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**GOVERNMENT CODE - GOV**

**TITLE 1. GENERAL [100 - 7931.000]** ( Title 1 enacted by Stats. 1943, Ch. 134. )

**DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599.84]** ( Division 4 enacted by Stats. 1943, Ch. 134. )

**CHAPTER 10.7. Meeting and Negotiating in Public Educational Employment [3540 - 3549.3]** ( Chapter 10.7 added by Stats. 1975, Ch. 961. )

**ARTICLE 1. General Provisions [3540 - 3540.2]** ( Article 1 added by Stats. 1975, Ch. 961. )

**3540.** It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It is the further intention of the Legislature that this chapter shall not restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of the school district with respect to district policies on academic and professional matters, so long as the exercise of the functions does not conflict with lawful collective agreements.

It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that this legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

(Amended by Stats. 1988, Ch. 160, Sec. 51.)

**3540.1.** As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means an employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

(d) "Employee organization" means an organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person of the organization authorized to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of public school employees, as "public school employee" is defined in subdivision (j), in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means an employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, is not subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, an auxiliary organization established pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, except an auxiliary organization solely formed as or operating a student body association or student union, or a joint powers agency, except a joint powers agency established solely to provide services pursuant to Section 990.8, if all the following apply to the joint powers agency:

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides educational services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of educational agencies.

(l) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means an employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*(Amended by Stats. 2012, Ch. 162, Sec. 54. (SB 1171) Effective January 1, 2013.)*

**3540.2.** (a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least 10 working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district, the county board of education, the district superintendent, the governing board of the school district, and each parent and teacher organization of the district within those 10 days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

(e) A county office of education, or a school district for which the county board of education serves as the governing board, that has a qualified or negative certification pursuant to Section 1240 of the Education Code shall allow the Superintendent at least 10 working days to review and comment on any proposed agreement or contract made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The county superintendent of schools shall provide the Superintendent with all information relevant to yield an understanding of the financial impact of that agreement or contract. The Superintendent shall notify the county superintendent of schools, and the county board of education within those 10 days if, in his or her opinion, the proposed agreement or contract would endanger the fiscal well-being of the county office.

*(Amended by Stats. 2004, Ch. 52, Sec. 16. Effective June 21, 2004.)*