
THIRD READING

Bill No: AB 1
Author: McKinnor (D), Bryan (D), Wendy Carrillo (D), Haney (D), Kalra (D),
Lee (D), McCarty (D), Ortega (D) and Reyes (D), et al.
Amended: 9/8/23 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 6/28/23
AYES: Cortese, Durazo, Laird, Smallwood-Cuevas
NO VOTE RECORDED: Wilk

SENATE JUDICIARY COMMITTEE: 9-1, 7/11/23
AYES: Umberg, Allen, Ashby, Caballero, Durazo, Laird, Min, Stern, Wiener
NOES: Niello
NO VOTE RECORDED: Wilk

SENATE APPROPRIATIONS COMMITTEE: 5-2, 9/1/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

ASSEMBLY FLOOR: 68-5, 5/25/23 - See last page for vote

SUBJECT: Collective bargaining: Legislature

SOURCE: California Labor Federation

DIGEST: This bill provides collective bargaining rights to legislative employees, as specified, by establishing the Legislature Employer-Employee Relations Act (LEERA).

Senate Floor Amendments of 9/8/23 (1) declare that legislative employees are exempt from civil service under the California constitution; (2) provide that a memorandum of understanding (MOU) between the parties shall not prohibit the employer from separating employees assigned to a Member of the Legislature who is not reelected, resigns, or otherwise departs from the employer; and (3) require the employer to provide a transition period for such employees and make the terms

of the transition period within the scope of representation and subject to collective bargaining.

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 establishes LEERA to provide collective bargaining rights to employees of the Assembly Rules Committee and the Senate Rules Committee, respectively, commonly referred to as legislative employees.

[NOTE: For a detailed description of this bill's provisions, please see the Senate Labor, Public Employee and Retirement Committee's policy analysis, incorporated herein by reference, of the May 18, 2023, version of AB 1.]

Amendments to AB 1 since the May 18, 2023 version do the following:

- 1) Replace references to the "Legislature" with the term "employer" and define "employer" as the respective chambers' Rules Committees to reflect the Legislature's actual employer-employee relationships.
- 2) Modify the definition of "employee" to except an additional category of persons from LEERA (besides Members, Appointed Officers, Department or Office Leaders, and Confidential employees). This additional category is denominated "Excluded employees".
- 3) Grant the employer the sole and exclusive authority to designate employees as department or office leaders, confidential employees, or excluded employees (i.e., employee not subject to LEERA).
- 4) Limit the total number of the respective employers' employees who are not subject to LEERA to one-third of the total employee positions authorized by the employer.

- 5) Clarify that PERB shall not issue any 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.
- 6) Exclude decisions regarding the following matters from the scope of representation:
 - Any matter relating to the qualifications and elections of Members of the Legislature, or the holding of office of Members of the Legislature.
 - Any matter relating to the Legislature or each house thereof choosing its officers, adopting rules for its proceedings, selecting committees necessary for the conduct of its business, considering and enacting legislation, or otherwise exercising the legislative power of this state.
 - Any matter relating to legislative calendars, schedules, and deadlines of the Legislature.
 - Laws, rules, policies, or procedures regarding ethics or conflicts of interest.
- 7) Replace references to the terms "law, rule, or resolution" with the term "policy or procedure" to reflect the distinction between the Legislature's law-making function and its function as an employer, to which LEERA applies only to the latter. The amendments thereby also help ensure that unions have no greater access to legislative lawmaking deliberations than the general public or other stakeholders.
- 8) Clarify that LEERA does not affect the constitutional and statutory authority of each house of the Legislature and the committees thereof to hold closed meetings.
- 9) Protect the expression of any views, arguments, or opinions related to LEERA or to matters within the scope of representation, or the dissemination thereof in any form, by a Member of the Legislature or an employee, including any LEERA-exempt employee, from constituting, or being evidence of, an unfair labor practice, unless the employer authorized the individual to express that view, argument, or opinion on behalf of, or authorized the individual to represent, the employer as an employer.
- 10) Provide that LEERA nor any other law requires the employer to disclose legislative records related to activities governed by 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.

- 11) Declare that legislative employees are exempt from civil service under the California constitution.
- 12) Provide that an MOU between the parties shall not prohibit the employer from separating employees assigned to a Member of the Legislature who is not reelected, resigns, or otherwise departs from the employer.
- 13) Require the employer to provide a transition period for such employees and make the terms of the transition period within the scope of representation and subject to collective bargaining.
- 14) Change the operative date of the bill from July 1, 2024, to July 1, 2026.
- 15) Make findings and declarations related to the Public Records Act that it is necessary that this bill limit the public's access to information in order to fulfill the purpose to promote full communication between the Legislature and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions and to allow the Legislature, in its role as employer, the opportunity to develop responsible and meaningful bargaining positions to present to employee representatives pursuant to this act and respond to the positions put forth by the same.

Comments

Continuing Concerns: Although this bill's amendments address many important considerations identified in previous analyses, several issues remain that create uncertainty regarding the constitutionality and functionality of the bill, a sample of which are briefly presented below:

- This bill may well generate substantial litigation given its novelty and potential impact on the operation of the Legislature and the constitutional issues raised surrounding its provisions. Designation for venue of any litigation regarding LEERA to the Third District Court of Appeal (a common feature of state governmental litigation) would avoid inconsistent decisions around the state in the development and application of LEERA and avoid any race to venue shop "pro-labor" or "pro-business" courts depending on the interested parties' strategies and objectives.
- This bill's continued silence on strikes, mediation, or arbitration provisions provides ample ground for future litigation. An explicit guarantee of limited

strikes designed not to interfere with the core constitutional functions of the Legislature combined with a fair mediation process would provide an important cornerstone for this bill's constitutional firmness.

- PERB's continued dominant role in the implementation and adjudication of LEERA implicates a continued constitutional infirmity of this bill as reviewed in previous legislative policy analyses. Practically speaking, the ability of the Legislature to defund PERB may serve as a shield from these constitutional concerns.
- While other issues remain, it is also true that very few legislative projects pass in perfect form. The need for ongoing clarification and improvement would not be unique to this bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Administrative costs to 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 this 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.
- This bill could result in minor additional penalty revenue to the State.

SUPPORT: (Verified 9/11/23)

California Labor Federation (source)
American Federation of State, County and Municipal Employees California
California Alliance for Retired Americans
California Association of Psychiatric Technicians
California Civil Liberties Advocacy
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Democratic Party

California Environmental Voters
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 the Sheet Metal, Air, Rail and Transportation
Workers - Transportation Division
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 & Technical Engineers, Local 21, IFPTE
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
Unite Here Local 11
United Auto Workers Local 2865
United Auto Workers Local 5810
United Domestic Workers, Local 3930
United Food and Commercial Workers, Western States Council
Utility Workers Union of America

OPPOSITION: (Verified 9/11/23)

None received

ARGUMENTS IN SUPPORT: 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.”

ASSEMBLY FLOOR: 68-5, 5/25/23

AYES: Addis, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Flora, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Waldron, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NOES: Megan Dahle, Dixon, Vince Fong, Gallagher, Sanchez

NO VOTE RECORDED: Aguiar-Curry, Essayli, Mathis, Papan, Jim Patterson, Ta, Wallis

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