

- **Board of Directors**
Communications and Legislation Committee

March 13, 2007 Board Meeting

8-8

Subject

Express opposition to Assembly Bill 489 (Calderon, D-Montebello) and Assembly Bill 503 (Swanson, D-Oakland) regarding assignment of overtime work

Description

Assembly Bill 489 ([Attachment 1](#)) by Assemblyman Calderon and Assembly Bill 503 ([Attachment 2](#)) by Assemblyman Swanson, both introduced on February 20, would prevent the District from mandating overtime, except in cases of emergency, without giving employees eight hours' advance written notice. Absent an emergency, or the required advance written notice, all overtime would be voluntary. These bills would impact a number of positions at Metropolitan primarily in the AFSCME bargaining unit, including but not limited to Operators, Administrative Assistants, Maintenance Mechanics, Maintenance Workers, Chemists, Administrative Analysts, and Engineers. The sponsor of the bills, AFSCME, has recently indicated their intention to amend AB 489 to address a new and unrelated issue and that AB 503 will be amended to apply on a statewide basis to all local agencies.

Overtime pay is a mandatory subject for collective bargaining. The Public Employment Relations Board, the agency created by the Legislature to oversee public sector collective bargaining, has repeatedly determined that overtime pay must be included in negotiations. (See, e.g., Compton Unified School District (1989) PERB Dec. No. 784.)

Under the current collective bargaining agreement with AFSCME, the District pays a premium rate of time-and-a-half (or in some cases, double time or triple time) when it requires staff to work overtime. In exchange, the MOU provides the District with the authority "to require any employee to perform overtime work." The MOU further provides "that overtime will be ordered and worked only when required to meet the District's needs." The above-quoted contract language can be found in every AFSCME MOU since 1982. Since 2000, the AFSCME MOUs have further provided that: "[s]cheduled overtime shall be fairly assigned to qualified employees based on the skills and responsibilities needed to perform the assignment."

Our research has not disclosed a single example of a statutory requirement requiring advance notice of overtime. Thus, a new precedent for public agencies will be established if AB 489, in its current form, and AB 503 becomes law. Further, AB 503 will encroach on a subject traditionally left by the Legislature to the collective bargaining process. Such legislative action would be inconsistent with the Myers-Milius-Brown Act, which views the collective bargaining arena as the appropriate forum to "resolve disputes regarding wages, hours, and other terms and conditions of employment between the public employer and public employee organizations." (Gov. Code Section 3500(a).)

From a business perspective, imposing an inflexible eight-hour written notice requirement on overtime is an unnecessary restriction on the District's ability to coordinate its operations. Metropolitan's 1,920 employees are responsible for a service area covering 5,200 square miles, and Metropolitan's mission – which is to provide its service area with adequate and reliable supplies of high quality water in a dependable and responsible manner – can impact their schedules. Oftentimes, as Metropolitan takes action to supplement, conserve or protect Southern California's water supplies, our operational demands and events will not permit the type of advance notice contemplated in AB 489 and AB 503, nor do they allow for work to be delayed until an emergency occurs. In such instances, the District must maintain the discretion as agreed to in the AFSCME MOU to "fairly assign"

overtime work in order to meet its objectives in a timely and efficient manner. AB 489 and AB 503 would place an undue burden on the District by eliminating its right to mandate overtime, and thus compromise its ability to complete work in progress on schedule.

AB 489, as introduced, and AB 503, as proposed to be amended, may also result in a drain on public funds due to unnecessary litigation exposure and expenses. Typically, overtime disputes are resolved through the expedited grievance and appeal procedure negotiated at the bargaining table. By regulating overtime by statute, the legislation may result in lawsuits alleging a violation of public policy along with corresponding demands for damages and attorney fees.

Policy

Memorandum of Understanding Between The Metropolitan Water District of Southern California and The Employees Association of The Metropolitan Water District of Southern California/AFSCME Local 1902 Meyers-Miliias-Brown Act, Sections 3500-3511, Chapter 10, Division 4, Title 1, of the Government Code

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and express opposition to AB 489 and AB 503.

Fiscal Impact: Unknown, but potential for project delays if legislation passes

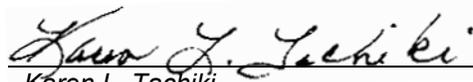
Option #2

Do not express opposition to AB 489 and AB 503.

Fiscal Impact: Unknown, based on potential for project delays

Staff Recommendation

Option #1


 Karen L. Tachiki
 General Counsel

3/7/2007

Date

Attachment 1 – Assembly Bill 489

Attachment 2 – Assembly Bill 503

BLA #5315

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 489

Introduced by Assembly Member Charles Calderon

February 20, 2007

An act to add Section 81.5 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as introduced, Charles Calderon. Metropolitan Water District Act: overtime.

(1) The Metropolitan Water District Act authorizes the board of a metropolitan water district to establish and reestablish the powers and compensation of all officers and employees.

This bill would prohibit the board of a metropolitan water district in establishing the hours of employment for specified employees from requiring the employee to perform services outside the time of the employee's normal work schedule without a minimum of 8 hours written notice, except in an operational emergency. By establishing this requirement on a metropolitan water district, the bill would impose a state-mandated local program.

(2) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

AB 489

— 2 —

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

- 1 SECTION 1. Section 81.5 is added to the Metropolitan Water
- 2 District Act (Chapter 209 of the Statutes of 1969), to read:
- 3 SEC. 81.5. In establishing the hours of employment of any
- 4 employee entitled to receive overtime compensation pursuant to
- 5 any federal statute or regulation, the board or its designee shall
- 6 not require the employee to perform services outside the time of
- 7 the employee's normal work schedule, without a minimum of eight
- 8 hours written notice to the employee of the work assignment,
- 9 except in the event of an operational emergency.
- 10 SEC. 2. If the Commission on State Mandates determines that
- 11 this act contains costs mandated by the state, reimbursement to
- 12 local agencies and school districts for those costs shall be made
- 13 pursuant to Part 7 (commencing with Section 17500) of Division
- 14 4 of Title 2 of the Government Code.

O

ASSEMBLY BILL

No. 503

**Introduced by Assembly Member Swanson
(Coauthor: Assembly Member Price)**

February 20, 2007

An act to add Section 81.2 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to water districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 503, as introduced, Swanson. Metropolitan water districts: overtime: notice.

Existing law, the Metropolitan Water District Act, requires the board of directors of a metropolitan water district to establish and reestablish the powers, duties, and compensation of all officers and employees of the district.

This bill would prohibit the board of a metropolitan water district, or its designee, from requiring any employee entitled to receive overtime compensation pursuant to any federal statute or regulation to perform services outside the employee's normal work schedule unless a minimum of 8 hours' written notice of that work assignment has been provided to the employee. The bill would provide that this notice requirement shall not apply in the event of an operational emergency.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 SECTION 1. Section 81.2 is added to the Metropolitan Water
- 2 District Act (Chapter 209 of the Statutes of 1969), to read:

1 SEC. 81.2. The board or its designee shall not require any
2 employee entitled to receive overtime compensation pursuant to
3 any federal statute or regulation to perform services outside the
4 employee's normal work schedule unless a minimum of eight
5 hours' written notice of that work assignment has been provided
6 to the employee. The notice requirement under this section shall
7 not apply in the event of an operational emergency.

O