1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

April 19, 2013

The Honorable Rob Bonta
Chair, Assembly Public Employees, Retirement and Social Security Committee
1020 N Street, Room 153
Sacramento, CA 95814

RE: AB 537 (Bonta) – Meyers-Milias-Brown Act: impasse procedures.
As Amended April 17, 2013 – OPPOSE
Set for Hearing April 24, 2013 – Assembly Public Employees, Retirement and Social Security Committee

Dear Assembly Member Bonta:

On behalf of the California State Association of Counties (CSAC), I write to express our opposition to your AB 537. AB 537 ignores decades of local rulemaking on collective bargaining procedures and undermines counties' constitutional right to provide for the compensation of employees. CSAC believes these changes are contrary to the central premise of the Meyers-Millias-Brown Act (MMBA), the collective bargaining law that has governed local public agencies since 1968 and permits each local agency to enact its own reasonable rules and regulations for governing employee relations. We discuss opposition to each of the bill's provisions below.

Mandatory Mediation
We believe the decision whether to enter into mediation should remain a joint decision by both the employer and the employee representative. If both parties agree to mediation it is usually because they believe the process can productively resolve a dispute. If one party does not want mediation, it is likely because that party knows it has already moved as far as possible towards agreement. The effect of making mediation mandatory is to further delay the conclusion of labor negotiations. Delays are generally sought when employers are seeking concessions and employees want to preserve the status quo. It is an unfortunate reality that budgets are still strained and concessionary bargaining is still the norm. AB 537 follows AB 646 (Chapter 680, Statutes of 2012) which established the right of employees to request fact finding. Fact finding and mandatory mediation will add 90 days or more each to the bargaining timeline, a process that can already take 6 months or more.

We also question whether AB 537 can be implemented as a practical matter. There are 58 counties, 482 cities, and over 2000 special districts, many with dozens of bargaining units. While some use mediators now, it is unlikely that there are enough mediators in the state to be appointed within 5 days of request as suggested by the bill, but more importantly, what would soon develop is a backlog of agencies waiting for a mediator. We do not believe lengthy drawn-out negotiation periods and employees working with expired contracts will promote full communication between public employers and their employees as intended by the MMBA.

Employee Relations Ordinances
County Employer-Employee Ordinances or Labor Relations Ordinances are detailed documents that specify communication between counties and their employees concerning their respective rights and duties under the MMBA. These local rules are not capricious and are not drafted in a vacuum by employers; they are rules that have evolved with local circumstances over decades and in consultation with employees. If the rules are unreasonable or their implementation unfair, employees have an existing remedy in their ability to file an unfair labor practice charge with the Public Employee Relations Board (PERB). Subjecting local rules to the *meet and confer* process will require a separate negotiation with each

bargaining unit and would likely result in employee representatives seeking different rules for each unit. A lack of uniform rules would cause chaos locally. In fact we believe this is why the MMBA use the language "in consultation" because drafters understood that it was not feasible to expect every bargaining until to separately agree to the same set of local rules. Following on this concern is the addition of factfinding to resolve disputes over local rules. As an example, in a county with 20 bargaining units, we anticipate no local rules would exist. The county and employees would be on a constant loop of bargaining, reaching impasse, and proceeding through factfinding all in an effort to get one set of local rules. The local upheaval that will caused by this change is not justified.

Contract Ratification

AB 537 binds a governing body to any tentative agreement reached by its bargaining representatives. The MMBA currently states that a tentative agreement is provided to the governing body for review. CSAC believes this change is unconstitutional. In 2003, the California Supreme Court ruled in *Riverside, supra,* 30 Cal.4th that "the Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county…money,…or perform municipal functions." Boards of Supervisors delegate to staff the authority to negotiate labor agreements and the MMBA currently recognizes the constitutional authority of the Board to provide for the compensation of its employees, by allowing the tentative agreement to be non-binding until the Board of Supervisors acts to approve it. It is also unclear why the sponsors of the bill believe they should bind locally elected officials, but do not also propose to bind the employee representatives and instead allow the agreement to remain tentative until ratification by the employees.

Ground Rules

Generally, local conditions dictate ground rules and CSAC does not believe is necessary to legislate this area. Some counties may bargain without ground rules because of trusted relationships with employee representatives, others may never reach agreement on ground rules, so simply move forward with bargaining. AB 537 would prohibit employers from restricting communication between local agency representatives and employee representatives as part of labor negotiation ground rules. This change is contrary to the understood rules on direct dealing and we question why it is one-sided in that it does not prohibit the union from seeking a ground rule that the employer cannot communicate directly with employees. CSAC does not believe that negotiations will be well-served by direct communication rather than through designated representatives, however if the sponsors disagree, then the communication should work in both directions.

AB 537 also adds language to the MMBA in the area of enforcement of arbitration agreements. Due to the timing of the amendments prior to Wednesday's hearing, CSAC is still gathering information as to the effect of this section. We will follow-up on the arbitration issue as necessary.

Should you have any questions about our position, please contact me at 916/650-8180 or eortega@counties.org.

Sincerely,

Eraina Ortega
Senior Legislative Representative

cc: Members and Consultant, Assembly Public Employees, Retirement and Social Security Committee