
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

AB 1 (McKinnor) - Collective bargaining: Legislature

Version: July 13, 2023

Urgency: No

Hearing Date: August 28, 2023

Policy Vote: L., P.E. & R. 4 - 0, JUD. 9 - 1

Mandate: Yes

Consultant: Robert Ingenito

AB 1 would provide employees of the California Legislature with collective bargaining rights, as specified.

Fiscal Impact:

- Administrative costs to the Public Employment Relations Board (PERB) for the current version of the bill have yet to be identified (General Fund).
- This bill would result in annual costs to the Legislature to establish and maintain labor and employee relations functions (General Fund). Additionally, to the extent that the bill results in salary or benefits increases resulting from collective bargaining, it could lead to increased ongoing employment costs. However, under the Constitution, the Legislature's annual spending is capped; consequently, the costs resulting from this bill could not be accommodated through budgetary increases relative to current law, and thus would likely displace existing workload and spending. (See Staff Comments).
- The bill could result in minor additional penalty revenue to the State.

Background: The California Constitution designates most state employees as members of civil service. However, legislative employees are excluded under the Constitution from civil service and instead are "at will" employees, meaning that their employment may be terminated at any time for any lawful reason without any required explanation.

Current law, the Ralph C. Dills Act (Dills Act), governs collective bargaining between the state and recognized state public employee organizations. Existing law excludes certain employees from coverage under the Dills Act, including, among others, managerial employees, supervisory employees, and confidential employees, as defined.

PERB is a quasi-judicial agency that oversees public sector collective bargaining in the State. Its major functions involve the evaluation and adjudication of unfair practice charges filed, and the administration of the collective bargaining process through which employees select organizations to represent them in their labor relations with their employer.

Covered employees may file an unfair labor practice charge with PERB within six months of the alleged unfair practice. Once the charge has been properly filed, a Board agent reviews it to determine if a complaint should be issued, or dismisses it if there is insufficient factual evidence. A dismissal may be appealed. If a complaint is filed, the

case proceeds to an informal settlement conference, or may proceed to a formal hearing conducted by an administrative law judge if no settlement can be reached.

Proposed Law: This bill would, among other things, do the following effective July 1, 2026:

- Enact the Legislature Employer-Employee Relations Act (LEERA), to provide employees of the Legislature, except certain specified categories of excluded employees, 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. The bill would prescribe rights, duties, and prohibitions in this context that parallel those in the Dills Act.
- Define, for the purposes of bargaining or meeting and conferring in good faith, “employer” to mean the Assembly Committee on Rules or the Senate Committee on Rules.
- Provide 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 \$1,000.
- Require the employer to meet and confer with representatives of recognized employee organizations regarding matters within the scope of representation.
- Exclude certain matters from the scope of representation, as specified.
- Grant exclusive jurisdiction to PERB to make an initial determination as to whether charges of unfair practices are justified, and, if so, the necessary remedy, as specified. However, the bill would prohibit PERB from issuing a decision or order that intrudes upon or interferes with the Legislature’s core function of efficient and effective lawmaking or the essential operation of the Legislature.
- Require PERB to determine appropriate bargaining units, and would prohibit it from including employees in a bargaining unit that includes employees other than those of the employer.
- Prohibit PERB from including within a bargaining unit employees from both the Assembly and Senate.
- Provide that the provisions of LEERA would be severable.
- Exempt from public inspection records related to activities governed by the LEERA that reveal the employer’s deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under LEERA.

Related Legislation:

- AB 1577 (Stone) would have established a LEERA that is substantially similar to this bill. The bill died on a 2-3 concurrence vote in the Assembly Public Employment and Retirement Committee.
- AB 314 (Lorena Gonzalez) would have established a LEERA that is substantially similar to this bill. The bill died at the Assembly Desk.
- AB 969 (Lorena Gonzalez, 2019) would have established a LEERA that is substantially similar to this bill. The bill died in the Assembly Public Employment and Retirement Committee.
- AB 2048 (Gonzalez, 2018) would have established a LEERA that is substantially similar to this bill. The bill died in the Assembly Public Employment, Retirement, and Social Security Committee.
- AB 83 (Santiago, Chapter 835, Statutes of 2017) established JCEERA which allows certain employees of the Judicial Council to form collective bargaining agreements and is substantially similar to this bill.
- AB 2350 (Floyd, 2000) would have included nonsupervisory employees of the Legislature as “state employees” for purposes of the Dills Act. The bill failed passage in the Assembly Committee on Public Employees, Retirement, and Social Security.

Staff Comments: This bill would impose new spending requirements on the Legislature resulting from collective bargaining, including (1) negotiating the MOUs, (2) administering the contracts, (3) ensuring the Legislature remains in compliance, (4) training Members and management, and (5) responding to grievances. Specific costs resulting from the bill would, among other factors, depend on the number of bargaining units formed.

Unlike other state departments whose budgets increase annually (subject to the budget process) in response to rising caseloads and additional workload, the Legislature’s ability to spend is constrained. Specifically, Proposition 140 (1990), among other things, set an annual cap on the amount of money that may be spent to support the Legislature’s operations (for example, legislator and staff salaries, travel, and communications). This cap changes annually based on growth in the State’s economy and population, and is completely outside the Legislature’s control. Thus, this bill would impose new spending requirements on the Legislature, but not provide new resources to accommodate the additional spending.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

-- END --