LAO
70 YEARS OF SERVICE

September 4, 2013

MOU Fiscal Analysis: Bargaining Unit 6

LEGISLATIVE ANALYST'S OFFICE

Presented to:
The California Legislature
Pursuant to Section 19829.5 of the Government Code

September 4, 2013

State Memorandum of Understanding (MOU) Process

- ☑ ***Ralph C. Dills Act Provides for State Employee Collective Bargaining.*** With passage of the Dills Act in 1977, the Legislature authorized collective bargaining between rank-and-file state employees organized into bargaining units and the Governor. About 180,000 full-time equivalent (FTE) positions are represented by one of the state's 21 bargaining units in the collective bargaining process. In collective bargaining, bargaining units are represented by unions and the Governor is represented by the California Department of Human Resources (CalHR). The product of the collective bargaining process is an MOU that establishes the terms and conditions of employment for rank-and-file state employees.

- ☑ ***Legislature and Employees Must Ratify MOUs.*** An MOU must be ratified by the Legislature and bargaining unit members in order to take effect. In addition, under the Dills Act, the Legislature generally may choose whether to appropriate funds in each annual budget to continue the financial provisions of MOUs.

- ☑ ***Fiscal Analysis Required by State Law.*** Section 19829.5 of the Government Code—approved by the Legislature in 2005—requires the Legislative Analyst's Office (LAO) to issue a fiscal analysis of proposed MOUs.

- ☑ ***MOU for Bargaining Unit 6 Now Before Legislature.*** The Unit 6 MOU expired in July 2013. Under the Dills Act, provisions of an expired MOU remain in effect until a new MOU is ratified by the Legislature and bargaining unit members. A tentative agreement between the bargaining unit and the Governor to replace the expired MOU is now before the Legislature for approval. The proposed MOU would expire on July 2, 2015.

LAO
70 YEARS OF SERVICE

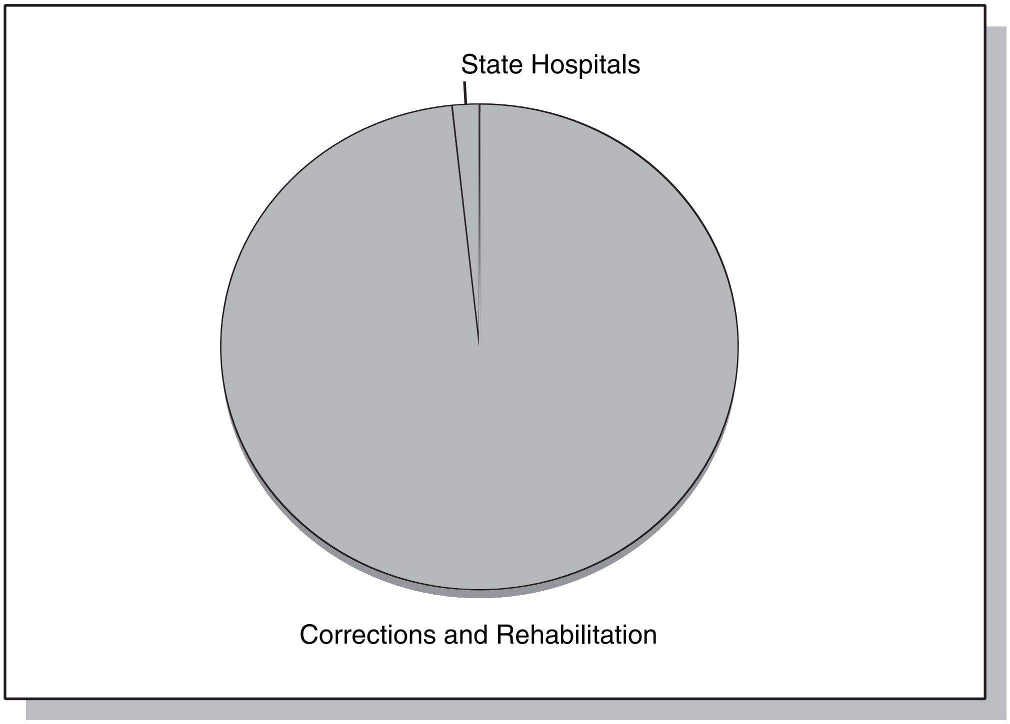
Common Provisions of State MOUs Ratified in 2010-11

Bargaining Unit (Percent of Workforce)	Months of Personal Leave Program	Employee Pension Contribution			Professional or Personal Development Days	Top Step Increase in 2012 or 2013
		Miscellaneous and Industrial	Safety	Police Officer, Firefighter, and Patrol		
MOUs That Expired July 2013						
1, 3, 4, 11, 14, 15, 17, 20, and 21—SEIU Local 1000 (42.8%)	24	8%	9%	—	2	3%
2—Attorneys (1.8)	24	9	10	—	5	4
6—Correctional Peace Officers (12.3)	24	8	—	11%	2	3 - 4
7—Protective Services and Public Safety (3.3)	24	8	9	10	2	2 - 3
9—Professional Engineers (4.9)	12[a]	8	9	—	2	3
10—Professional Scientific (1.2)	24	8	9	—	2	3
12—Craft and Maintenance (5.1)	24	10	11	—	2	5
13—Stationary Engineers (0.4)	12[a]	10	11	—	2	5
16—Physicians, Dentists, and Podiatrists (0.7)	24	10	11	—	2	5
18—Psychiatric Technicians (2.7)	24	10	11	—	2	5
19—Health and Social Services/Professionals (2.2)	24	10	11	—	2	5
MOUs That Expire July 2017						
8—Firefighters (1.7)	12	10	—	10	—	4 - 5
MOUs That Expire July 2018						
5—Highway Patrol (3.0)	12	10	—	10	—	2

[a] These employees also received 12 months of furlough.

☑ ***Common Elements in 2010-11 MOUs.*** During fiscal year 2010-11, the Legislature ratified new MOUs for all 21 bargaining units. The figure compares similar major provisions from these MOUs. While the nine bargaining units represented by Service Employees International Union, Local 1000 (Local 1000) now work under new MOUs ratified by the Legislature in July 2013, all other state bargaining units work under the 2010-11 MOUs. With the exception of Units 5 and 8, all 2010-11 MOUs expired in July 2013. We discuss major provisions of the expired Unit 6 MOU later in this report. For additional information, refer to past MOU analyses posted on our website.

Unit 6 at a Glance



☑ ***Correctional Peace Officers.*** Representing about 28,000 FTE positions, Unit 6—represented by the California Correctional Peace Officers Association (CCPOA)—is the second largest of the state's 21 bargaining units. Almost all Unit 6 employees work for the California Department of Rehabilitation (CDCR), as shown in the figure above. Salaries and related expenses for Unit 6 employees and their supervisors total about 40 percent of all such dollars paid from the General Fund. This results from (1) the salary levels of correctional officers (which are relatively high compared with other state classifications), and (2) the fact that the personnel costs for correctional staff—unlike many other groups of state employees—are funded almost entirely from the General Fund. About 85 percent of Unit 6 employees belong to the civil service classification of correctional officer. These officers confine and supervise felons within the state's prison system.

Expired Unit 6 MOU—Provisions Affecting Pay

- ☑ ***28-Day Work Period for Overtime.*** If an employee works 164 hours in a 28-day work period, he or she is paid time and a half—known as "premium pay"—for all hours in excess of 164. If an employee has not worked 164 hours in the pay period as a result of being on paid leave, he or she is paid at his normal hourly pay rate—known as "straight time"—for overtime work.

- ☑ ***Personal Leave Program (PLP).*** In each month of PLP, employees received eight hours of unpaid leave, resulting in a 4.6 percent pay cut. The PLP is fundamentally the same policy as furloughs, except PLP is established through the collective bargaining process. Through the original MOU and an addendum, CCPOA agreed to 24 months of PLP since 2010-11. June 2013 was the last scheduled month of PLP.

- ☑ ***Employee Pension Contributions.*** The expired MOU increased active and future employees' pension contribution rates by either 3 percent or 4 percent, depending on whether an employee was enrolled in a defined contribution retirement program that was eliminated pursuant to the agreement. As a result, most Unit 6 employees now contribute about 11 percent of their pay to cover a portion of pension expenses.

- ☑ ***Top Step Pay Increase.*** The MOU increased the level of the "top step" of employee pay ranges by either 3 percent or 4 percent in July 2013. Most state employees are at or near the top step of their pay range.

- ☑ ***Night Shift Differential.*** Division of Juvenile Justice (DJJ) institutional parole agents who work at least two hours of a scheduled work shift falling between 6 p.m. and 6 a.m. receive a 50 cent hourly pay differential.

Expired Unit 6 MOU—Other Major Provisions

- ☑ ***Health Benefits.*** The state pays a specified dollar amount towards Unit 6 employee health benefits that is about 80 percent of the average health premium costs. This "flat-dollar" employer contribution was last increased earlier this year to reflect rising health premium rates. Absent a new agreement, the state's contribution for Unit 6 health care costs would not change when health premium costs increase in future years.

- ☑ ***Personal Development Days.*** Unit 6 employees are eligible for two days off each year that may be used at the employee's discretion. Unused days do not carry over from one year to the next.

- ☑ ***Continuous Appropriations.*** As part of the legislation ratifying the expired MOUs, the Legislature approved continuous appropriations of the economic terms of the agreement through July 2, 2013.

LAO
70 YEARS OF SERVICE

Proposed Unit 6 MOU—Provisions Affecting Pay

- ☑ ***Seven-Day Work Period for Overtime.*** Beginning in February 2014, overtime would be defined as any hours worked in excess of 41 hours in a seven-day work period. The administration informs us that if an employee goes on paid leave for any time during the 41-hour period, the time spent on leave would not be considered as time worked for purposes of calculating premium pay.

- ☑ ***General Salary Increase.*** On January 1, 2015, all Unit 6 employees would receive a 4 percent pay increase. This would be the first general salary increase for these employees in several years.

- ☑ ***Night Shift Differential.*** The agreement would extend the 50 cent hourly differential to DJJ casework specialists who work at least two hours of a scheduled work shift between 6 p.m. and 6 a.m.

- ☑ ***Per Diem for Duration of Temporary Involuntary Transfer.*** Under the expired MOU, employees who are temporarily involuntarily transferred receive per diem to cover specified living and commuting expenses for the first 30 days of the temporary assignment. Under the proposed agreement, "employees who are involuntarily assigned shall receive short term per diem for the duration of their assignment."

LAO
70 YEARS OF SERVICE

Proposed Unit 6 MOU—Health Benefits

☑ ***Increased State Contributions.*** The flat-dollar state contribution towards monthly health premiums for Unit 6 employees and their dependents would be increased to the equivalent of about 80 percent of health premium costs (as measured during the term of the contract). The state's contribution would be adjusted to reflect any premium increases in January 2014 and January 2015.

Proposed Unit 6 MOU—Changes to Training New Correctional Officers

- ☑ ***Shortened Training Period at Academy.*** Within six months of the agreement being ratified, the number of weeks that cadets would be trained at the state's training academy before working at a correctional institution would be reduced from 16 to 12.

- ☑ ***New Post-Academy Field Training.*** After completing the 12-week training at the academy, new correctional officers would receive one week of orientation and three weeks of field training at correctional facilities. As a result, cadets would continue to receive 16 weeks of training in total. The four weeks of post-academy field training would be led by more senior correctional officers serving as field training officers (FTOs) at the local facilities. Specifics regarding the duties and roles of FTOs will be the subject of future discussions between CCPOA and the administration.

- ☑ ***FTOs Receive Pay Differential.*** Unit 6 employees who serve as FTOs would receive a 5 percent differential for the time spent working as an FTO. CalHR estimates that there would be four cadets for every one FTO.

Proposed Unit 6 MOU—Other Fiscal Provisions

☑ ***Meal and Lodging Expenses.*** State employees may be reimbursed for specified costs related to travel and other business expenses. The proposed agreement would increase the maximum reimbursement rates available to Unit 6 employees for costs related to meals and lodging while traveling on state business. Employees would be eligible for reimbursement for:

- A maximum of $41 for meals (up from $34) in a 24-hour period of travel.
- Between $90 and $150 each night (up from between $84 and $140 each night) for necessary in-state lodging, depending on location.

☑ ***Fire Captain Holiday Reduction.*** The approximately 126 fire captains represented by Unit 6 would receive 24 hours of holiday credits each quarter rather than the 28 hours of holiday credit provided each quarter under the expired MOU.

☑ ***Continuous Appropriations.*** The parties agree to present to the Legislature legislation to provide continuous appropriations of the economic terms of the agreement through July 2, 2015.

☑ ***Retirement Benefits.*** Employee retirement benefits outlined in the agreements—including employee contributions to the California Public Employees' Retirement System and pension formulas—would reflect current law established by last year's pension legislation (AB 340). Assembly Bill 340 largely affects retirement benefits for *future* state employees. Conforming the MOUs to AB 340 generally does not change current or future employees' retirement benefits from what is already established in current law.

LAO
70 YEARS OF SERVICE

Administration's Fiscal Estimate of Proposed MOU

(In Millions)

Proposal[a]	2013-14 General Fund	2013-14 All Funds	2014-15 General Fund	2014-15 All Funds	2015-16 General Fund	2015-16 All Funds
Increased overtime costs from 7-day work period	$8.9	$9.0	$21.8	$22.0	$22.2	$22.4
Administrative costs from 7-day work period	0.7	0.7	—	—	—	—
Increased state contributions to health premiums	5.2	5.2	22.5	22.7	32.2	32.4
Fire captain holiday reduction	0.1	0.1	1.0	1.0	1.0	1.0
Night shift differential	0.0	0.0	0.0	0.0	0.0	0.0
4 percent pay increase	—	—	60.6	61.1	121.3	122.1
Increased travel reimbursement rates[b]	0.4	0.4	0.4	0.5	0.4	0.5
New academy and post-academy training[b]	—	—	-0.2	-0.2	-0.2	-0.2
Totals	**$15.1**	**$15.2**	**$104.2**	**$104.9**	**$175.0**	**$176.2**

[a] Does not include costs associated with current law.
[b] The administration assumes that some or all of these costs and savings will be absorbed within existing departmental resources.
Note: 0.0 indicates an estimated cost of less than $50,000.

☑ ***Modest Effect on Current-Year Budget, but Larger Cost in Future Years.*** The administration estimates that the agreement would increase state costs by about $15 million (General Fund) in 2013-14. The administration estimates that the new seven-day work period, increasing health costs, and 4 percent general salary increase would result in more significant, ongoing General Fund costs beginning in 2014-15.

LAO Comments—Administration's Estimate of Overtime Costs

☑ ***Difficult to Predict Fiscal Effect of Shortened Work Period***. The administration estimates that the shortened work period would increase Unit 6 overtime costs (currently about $220 million annually) by about 10 percent. While this estimate is a reasonable one, we note that the fiscal effect of the shortened work period would depend on future decisions by employees and management and is difficult to predict. It is possible that this change could increase annual Unit 6 overtime costs by millions or tens of millions more than the administration estimates.

- ***Current Contract Provisions.*** Currently, Unit 6 employees receive premium pay for about two-thirds of their overtime. Specifically, employees receive straight time pay for some overtime if they take off leave time during the 28-day work period. For example, if an employee takes three days of vacation but then works three days of overtime during the same work period, the overtime hours are paid at straight time rates.

- ***Effect of Shortening the Work Period.*** Shortening the work period to seven days would increase the number of hours eligible for premium pay because an employee's use of leave during times outside of the seven-day period but within the former work period would no longer be a factor. (In our example, the employee would be counted as taking three vacation days during one work period and earning three days of premium pay in the next.) Overall, employees are more likely to receive premium pay for overtime work under a shortened work period. The administration's estimate recognizes this and assumes that—under the shortened work period—Unit 6 employees would receive premium pay for over 90 percent of their overtime.

LAO
70 YEARS OF SERVICE

LAO Comments—Administration's Estimate of Overtime Costs *(Continued)*

- ***Potential Other Effects Not Incorporated in Administration's Estimate.*** The shortened work period could change the seniority distribution of employees working overtime, with higher paid employees working a larger share of total overtime. This would happen if senior staff—who have priority in selecting overtime slots—are more willing to work overtime due to the increased ability to earn premium pay. Similarly, the shortened work period could increase Unit 6 employees' interest in taking paid leave (because using leave would be less likely to affect their overtime pay calculations). This, in turn, would increase the need for other employees to work overtime.

LAO Comments—Administration's Estimate of Other Changes

- ☑ ***Shortened Academy.*** The proposed changes to correctional officer training are significant. Depending on various factors—including the number of cadets trained through the shortened academy, the cost of backfilling for FTOs, and the state's strategy to comply with the federal order to reduce its prison population—this provision could result in additional costs or savings, compared to the administration's estimates.

- ☑ ***Per Diem for Duration of Temporary Involuntary Transfer.*** The administration does not attribute any cost to this provision. Depending on how the state complies with the federal court order to reduce its prison population, employees may be involuntarily transferred for longer periods, resulting in higher per diem costs.

LAO
70 YEARS OF SERVICE

LAO Comments—Salary Compaction

- ☑ ***Managers and Supervisors Do Not Necessarily Receive Pay Increase***. The administration has broad authority over supervisory and managerial salaries under current law. When rank-and-file employees negotiate pay increases, managerial employees do not automatically receive a comparable increase in pay. When rank-and-file pay increases faster than managerial pay, "salary compaction" can result.

- ☑ ***Difficult for Legislature to Determine Where Compaction Exists.*** Salary compaction can be a problem when the differential between management and rank-and-file pay is too small to create an incentive for employees to accept the additional responsibilities of being a manager. To date, there has not been a consistent or coordinated process for the administration to analyze compaction issues and inform the Legislature where such problems exist.

- ☑ ***Overtime Exacerbates Compaction at CDCR.*** Some managers are not eligible to receive compensation for working overtime. Accordingly, this can make it difficult for the department to fill these positions because employees may be able to earn more money as a rank-and-file employee earning overtime pay.

- ☑ ***Consider Increasing Managerial and Supervisory Pay.*** This agreement could increase any salary compaction that currently exists if (1) the 4 percent pay increase is not extended to these employees' managers and (2) the seven-day work period increases overtime compensation for more senior rank-and-file employees. The administration estimates that extending the 4 percent to managers and supervisors of rank-and-file employees represented by Unit 6 would increase state costs by $45 million (General Fund) over the course of the agreement. Depending on how overtime compensation is affected by the agreement, the Legislature may want to consider the merits of further increasing managerial and supervisory pay if it approves the proposed MOU.

LAO

70 YEARS OF SERVICE

LAO Comments—Federal Court Order

- ☑ ***Plan to Address Court Order Will Affect Prison Personnel.*** Currently, the Legislature and the Governor are debating how to address the orders of the federal three-judge panel related to the prison population. No matter what plan is chosen, state personnel policies and costs will be affected—not only for Bargaining Unit 6, but for other bargaining units as well.

- ☑ ***Additional MOU Changes Likely Will Be Required.*** Over time, changes ("addenda") to existing agreements with Unit 6 and other employee units may be required to implement the details of the prison plans now under consideration. In recent years, addenda also were required to respond to the Receivership and 2011 realignment. We cannot predict the nature or fiscal impact of the addenda that may be necessary to meet the federal court requirements. Addenda may be necessary within the next few months under any adopted prison plan. Current state law provides no ready mechanism for addenda to be implemented quickly during a legislative recess if the addenda involve the expenditure of state funds.

- ☑ ***Future Waivers of Legislative Approval Requirements?*** The federal court has indicated a willingness to waive constitutional, statutory, and budget provisions necessary to implement its directives related to prison overcrowding. To the extent that addenda are necessary to implement the prison plan eventually put in place, the administration could seek to waive legislative addenda approval requirements (based on the authority granted by the federal court). This, in turn, would diminish the role of the Legislature in overseeing state personnel costs and policies.

LAO
70 YEARS OF SERVICE

Selected Features of Summer 2013 Agreements

Bargaining Unit	Expires	Maximum Compounded GSI	Some Provisions Contingent on DOF Fiscal Estimates	One-Year Dependent Health Vesting	Increased Flat-Dollar Health Contribution	Leave Cashout
Units With Agreements Before Legislature						
6—Correctional Peace Officers	2015	4.0%	No	No	Yes	No
7—Protective Services and Public Safety	2016	3.0[a]	No	No	Yes	Yes
12—Craft and Maintenance	2015	3.3	Yes	Yes	Yes	Yes
16—Physicians, Dentists, and Podiatrists	2016	4.0[b]	Yes	No	N/A	No
18—Psychiatric Technicians	2016	4.3	Yes	Yes	Yes	No
19—Health and Social Services Professionals	2016	3.0[c]	Yes	Yes	N/A	No
Agreements Ratified by Legislature						
1, 3, 4, 14, 15, 17, 20, and 21—SEIU Local 1000	2016	4.6	Yes	Yes	Yes[d]	No

[a] Listed GSI applies to most Unit 7 employees. Specified peace officer classifications eligible for an additional 4.67 percent pay increase.
[b] Listed GSI applies to most Unit 16 employees. Specified classifications eligible for up to 8.1 percent GSI.
[c] Listed GSI applies to most Unit 19 employees. Specified classifications eligible for up to 8.2 percent GSI.
[d] Only applies to Unit 3. State contributions for other Local 1000 bargaining units automatically increase when health premiums increase.
GSI = General Salary Increase and DOF = Department of Finance.

☑ ***Common Provisions in New MOUs.*** At the time this report was published, our office had completed its analysis of 15 tentative agreements affecting Units 6, 7, 12, 16, 18, 19, and the nine bargaining units represented by Local 1000. The figure compares certain provisions from these agreements. Our office's analysis of a tentative agreement for Unit 9 will be released shortly.