
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**Senator Dave Cortese, Chair****2023 - 2024 Regular**

Bill No: AB 1**Hearing Date:** June 28, 2023**Author:** McKinnor**Version:** May 18, 2023**Urgency:** No**Fiscal:** Yes**Consultant:** Glenn Miles**SUBJECT:** Collective bargaining: Legislature**KEY ISSUE**

Should the Legislature provide collective bargaining rights to Legislative employees, as specified, by establishing the Legislature Employer-Employee Relations Act (LEERA)?

ANALYSIS**Existing law:**

- 1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights (29 United State Code § 151 et seq.).
- 2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the Dills Act, which provides collective bargaining for state employees of the executive branch and establishes a process for determining wages, hours, and terms and conditions of employment for represented employees. The Act excludes managers and confidential employees from bargaining rights. (Government Code § 3512 et seq.)
- 3) Requires the Governor and the recognized state employee organizations to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment and, if they reach an agreement, to jointly prepare a written memorandum of understanding (MOU), which the Governor shall present, when appropriate, to the Legislature for determination. (GC § 3517 et seq.)
- 4) Establishes a civil service that includes every officer and employee of the State except as otherwise provided in the Constitution and requires that the State make permanent appointment and promotion in the civil service under a general system based on merit ascertained by competitive examination. (Cal. Const., art. VII, § 1.)

- 5) Defines the powers of state government as legislative, executive, and judicial and prohibits persons charged with the exercise of one power from exercising either of the others except as permitted by the Constitution. (Cal. Const., art. III, § 3.)
- 6) Establishes the California Legislature which consists of the Senate and Assembly and in which the people, through the state constitution, have vested the state's legislative power. (Cal. Const., art. IV, § 1.)
- 7) Exempts officers and employees appointed or employed by the Legislature, either house, or legislative committees from the state civil service. (Cal. Const., art. VII, § 4, subd. (a))
- 8) Limits for the Legislature, state-financed incumbent staff and support services, among other things, in order to counter the unfair incumbent advantages that discourage qualified candidates from seeking public office and create a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers. (Cal. Const., art. IV, § 1.5.)
- 9) Prohibits the total aggregate expenditures of the Legislature for the compensation of members and employees of, and the operating expenses and equipment for, the Legislature from exceeding an amount equal in 1991 to \$950,000 per member for that fiscal year or 80 percent of the amount of money expended for those purposes in the preceding fiscal year and for each fiscal year thereafter, an amount equal to that expended for those purposes in the preceding fiscal year, adjusted and compounded by an amount equal to the percentage increase in the appropriations limit for the State established pursuant to Article XIII B of the Constitution. (Cal. Const., art. IV, § 7.5.)
- 10) Establishes the Judicial Council Employer-Employee Relations Act (JCEERA), which provides collective bargaining rights to Judicial Council employees, as specified. (GC § 3524.50 et seq.)
- 11) Requires the Administrative Director of the Courts, or his or her designated representatives, acting with the authorization of the Chairperson of the Judicial Council, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and to consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. (GC § 3524.63 et seq.)
- 12) Requires the Administrative Director of the Courts and the recognized employee organization, if they reach an agreement, to jointly prepare a written memorandum of the agreement, which the Administrative Director of the Courts shall present, when appropriate, to the Legislature for appropriation of funding and amendment of any related statutes. (GC § 3524.63 et seq.)
- 13) Establishes the Public Employee Relations Board (PERB), a quasi-judicial administrative agency, to administer the collective bargaining statutes covering public employees including school, college, state, local agency, and trial court employees. PERB consists of five members appointed by the Governor with the advice and consent of the Senate. Existing law tasks PERB with administering several public employee labor relations statutes that provide collective bargaining to California public employees, including the Dills Act and JCEERA, and adjudicating unfair labor practice claims under the respective acts. (GC § 3541 et seq.)

This bill:*I. Legislature Employer-Employee Relations - Purpose (3599.50-3599.51)*

- 1) Establishes the Legislature Employer-Employee Relations Act (LEERA) for the following purposes:
 - a. Promoting full communication between the Legislature and its employees by providing a reasonable method of resolving disputes regarding wages, hour, and other terms and conditions of employment between the Legislature and public employee organizations;
 - b. Promoting the improvement of personnel management and employer-employee relations within the Legislature by providing a uniform basis for recognizing the right of employees of the Legislature to join organizations of their own choosing and be represented by those organizations in their employment relations with the Legislature; and
 - c. Fostering peaceful employer-employee relations, to allow employees of the Legislature to select one employee organization as the exclusive representative of the employees in an appropriate unit and to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation. (3399.50)

II. Definition of Certain Terms (3599.52)

- 2) Defines certain terms as follows:
 - a. “Board” means the Public Employment Relations Board (PERB). The bill also applies PERB’s existing statutory powers and duties, as appropriate, to LEERA.
 - b. “Employee of the Legislature” or “employee” means any employee of either house of the Legislature, *except* all of the following:
 - Members of the Legislature.
 - Appointed officers of the Legislature, such as the Secretary of the Senate and the Chief Clerk of the Assembly.
 - Department or office leaders, such as chiefs-of-staff, staff directors, and chief consultants. “Department or office leader” means any supervisory employee having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or effectively to recommend this action, if, in connection with the foregoing, the exercise of any authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
 - Confidential employees. “Confidential employee” means any 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 contributing significantly to the development of management positions.
 - c. “Employee organization” means any organization that includes employees of the Legislature and that has as one of its primary purposes representing these employees in their relations with the Legislature.

- d. “Legislature” means the Assembly Committee on Rules or the Senate Committee on Rules. For the purposes of bargaining or meeting and conferring in good faith, “Legislature” means the Assembly Committee on Rules or the Senate Committee on Rules, or their designated representatives, acting with the authorization of their respective houses.
- e. “Maintenance of membership” means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision does not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller’s office.
- f. “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the Legislature and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.
- g. “Recognized employee organization” means an employee organization that has been recognized by the Legislature as the exclusive representative of the employees in an appropriate unit.

III. PERB Authority to Administer LEERA (3599.54 and 3599.55)

- 3) Provides that any person who willfully resists, prevents, impedes or interferes with any member of PERB, or any of its agents, in the performance of duties pursuant to LEERA, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).
- 4) Provides PERB with exclusive jurisdiction over the initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of LEERA but prohibits PERB from awarding strike-preparation expenses as damages or damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.
- 5) Authorizes PERB to establish procedures for investigating, hearing, and deciding LEERA cases and requires the procedures to include all of the following:
 - a. Any employee, employee organization, or employer shall have the right to file an unfair practice charge (ULP) , except that PERB shall not do either of the following:
 - i. Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.
 - ii. Issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted either by settlement or by binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be

necessary. PERB shall have discretionary jurisdiction to review a settlement or arbitration award reached pursuant to the grievance machinery solely to determine whether it is repugnant to LEERA's purpose. If PERB finds that the settlement or arbitration award is repugnant to LEERA's purpose, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. PERB shall consider, in determining whether the charge was timely filed, the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

- 6) Prohibits PERB from enforcing agreements between the parties or issuing a complaint on any charge based on an alleged violation of an agreement that would not also constitute an unfair practice under LEERA.
- 7) Allows PERB to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate LEERA's policies.

IV. Employees' Right to Collectively Organize / Employee Organizations (3599.56)

- 8) Grants employees of the Legislature the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.
- 9) Grants employees of the Legislature the right to refuse to join or participate in the activities of employee organizations.
- 10) Provides that nothing shall preclude the parties from agreeing to a maintenance of membership provision pursuant to a memorandum of understanding.
- 11) Specifies that in any event employees of the Legislature shall have the right to represent themselves individually in their employment relations with the Legislature.

V. Recognized Employee Organization Exclusive Representation (3599.57)

- 12) Provides that employee organizations shall have the right to represent their members in their employment relations with the Legislature until an employee organization is recognized as the exclusive representative of an appropriate unit.
- 13) Requires that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the Legislature.
- 14) Authorizes employee organizations to establish reasonable restrictions regarding who may join and to make reasonable provisions for the dismissal of individuals from membership.
- 15) Clarifies that this provision does not prohibit any employee from appearing on the employee's own behalf in the employee's employment relations with the Legislature.

VI. Employee Organization Dues, Maintenance of Membership, and Employer Requirements to Provide Corresponding Employment Data (3599.58 and 3599.59)

- 16) Provides that all employee organizations have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted, as specified, until an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then any deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.
- 17) Authorizes an employee organization recognized as the exclusive representative of an appropriate unit to enter into an agreement with the Legislature providing for organizational security in the form of a maintenance of membership deduction.
- 18) Requires the Legislature to furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and to deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee.
- 19) Requires the fees to be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine-readable data.

VII. Scope of Representation (3599.60 and 3599.61)

- 20) Limits the scope of representation to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation does not include consideration of the merits, necessity, or organization of any service or activity provided by law.
- 21) Requires the employer to give reasonable written notice to each recognized employee organization affected by any law, rule, or resolution directly relating to matters within the scope of representation proposed to be adopted by the Legislature, and to give such recognized employee organizations the opportunity to meet and confer with the Legislature except in cases of emergency.
- 22) Requires the Legislature to provide notice and opportunity to meet and confer in good faith at the earliest practical time following the adoption of the law, rule, or resolution in cases of emergency when the Legislature determines that a law, rule, or resolution must be adopted immediately without prior notice or meeting with a recognized employee organization.

VIII. Requirements to Meet and Confer, Disclosure of Non-confidential Information, Definition of Confidential Information (3599.62)

- 23) Requires the Legislature to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and to consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

- 24) Defines the term “meet and confer in good faith” to mean that the Legislature and representatives of recognized employee organizations have the mutual obligation to personally meet and confer promptly upon request by either party and continue to meet and confer for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year.
- 25) Clarifies that the process should include adequate time for the resolution of impasses.
- 26) Requires the Legislature to freely provide to representatives of recognized employee organizations nonconfidential information that is necessary and relevant to their scope of representation.
- 27) Provides, however, that LEERA does not require the Legislature to provide confidential information to representatives of recognized employee organizations.
- 28) Defines “confidential information” to mean any information contained in records that are exempt from public disclosure under federal or state law.
- 29) Clarifies that “confidential information” does not include the name, job title, office, workplace location, work telephone number and email address, and home or personal telephone number and email address, if on file with the Legislature, for employees in the bargaining unit of the recognized employee organization.

IX. Preparation of MOUs and Presentation to the Legislature for Appropriation / Side Letters / Reopening Bargaining (3599.63, 3599.64, 3599.65)

- 30) Requires the parties, if an agreement is reached between the Legislature and the recognized employee organization, to jointly prepare a written memorandum of understanding (MOU) reflecting the terms of the agreement, which shall be presented, when appropriate, to the Legislature for adoption as a resolution.
- 31) Requires the parties to expressly identify a side letter, appendix, or other addendum to a properly ratified MOU if that side letter, appendix, or other addendum is to be incorporated in a subsequent MOU submitted to the Legislature for adoption as a resolution.
- 32) Authorizes either party to reopen negotiations on all or part of the MOU if the Legislature does not fully fund any of the MOU’s provisions that require the expenditure of funds.
- 33) Does not preclude the parties from agreeing to and effecting those provisions of the MOU that do not require legislative action for passage of a statute.

X. Continued Effect of Expired MOU / Impasse / LBFO (3599.66)

- 34) Requires the parties to the agreement to continue to give effect to the provisions of the expired MOU, including provisions that supersede existing law, arbitration provisions, no-strike provisions, and agreements regarding matters covered in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.) if an MOU has expired, and the

Legislature and the recognized employee organization have not agreed to a new MOU and have not reached an impasse in negotiations, as specified.

- 35) Authorizes the Legislature to implement any or all of its last, best, and final offer (LBFO) through adoption of a resolution if the Legislature and the recognized employee organization reach an impasse in negotiations for a new MOU.
- 36) Clarifies that implementation of the LBFO does not relieve the parties of the obligation to bargain in good faith and reach an agreement on an MOU if circumstances change, and does not result in a waiver of rights that the recognized employee organization has under LEERA.

XI. Mediation and Time off for Employee Representatives (3599.67, 3599.68)

- 37) Authorizes the Legislature and the recognized employee organization, if after a reasonable period of time in which they fail to reach agreement, to agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request PERB to appoint a mediator.
- 38) Provides that when both parties mutually agree upon a mediator, costs of mediation shall be divided one-half to the Legislature and one-half to the recognized employee organization but that if PERB appoints the mediator, PERB shall pay the costs of mediation.
- 39) Requires the Legislature to grant a reasonable number of recognized employee organizations' employee representatives reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the Legislature on matters within the scope of representation. This section applies only to employees, as defined by Section 3599.52, and only for periods when an MOU is not in effect.

XII. Unlawful Acts – the Legislature (3599.69)

- 40) Defines the following acts as unlawful and prohibits the Legislature from doing any of the following:
 - a. Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by LEERA. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
 - b. Deny to employee organizations rights guaranteed to them by LEERA.
 - c. Refuse or fail to meet and confer in good faith with a recognized employee organization.
 - d. Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

- e. Refuse to participate in good faith in the mediation procedure set forth in Section 3599.67.

XIII. Unlawful Acts - Employee Organization (3599.70)

- 41) Defines the following acts as unlawful and prohibits an employee organization from doing any of the following:
 - a. Cause or attempt to cause the Legislature to violate Section 3599.69.
 - b. Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
 - c. Refuse or fail to meet and confer in good faith with the Legislature in relation to the employees for whom it is the recognized employee organization.
 - d. Refuse to participate in good faith in the mediation procedure set forth in Section 3599.67.

XIV. Limitation on Judicial Review of Bargaining Unit Determination (3599.71 (a))

- 42) Limits judicial review of a unit determination only to either of the following circumstances:
 - a. When PERB, in response to a petition from the Legislature or an employee organization, agrees that the case is one of special importance and joins in the request for the review.
 - b. When a party raises the issue as a defense to an unfair practice complaint. A reviewing court shall not stay a PERB order directing an election pending judicial review.

XV. Writ of Extraordinary Relief / Court Enforcement by Writ of Mandamus (3599.71 (b) - (e))

- 43) Permits a party to the case to petition for a writ of extraordinary relief from the unit determination decision or order upon receipt of a PERB order joining in the request for judicial review.
- 44) Authorizes any charging party, respondent, or intervenor aggrieved by a PERB final decision or order in an unfair practice case to petition for a writ of extraordinary relief from such decision or order, except a PERB decision not to issue a complaint in such a case.
- 45) Requires the charging party to file the petition in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred within 30 days after issuance of PERB's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable.

- 46) Requires the court to cause the petitioning party to serve notice upon PERB upon the filing of the petition and thereupon provides the court with jurisdiction of the proceeding.
- 47) Requires PERB to file in the court the record of the proceeding, certified by PERB, within 10 days after the clerk's notice unless the court extends time for good cause shown.
- 48) Gives the court jurisdiction to grant PERB any temporary relief or restraining order the court deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside PERB's order.
- 49) Deems PERB's findings conclusive with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole.
- 50) Provides that the provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to these proceedings.
- 51) Authorizes PERB to seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred if the time to petition for extraordinary relief from the PERB decision has expired.
- 52) Requires the court to enforce the PERB order by writ of mandamus if, after hearing, the court determines that the order was issued pursuant to procedures established by PERB and that the person or entity refuses to comply with the order. The court shall not review the merits of the order.

XVI. PERB Rules for Determining the Legislature's Exclusive Recognition of Employee Organizations and Bargaining Units (3599.72)

- 53) Requires the Legislature to grant exclusive recognition to employee organizations designated or selected pursuant to PERB established rules for employees of the Legislature or an appropriate unit thereof, subject to the right of an employee to self-represent. Requires PERB to establish reasonable procedures for petitions and for holding elections and determining appropriate units, as specified.
- 54) Prohibits PERB, as it determines appropriate bargaining units, from the following:
 - a. Including employees of the Legislature in a bargaining unit that includes employees other than those of the Legislature;
 - b. Including within a bargaining unit employees from both the Assembly and Senate;
 - c. Separating employees into bargaining units solely based on political affiliation.
- 55) Requires PERB to establish procedures whereby a majority vote of the employees may revoke recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees only after a period of not less than 12 months following the date of such recognition.

XVII. Legislature's Adoption of Rules for Employee Organization Recognition (3599.73)

- 56) Requires the Legislature to adopt reasonable rules and regulations for all of the following:
- a. Registering employee organizations, as specified.
 - b. Determining the status of organizations as employee organizations.
 - c. Identifying the officers and representatives who officially represent employee organizations.

XVIII. Exhaustion of Administrative Remedies after 180 Days (3599.74)

- 57) Provides that an administrative law judge's decision regarding the recognition or certification of an employee organization becomes PERB's final order if a party appeals the decision and if PERB does not issue a ruling that supersedes the decision on or before 180 days after the party filed the appeal.

XIX. Criteria Governing PERB's Determination of Appropriate Bargaining Units (3599.75)

- 58) Requires PERB to be governed by the following criteria in determining an appropriate bargaining unit, except that PERB shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit:
- a. The internal and occupational community of interest among the employees, including, but not limited to, all of the following:
 - i. The extent to which they perform functionally related services or work toward established common goals.
 - ii. The history of employee representation in state government and in similar employment.
 - iii. The extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements.
 - b. The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the Legislature, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.
 - c. The effect of the proposed unit on efficient operations of the Legislature and the compatibility of the unit with the responsibility of Legislature and its employees to serve the public.

- d. The number of employees and classifications in a proposed unit and its effect on the operations of the Legislature, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.
 - e. The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the Legislature.
- 59) Prohibits political affiliation from constituting a community of interest for purposes of determining an appropriate unit.

XX. Public Meeting - Public Record Requirement for Meet and Confer (3599.76)

- 60) Requires the exclusive employee representative to present all of its initial meet and confer proposals to the Legislature at a public meeting, and thereafter, make those proposals a public record.
- 61) Requires the Legislature to present all of its initial meet and confer proposals or counterproposals to the recognized employee organization at a public meeting, and thereafter, make those proposals or counterproposals a public record.
- 62) Prohibits, except in cases of emergency, any meeting and conferring to take place on any proposal until not less than seven consecutive days have elapsed to enable the public to become informed, and to publicly express itself regarding the proposals, as well as regarding other possible subjects of meeting and conferring, and thereafter, requires the Legislature, in an open meeting, to hear public comment on all matters related to the meet and confer proposals.
- 63) Requires any proposal the parties offered during any meeting and conferring session that includes any substantive subject that the Legislature has not first presented as a proposal for public reaction, and the position if any, taken by the Legislature's representatives on the proposal, to be a public record within forty-eight hours.
- 64) Provides that the requirement to wait seven days after publicly presenting a proposal before meeting and conferring does not apply when the Legislature determines that, due to an act of God, natural disaster, or other emergency or calamity affecting the state, and that is beyond the control of the Legislature or recognized employee organization, the parties must meet and confer and take action upon a proposal immediately and without sufficient time for the public to become informed and to publicly express itself. In those cases, the Legislature shall make the results of the meeting and conferring public as soon as reasonably possible.

XXI. No Application of Labor Code Section 923 (3599.77)

- 65) Provides that LEERA does not apply Section 923 of the Labor Code to employees of the Legislature. That section provides that it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents,

in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

XXII. No Immediate Change to Wages, Hours, or Terms and Conditions of Employment (3599.78)

- 66) Provides that nothing in LEERA modifies or eliminates any wages, hours, or terms and conditions of employment for employees of the Legislature. All existing wages, hours, and terms and conditions of employment for employees of the Legislature remain in effect unless and until changed in accordance with the Legislature's procedures or pursuant to a MOU between the Legislature and a recognized employee organization.

XXIII. Severability Clause (3599.79)

- 67) Provides that if any provision of LEERA, or the application thereof to any person or circumstances, is held invalid, the invalidity shall not affect any other provision or application of LEERA that can be given effect without the invalid provision or application and, to this end, LEERA's provisions are severable.

XXIV. Application of Proposition 140 (3599.80)

- 68) Subjects expenses incurred by the Legislature in relation to a properly ratified MOU pursuant to LEERA to Section 7.5 of Article IV of the California Constitution, which limits funding to the Legislature, as specified.

XXV. Effective Date of AB 1 (3599.81)

- 69) Provides that LEERA shall become operative on July 1, 2024.

XXVI. No Reimbursable Local Mandate (SEC. 2)

- 70) Provides that 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.

COMMENTS

1. Need for this bill?

According to the author,

“The legislature itself remains the only branch of state government that does not allow their employees to have the choice to unionize. Legislative staff serve as at-will employees that are exempt from state civil service laws and denied the right to collectively bargain for wages, benefits and working conditions. This has led to generations of legislative employees

being subject to low and inequitable pay and subject to hostile work environments with no recourse other than being forced to seek employment outside of the legislature. This bill will solve this issue by allowing legislative staff the choice to organize and seek representation.”

2. Background

This bill comes to the committee in essentially the same form that last session’s AB 1557 (Stone, 2021) passed the Senate floor. The issues identified in that bill’s Senate Floor Analysis in particular and the bill’s committee analysis in general, both incorporated herein by reference, still apply although the proponents addressed several issues raised in the latter.

Also still highly relevant are the aspirations of many, both within and outside the Legislature, who seek to give legislative employees what nearly all other public employees and most private sector employees already have, a right to choose representation by a union to bargain collectively with their employer and to improve the conditions under which they labor for the people of this state.

The fundamental roadblock for many lies in addressing several constitutional and practical issues that this bill presents. Whatever others may say about all employers’ reluctance or outright hostility to employee organizing or how self-important it may sound, the Legislature is a beast of a different nature. The Legislature does not produce widgets nor seek profit for profit’s sake. Nor is it a minor actor in the regulatory affairs of our residents. It is the constitutional embodiment of how we, as a people, agree to govern ourselves and to regulate the process that permits the evolution of our laws so they may adapt to our own changing nature while holding fast to fundamental precepts that history shows is the only assurance of democratic government that also protects minority rights. When we lose sight of those principles, other co-equal and co-extensive branches of the government must, by their constitutional duty, act. If not, we may find our fate determined under the mutual obligations of our federalist system.

Because we wish to be no part of a false promise to our colleagues that the bill’s passage will guarantee the rights they seek, we once again put forth concerns that certain aspects of the bill’s current provisions make it vulnerable and constitutionally suspect, administratively challenging, and pragmatically unimplementable. The prime concern remains the resolution of addressing the constitutional separation of powers issues with the proponents’ desired objective of utilizing PERB as expert administrator and adjudicator of the bill’s provisions. The committee presents the amendments below with the objective of bridging, however imperfectly, the gaps between the impossible, the feasible, and the attainable.

3. Recommended Amendments

A. To Ensure Noninterference with the Legislature’s Core Functions

(1) Adjustments to the Balance Between PERB’s Role and the Legislature’s Role

Prior analyses both of this bill and of its predecessors have detailed the problematic aspect of PERB administering and adjudicating LEERA. The essential issue remains a question of constitutional separation of powers. This committee recommended in past versions potential solutions including establishing a Legislative Employee Relations Board, an appeal process from PERB to the Legislature or its representatives, or binding

arbitration. All seem to find little support, being either disfavored by proponents or other parties or seen as unnecessarily repetitive of PERB's expertise. Nevertheless, application of PERB's full powers to the Legislature pose a direct challenge to the Legislature's core functions by interfering with the Legislature's ability to organize as it deems necessary to complete its constitutionally mandated mission.

In order to avoid a constitutional conflict, we recommend that the author take amendments that do the following:

- Specify that PERB shall not intrude on the Legislature's core function of efficient and effective lawmaking.
- Clarify that each house's Rules Committee ("the employer") shall have the sole and exclusive authority to determine and designate excluded positions.
- Grant to the respective Rules Committees the sole and exclusive authority to determine bargaining units pursuant to LEERA or pursuant to reasonable rules adopted by the respective houses to implement LEERA. However, the amendment should also provide that such determinations are appealable to PERB.
- Expressly authorize the employer to reject or decline to implement a PERB decision or remedy that the employer determines in good faith intrudes on the Legislature's core function.
- Exclude from LEERA's scope of representation the following subjects:
 - The qualifications and elections of Members of the Legislature, or the terms of their holding office.
 - The ability of the Legislature or each house to choose its officers, adopt rules for its proceedings, select committees, or otherwise exercise the legislative power of this state.
 - The determination of legislative calendars, schedules, deadlines, and operating hours.
 - Ethics and conflict of interest rules.
 - Legislative facilities' design, construction, and location.
- Expressly acknowledge the Legislature's continued right to meet in closed session for specified matters as determined in the constitution.

(2) Seasonal Limitations on the Right to Strike

The Legislature is constitutionally obligated to address the peoples' concerns, deliberate thereon, and act to address them in a well-defined, if little understood process. As enunciated in past analyses of this proposal, the right to strike – universally understood to be employees' most powerful tool in negotiating with intransigent employers - can hinder if not completely shut down this core function. Some might reflexively retort that is exactly the point. However, courts are unlikely to treat a strike in the public sector the same way as in the private, particularly one involving the Legislature, due to the responsibility of public employers to provide services to ensure the public welfare. To the extent that current case law, *intending to support* public sector collective bargaining, still requires a case-by-case analysis whether a strike imperils public welfare, one should expect a more careful examination from courts when a strike might impede the Legislature's core functions.

- To preemptively defend LEERA from such scrutiny and potential frustration, the author ought to amend the bill to provide that strikes shall be prohibited during the period beginning with the bill introduction deadline to the last day for each house to pass bills, inclusive. Such an amendment would allow the Legislature to fulfill its core function of revising and passing laws and still permit employees to strike when the Legislature is present and during other periods still filled with substantial administrative, executive, constituent, and research work where employees may apply appropriate pressure in pursuit of their legitimate objectives.
- For similar reasons the committee recommends prohibiting essential employees, defined as those necessary to maintain public health and safety, from striking at any time to ensure the Legislature can continue its core functions without interruption.
- Also, to ensure the effective operation of the Legislature, the bill should grant each house sole and exclusive authority to determine respectively who is an essential employee.

B. To Exempt Certain Speech and Deliberations from Unfair Labor Practice Claims

It is common in other public sector statutory schemes to protect employees' rights to be free of interference from their employer whose speech or communication on matters related to collective bargaining may unlawfully influence employees' exclusive decision whether to unionize. In contrast, the constitution designs the Legislature to be a deliberative body. Members and staff as well as witnesses and constituents may provide choice words for and opinions on a number of topics, including collective bargaining.

- The bill should be amended to specifically exempt speech, opinions, arguments, etc. by members, employees, and other persons from ULP claims unless the employer has specifically authorized the person to speak for the employer on employer-employee relations matters pursuant to LEERA.

C. To Clarify the Terms “employer”, “house”, and “Legislature” Pursuant to Each Term’s Respective Function

- (1) The bill refers throughout its provisions to the Legislature, sometimes in its role as an employer to whom LEERA’s requirements to negotiate with its employees clearly and appropriately apply and in other instances to its role as lawmaker who has the power to make changes to existing law or introduce and pass new law so that the parties can implement the agreements they negotiate under LEERA. The latter bears directly on the Legislature’s core function and this bill’s provisions cannot command or restrain it without imperiling the legislation.

Additionally, the current bill uses the term “Legislature” at different times to refer to 1) each house’s Rules committee, 2) each house separately, or 3) both houses together. Although the proponents have made progress in delineating the institution’s dual nature as both employer and lawmaker and its bicameral nature of two discrete houses and one unified lawmaker, the author ought to amend the bill to better distinguish when the bill intends the respective Rules Committees to act as employer, when the respective houses must act, and when the bill seeks to task the Legislature in its function as lawmaker.

- The committee recommends that the bill use the term “employer” when referring to the former function and “Legislature” for the latter. More specifically, “employer” should refer to each house’s respective Rules Committee; “house” should refer to an action by the respective chamber through resolution, and “Legislature” should designate when both houses act together to make or amend law through statute or joint declarations through joint resolutions.

D. Other Operational and Administrative Amendments

(1) Limitation on the Disclosure of Legislative Records

- To protect the Legislature’s deliberative process and the ability of members and staff to provide forthright assessments to develop the Legislature’s positions on matters regulated by LEERA, the committee recommends amendments that specifically exempt certain specified legislative records.

(2) Extension of the Bill’s Operative Date to July 1, 2026.

- The bill’s operative date should be extended to July 1, 2026, to allow for the preparation necessary to implement LEERA. However, it should be clear that extending the operative date does not mean that preparations cannot start until July 1, 2026. Rather, meeting and conferring between the employer and employees should begin prior to that time and with the assistance of PERB, as appropriate.

4. Proponent Arguments

According to the author,

“Our staff aren’t looking for special treatment. They are looking for the same dignity and respect afforded to all workers. It is hypocritical as legislators that we ask our employees to staff committees and write legislation that often expands collective bargaining rights for other workers in California, but we intentionally prohibit our own workers from that same right.”

According to the California Labor Federation and a coalition of multiple employee organizations,

“In any workplace, an imbalance of power leaves workers with little to no recourse to make their voice heard. In recent years, various events, including the #MeToo Movement and the COVID-19 pandemic, have shed a spotlight on legislative employees’ fear of retribution for voicing workplace concerns and their lack of tangible workplace protections in statute due to their at-will status. AB 1 will grant employees of the Legislature agency over the decision to form and join a union, without fear of retaliation, and have a collective voice over their working conditions and protections in the workplace.”

5. Opponent Arguments:

None received.

6. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

7. Prior Legislation:

AB 1577 (Stone, 2021) was substantively identical to this bill and would have provided collective bargaining rights to Legislative employees, as specified, by establishing the Legislature Employer-Employee Relations Act (LEERA). The bill died in the Assembly Public Employment and Retirement Committee on concurrence.

AB 314 (Gonzalez, 2021) was substantively similar to this bill. The Assembly held AB 314 at the Desk.

AB 969 (Gonzalez, 2019) was substantively similar to this bill. The Assembly Public and Retirement Committee held AB 969 in committee.

AB 2048 (Gonzalez, 2018) was substantially similar to this bill except that it included specific provisions related to fair share fees (i.e., fees non-union members would have to pay for the benefits that they received resulting from the union's bargaining efforts). U.S. Supreme Court case law has since prohibited mandatory fair share fees. The Assembly Public and Retirement Committee held AB 969 in committee.

AB 83 (Santiago, 2017), Chapter 835, Statutes of 2017, established the Judicial Council Employer-Employee Relations Act, which provides collective bargaining rights to specified Judicial branch employees.

AB 874 (Santiago, 2016), would have applied the Ralph C. Dills Act (Dills Act) to certain specified employees of the Judicial Council, thereby providing collective bargaining rights to these employees. The Governor vetoed the bill.

AB 2350 (Floyd, 2000) would have included nonsupervisory Legislative employees within the definition of "state employees" in the Ralph C. Dills Act, which authorizes collective bargaining for state employees. The bill died in the Assembly Public Employees, Retirement and Social Security Committee.

SUPPORT

California Labor Federation (Sponsor)
American Federation of State, County and Municipal Employees
California Alliance for Retired Americans
California Association of Psychiatric Technicians
California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California Faculty Association

California Federation of Teachers
California IATSE Council
California Low-income Consumer Coalition
California Nurses Association
California Professional Firefighters
California School Employees Association
California State Council of Laborers
California State Legislative Board of SMART-TD
California Teachers Association
California Teamsters Public Affairs Council
City of Pinole
Ella Baker Center for Human Rights
Engineers & Scientists of California, Local 20, IFPTE
Faculty Association of California Community Colleges
Fund Her
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Los Angeles County Federation of Labor
Lyles, Wiesmann, Pizzotti & Associates
National Union of Healthcare Workers
Northern California District Council of The International Longshore and Warehouse Union
Professional and Technical Engineers, IFPTE Local 21
Service Employees International Union, California State Council
Service Employees International Union, Local 1000
Solano County Democratic Central Committee
State Building & Construction Trades Council of California
Transport Workers Union of America
Unite Here Local 11
United Auto Workers, Local 2865
United Auto Workers, Local 5810
United Domestic Workers, AFSCME Local 3930
United Food and Commercial Workers, Western States Council
Utility Workers Union of America

OPPOSITION

None received

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