided for under current law or any memorandum of understanding between the state and any applicable bargaining unit agreement in effect upon the effective date of this section.

(h) The provisions of the Unit 6 Memorandum of Understanding, which expires July 2, 2006, as modified by the ratified addendum dated June 30, 2004, relating to the release of copies of videotaped incidents, shall be subject to the California Public Records Act.

(i) This section shall become operative only when the Secretary of the Youth and Adult Correctional Agency certifies in writing that it is necessary to prevent or minimize employment actions, including, but not limited to, layoffs, demotions, reductions in time base, or involuntary transfers of employees. In addition, the Secretary of the Youth and Adult Correctional Agency shall have the sole authority to designate any or all departments, boards, or commissions eligible to have its peace officer employees transfer pursuant to subdivision (a) and any or all departments, boards, or commissions that shall accept peace officer employees under this section.

SEC. 6. (a) Notwithstanding Section 13340 of the Government Code, there is hereby appropriated, from any appropriate fund sources, the sum necessary to satisfy the economic requirements for employee compensation for employees included in State Bargaining Unit 6, for the term of the Unit 6 Memorandum of Understanding, which expires July 2, 2006, as modified by the ratified addendum dated June 30, 2004.

(b) It is the intent of the Legislature that the appropriation made by this section shall not be construed to set precedent for the funding of the provisions of any future memorandum of understanding entered into pursuant to Sections 3517 and 3517.5 of the Government Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2004–05 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

*California Correctional Peace Officers' Association v. Arnold Schwarzenegger, et al.*,  
California Court of Appeal, First Appellate District, Division 2, No. A127292

**PROOF OF SERVICE BY UNITED PARCEL SERVICE (UPS) – NEXT DAY**

I declare that I am employed in the County of San Francisco, California. I am over the age of eighteen years and not a party to the within cause; my business address is 44 Montgomery Street, Suite 400, San Francisco, CA 94104. On April 28, 2010, I served the enclosed:

**REAL PARTY IN INTEREST CCPOA'S  
MOTION TO TAKE JUDICIAL NOTICE  
(EVID. CODE §§ 451 and 459; CRC § 8.252)**

on the parties in said cause (listed below) by enclosing a true copy thereof in a prepaid sealed package, addressed with appropriate United Parcel Service shipment label and, following ordinary business practices, said package was placed for collection (in the offices of Carroll, Burdick & McDonough LLP) in the appropriate place for items to be collected and delivered to a facility regularly maintained by United Parcel Service. I am readily familiar with the Firm's practice for collection and processing of items for overnight delivery with United Parcel Service and that said package was delivered to United Parcel Service in the ordinary course of business on the same day.

Ross C. Moody, Esq.  
California Attorney General's Office  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004

*Counsel for Defendant/Real Party in  
Interest, John Chiang in his capacity as  
the Controller of the State of California*

(415) 703-1376  
Fax (415) 703-1234

David W. Tyra, Esq.  
Kristianne T. Seargeant, Esq.  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814

*Counsel for Defendants/Petitioners  
Arnold Schwarzenegger, State of  
California; California Department of  
Personnel Administration; California  
Department of Corrections and  
Rehabilitation; California Department of  
Mental Health; California Department of  
Juvenile Justice (State  
Defendants/Petitioners)*

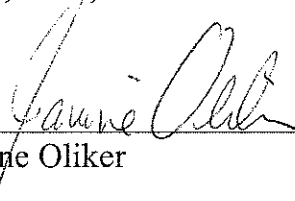
(916) 321-4500  
Fax (916) 321-4555

Linda A. Mayhew, Esq.  
Will M. Yamada, Esq.  
Department of Personnel Administration  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95811-7258

*Co-Counsel for State  
Defendants/Petitioners*

(916) 324-0512  
Fax (916) 323-4723

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 28, 2010, at San Francisco, California.

  
\_\_\_\_\_  
Janine Oliker