Date of Hearing: March 18, 2026

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT
Tina S. McKinnor, Chair
AB 1564 (Ahrens) – As Amended February 25, 2026

SUBJECT: Employer-employee relations: confidential communications

SUMMARY: Prohibits a public employer from questioning an employee or employee representative regarding communications between the employee and employee representative, among other provisions. Specifically, **this bill:**

1) Prohibits a public employer from questioning any employee, a representative of a recognized employee organization or an exclusive representative regarding communications made in confidence between a public employee and the representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.

2) Establishes that its provisions are intended to be consistent, and not in conflict, with *William S. Hart Union High School District* (2018), PERB Decision No. 2595.

3) Prohibits a public employer from compelling confidential communication disclosures to a third party relating to any matter within the scope of representation of the recognized employee organization's representation.

4) Does not apply to criminal investigation, and does not supersede existing law relating to investigations and interrogations of public safety officers.[1]

5) Includes uncodified legislative findings and declarations for these purposes.

EXISTING LAW:

1) Provides a privilege enabling a party to refuse to testify or otherwise disclose confidential communications made in the course of certain relationships, including the following within the Evidence (Evid.) Code:

   a) The lawyer-client relationship. (Section 954.)

   b) The spousal relationship. (Section 980.)

   c) Physician-patient relationship. (Section 994.)

   d) Psychotherapist-patient relationship. (Section 1014.)

   e) Sexual assault counselor-victim relationship. (Section 1035.8.)

   f) Domestic violence counselor-victim relationship. (Section 1037.5.)

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[1] This bill incorporates Section 3303 of the Gov. Code by reference. Commonly deemed or referred to as the "heart" of the Public Safety Officers Procedural Bill of Rights Act (PSOPBRA), this specific section relates to notice to, and the nature of investigations and interrogations of, "public safety officers," as this term is statutorily defined.

g) Clergy-penitent relationship. (Sections 1033 and 1034.)

2) Prohibits the holder of a privilege from claiming a privilege based on one of the relations listed above if a holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to a disclosure made by anyone. (Section 912 (a), Evid. Code.)

3) Provides that if two or more persons are joint holders of a privilege, a waiver of a right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the spousal privilege, the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege. (Section 912 (b), Evid. Code.)

4) Provides that if a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of a recognized privileged relation, then the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential. Additionally, provides that a communication does not lose its privileged character for the sole reason that it was communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication. (Section 917, Evid. Code.)

5) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors. (Section 151 *et seq.* Title 29, United States Code.)

   While the NLRA and the decisions of its National Labor Relations Board often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights.

6) 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 some, but not all, public transit districts.

7) Expressly establishes as unlawful within various statewide public employer-employee relations statutes, certain acts or conduct by a public employer relating to employee and labor organization rights, including specified acts or conduct relating to the collective bargaining process. Similar unlawful acts also are expressly applicable to employee organizations.

8) Establishes the Public Employee Communication Chapter (PECC), which gives exclusive representatives of California's public employees specific rights designed to provide them with meaningful access and the ability to effectively communicate with represented members. (Sections 3555 *et seq.,* Gov. Code.) Among other statutes, the PECC is within the administrative jurisdiction of the Public Employment Relations Board (PERB).

9) Establishes the PERB, a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers, employees, and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight. (Sections 3541 *et seq.,* Gov. Code.)

10) Does not cover California's public transit districts by a common employer-employee relations statute. Instead, while some transit districts are subject to specific employer-employee relations statutes, the majority of transit districts are subject to labor relations provisions found in each district's specific Public Utilities Code (P.U.C.) enabling statute, joint powers agreements, or in articles of incorporation, and bylaws.

    Generally, these provisions provide employees with basic rights to organization and representation, but do not define or prohibit unfair labor practices. Unlike other California public agencies and employees, public transit districts and their employees not within the jurisdiction of the PERB have no recourse to the PERB. Instead, they must rely upon the courts to remedy alleged violations. Additionally, they may be subject to provisions of the federal Labor Management Relations Act of 1947 and the 1964 Urban Mass Transit Act (modernly referred to as the Federal Transit Act).

11) Establishes the Public Safety Officers Procedural Bill of Rights Act, which provides procedural rights that must be accorded to such officers when they are subject to investigation or discipline. (Sections 3300 *et seq.,* Gov. Code.)

FISCAL EFFECT: Unknown. This bill is flagged as fiscal by Legislative Counsel.

COMMENTS:

Among other things, information provided by the author states that, "[m]ost public employees reasonably believe their conversations with union representatives are confidential. However, current law does not explicitly prohibit employers from compelling disclosure of those communications… [to] safeguard the confidentiality of communications between public employees and their union representatives. While the [PERB] has ruled in multiple cases, including *California School Employees Association v. William S. Hart Union High School District* (2018) and *Victor Valley Teachers Association v. Victor Valley Union High School District* (2022), that questioning employees about such discussions may interfere with protected labor rights, these decisions do not create a formal evidentiary privilege or an absolute rule of confidentiality. Under existing law, employers may still question employees or union representatives in certain circumstances. This gap creates the potential for coercion, erodes trust in union representation, and weakens employee protections. [This bill] addresses this issue by codifying PERB's rulings and expressly prohibiting public employers from compelling disclosure of confidential communications between employees and their union representatives."

The Public Employee Communication Chapter

As previously stated under "Existing Law," the PECC is established. Within this statute, the legislative findings and declarations expressly state that, "[…] the ability of an exclusive representative to communicate with the public employees it represents is necessary to ensure the

effectiveness of state labor relations statutes, and *the exclusive representative cannot properly discharge its legal obligations unless it is able to meaningfully communicate through cost-effective and efficient means with the public employees on whose behalf it acts*. *(Emphasis added.)*

"In most cases, that communication includes an opportunity to discuss the rights and obligations created by the contract and the role of the representative to answer questions. That communication is necessary for harmonious public employment relations […]." (Section 3555, Gov. Code.)

Although the PECC provides employee organizations with such communications rights, unlike other states that have established an explicit privilege regarding employee-union communications by statute or judicial decision, public employees in California do not have statutory communication protections with their employee organizations, which may foster apprehension or lack of candor with their union representative, and undermines trust in that relationship.

A Core Function of Employee Organizations: Protecting Employee Rights Through Representation

Here, as stated verbatim in a prior analysis of a bill of similar subject, "[t]he communications that this bill seeks to protect occur, primarily, when an employee is filing a grievance or facing an adverse action against their employer. In these cases, the [labor organization] agent's role in representing an employee reflects one of the core functions of the labor organization [and of organized labor, as a whole] representing an employee in a dispute with their employer […].

"Should employees begin to question the confidentiality of their communications with [labor organization] agents, such fears would not only undermine the core functions of the [organization], but may provide a chilling effect with regards to employees coming forward with claims of sexual harassment, civil rights violations, or other instances of workplace misconduct."[2]

Should This Bill Advance and Be Enacted, California Would Not Be the First State To Do So

Although this bill does not propose to establish a *per se* explicit communications evidentiary privilege similar to those that exist for the respective lawyer-client, physician-patient, psychotherapist-patient, sexual assault counselor-victim, domestic violence counselor-victim, and clergy-penitent relationships, other states, either by statute or court ruling, have effectuated a privilege for certain communications between a labor organization agent and a represented employee.

For example, in 2012, the Alaska Supreme Court recognized that a privilege between union agents and employees, similar to that between lawyers and their clients, was necessary to encourage employees to "communicate fully and frankly" with their union agents. (*Peterson v. State* (2012) 280 P. 3d. 559, 565.) The court noted that to force disclosure of such communication, particularly in the context of grievance discussions, would have a chilling effect

[2] See analysis of Assembly Bill 2421 (Low, 2024), Assembly Committee on Public Employment and Retirement. April 3, 2024.

on the employee's willingness to come forward and speak candidly with their agents. *(Peterson, id.,* at p. 563; pp. 565-567.) For the same reasons, Illinois and Maryland codified the privilege between employees and their union representatives. In Maryland, labor organizations and agents of labor organizations cannot be compelled to disclose the information that is given to them by an employee so long as that information relates to an employee grievance. (Section 9-124, Maryland Courts and Judicial Proceedings Code.) The Illinois provision extends even greater protection to the union agent and employee privilege. Under Illinois state law, the privilege between the union agent and employee extends to both civil and criminal proceedings…." (735, Illinois Compiled Statutes, 5/8-803.5) And, in Washington, an employee-union communications privilege from examination and disclosure exists.[3]

Related PERB Decisions

In *California School Employees Assn. v. William S. Hart Union High School District* (2018), which is incorporated in this bill, the Administrative Law Judge found that an employer interfered with employee and union rights by asking a union steward about complaints received from bargaining unit members about another unit member. (PERB Decision No. 2595, *id*.)

In that case, and recall from earlier that the NLRA and decisions of the NLRB often provide persuasive precedent in interpreting state collective bargaining law, the PERB cited another one of its decisions where it stated that, "[it] is […] beyond dispute that an employer's inquiries into discussions between employees and their union representatives have a tendency to chill the protected activities of both the employees and the representatives." (*County of Merced* (2014) PERB Decision No. 2361-M, pp. 7-8, 10.) Further, citing *Cook Paint & Varnish Co.* (1981) 258 NLRB 1230, 1232, the PERB's decision in *County of Merced, id.,* states*, "*[…] as the NLRB has explained, allowing an employer to compel disclosure of the substance of conversations between an employee and [their] union steward 'manifestly restrains employees in their willingness to candidly discuss matters with their chosen, statutory representatives,' and inhibit[s] stewards in obtaining the needed information from employees. Such conduct also interferes with protected rights more generally, because it 'cast(s) a chilling effect over all of [the] employees and their stewards who seek to candidly communicate with each other over matters' concerning their employment." *(Cook Paint.)*

It is further noted that the aforementioned PERB decisions are not solely those where it has similarly decided. For example, it adopted a three-part test of the NLRB for determining when an employer's questions of an employee or union representative during a deposition interfere with protected labor rights of public employees (*Victor Valley Union High School District* (2022), PERB Decision No. 2822), and regarding certain safeguards when interviewing an employee in preparation for an arbitration hearing. (*City of Commerce* (2018) PERB Decision No. 2602, citing, *inter alia, Johnnie's Poultry Company* (1964) 146 NLRB 770, enf. den. (8th Cir. 1965) 344 F.2d 617.)[4]

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[3] Washington State Legislature: https://app.leg.wa.gov/billsummary?billnumber=1187&year=2023

[4] In *Johnnie's Poultry, id.,* the NLRB recognized that where an employer has a legitimate cause to inquire, it may exercise the privilege of interrogating employees on matters involving their NLRA Section 7 rights without incurring NLRA Section 8(a)(1) liability. To remove the coercive nature of the questioning, the employer must communicate the purpose of the questioning to the employee; provide assurance that no reprisal will take place; that employee participation is voluntary; and, the questioning must occur in a context free from employer hostility to union organization and not itself be coercive in nature, nor the questions exceed the necessities of legitimate purpose

This Bill

Questioning a union agent about whether (or what) represented employees had communicated to the agent interferes with an employee's right to serve as a union agent and employee rights to confer with their union agent. A public employer's legitimate investigation into alleged wrongdoing cannot include quizzing a union agent (or employee) about the substance of their communication; thereby, deputizing the employee organization as the employer's agent for conducting disciplinary investigations. Along these lines, this bill is consistent and in harmony with various employee organization-represented employee rights, including "Weingarten Rights," and others discussed below.

What are "Weingarten rights?" Following the United States (U.S.) Supreme Court Ruling in *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251, where an employer denied an employee's request for union representation at an interview and where the employee reasonably believed the interview might result in disciplinary action, the court reversed a judgement by the U.S. Court of Appeals for the Fifth Circuit and held that the employer violated Section 7 of the NLRA. There, the U.S. Supreme Court held that unionized employees have a right to have a union representative present during an *investigatory interview*. As a result of that decision, such rights have commonly been referred to as "Weingarten Rights." These rights apply during such interviews *conducted by the employer and where the employee reasonably believes may result in disciplinary action*. *(Emphasis added.)*

It is noted that, the provisions of this bill would be enacted within Chapter 11.5, Division 4 of Title 1 of the Gov. Code, known as the PECC; thus, uniformly applying its public sector employment relations provisions to local, state, K-14 education, higher education (California State University, University of California, and San Francisco College of Law [formerly, Hastings College of Law]), Judicial Council, trial court (and trial court interpreters), and public transit district employers and their employees governed by the Chapter. (Section 3555.5, Gov. Code.) While being consistent with, providing for, and applying such uniformity, this bill seeks to ensure protection of public employee-employee representative communications for purposes of representation, and more specifically, is narrowly tailored relating to communications involving representation on matters within the scope of the employee representative's representation, i.e., wages, hours, and other terms and conditions of employment, except in criminal investigations, and investigations and interrogations of public safety officers, as provided. In doing so, "[…] this bill recognizes that unlike most professional-client relationships, the [labor organization] agent owes a duty not only to the employee, but also to all of the employees represented by the [labor organization]," and "… the [labor organization] agent… may…. refuse to disclose the content of [the …] communication on the grounds that disclosure could adversely affect the union agent's other represented employees. This bill would provide employees with assurances that their communications would be safe, and empower employees to [candidly] communicate [with their labor organization agent consistent with the labor organization's core functions]."[5]

Further, as with Weingarten case law rights, statutory employee organization communication rights, and the various statutes the confer organization rights to public employees, this bill may be viewed as consistent and harmonious with, as well as in furtherance of, an employee's rights

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by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees.

[5] See fn. 2.

to join and participate in the activities of an employee organization, and an employee organization's paramount legal obligation to represent its members without employer interference.[6]

It is further noted that the consistency, uniformity, and harmony provided by this bill would not eviscerate fully the ability of a party to file an unfair labor practice charge (ULP) with the PERB as, naturally, the facts, circumstances, and merit of each ULP filed would continue to be reviewed by the PERB for a determination as currently exists under the PECC and other employment relations statutes that it administers.

Conflict Notice to the Author

The author is informed that the Office of Legislative Counsel has issued a conflict notice regarding this bill and Assembly Bill 340 (Ahrens, 2025).

A conflict exists when two or more bills and/or constitutional amendments amend, add, repeal, or amend and renumber the same section, article, chapter, division, title, or heading. The enactment of these measures in their present form could give rise to a serious legal problem that may be avoided by appropriate amendments.

Author's Statement

"Many employees reasonably believe that conversations with their union representatives about workplace issues are private and cannot be disclosed to their employer. However, current law does not expressly prohibit employers from compelling employees or their representatives to reveal those discussions. [This bill] aims to establish a clear standard of protecting confidential communications between employees and their union representatives. Doing so would create a safe and secure environment for employees to openly discuss their workplace rights, concerns, and representation without fear of employer interference."

Comments by Supporters

In part, the Peace Officers Research Association states that, "… this bill would recognize the confidentiality of.. [communications between represented employees and their union representatives about matters within the scope of union representation and] preclude public employers from interfering with union representation, which benefits every public sector union and public employee in California. [This bill] would also provide that communications between an employee and their employee representative would not be confidential if the representative was a witness or party to any of the events forming the basis of a potential administrative disciplinary or criminal investigation. This exception is limited to disciplinary investigations and criminal investigations and is consistent with the peace officer and firefighter bill of rights. This exception does not apply to representation in grievances and unfair practice cases. The bill does not create a privilege equal to attorney/client or doctor/patient privileges. No privilege would exist in a civil or criminal proceeding where someone other than the employing agency or its agents sought evidence regarding those communications. For example, if an employee brought a

[6] For example, see Sections Gov. Code Sections 3500, 3503, 3506, 3506.5, 3515, 3515.5, 3519, 3524.51, 3524.56, 3524.57, 3524.71, 3543, 3543.1, 3543.5, 3565, 3571, 71630, 71631, 71633, and 71815, Public Utilities Code Sections 28849, 28856, 28858, 102399, 102400, 102404, 102406, 100300, 100309, 98160.5, 98162, 98169, 999563, and 19563.7.

sexual harassment lawsuit, this prohibition against employer interrogations would not prevent the plaintiff from being able to force the union representative to testify to their communications. The bill also does not preclude public employers from questioning union representatives about things they personally observed as percipient witnesses when those observations are distinct from confidential communications with union members about union representation and union matters." Further, [this bill] is modest and balanced. It prevents public agencies from interfering in union representation matters and communications in a host of circumstances, but it does not create a statutory privilege [and…] would merely constitute an unfair labor practice to be adjudicated by PERB."

In support of this bill, the California Association of Highway Patrolmen, the California Association of Psychiatric Technicians, the Orange County Employees Association, and Teamsters California offer similar statements regarding the need to protect union and represented employee communications.

Comments by Opponents

A coalition of local government employers, i.e., cities, counties, special districts, recreation and park districts, rural counties, and urban counties, as well as education employers, i.e., small school districts, the University of California, school business officials, school administrators, and health care districts state, among other things, that prior similar bills have been "unsuccessful" or "vetoed," and this bill is not different. They further state that, "… to conduct proper investigations that uphold the public's trust, protect against the misuse of public funds, and ensure the safety and well-being of both public employees and the public at large, it is critical that a public employer has the ability to interview all individuals with relevant information to ascertain the facts and under the matter fully. This bill would increase costs for [each segment of California government] by creating incomplete investigations, since all appropriate employees with relevant information cannot be questioned." Specifically, as to costs, they state that this bill could lead to "unknown and unbudgeted costs… for dispute resolution, attorney fees," and "could force [public agencies] to, in some cases, update collective bargaining agreements and policies regarding workplace investigations and allowable communications between represented employees and their employer…."

Opponents express concerns that this bill is inconsistent with the PERB's decision in *William S. Hart UHSD, id.,* as that decision engaged in a "circumstantial analysis to determine whether employer questioning related to a disciplinary investigation was prohibited or not, while weighing the employee's and the employer's interests. The bright line standard in the opinion was narrow in scope…, and "this bill goes beyond that, forgoing any circumstantial analysis or weighing of interests, and exceeding the scope of any standards articulated by the decision…." They question "whether evidence exists that the PERB is denying the interests of employees on this issue, raising the question of whether a legislative solution is warranted."

Among other things, they articulate that this bill would create a "de facto prohibition against employers requesting a court to compel disclosure of purportedly confidential communications, which is the same outcome as if the communication was privileged in those circumstances, and this bill endangers workplace safety."

Prior or Related Legislation

Assembly Bill 340 (Ahrens, 2025), except for the uncodified legislative findings and declarations in the current bill, was substantially similar to the current bill and proposed to prohibit an employer from questioning an employee or employee representative regarding communications between the employee and employee representative, among other provisions. This bill was held in the Senate Committee on Appropriations.

Assembly Bill 2421 (Low, 2024) proposed to make changes to existing law relating to public employer prohibited activity or conduct and public employer-employee relations. This bill was held in the Senate Committee on Appropriations.

Assembly Bill 418 (Kalra, 2019) was substantially similar to Assembly Bill 3121 (Kalra, 2018), which proposed to establish an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. This bill died on the Senate inactive file.

Assembly Bill 3121 (Kalra, 2018) proposed to establish an evidentiary privilege from disclosure for communications between a union agent and a represented employee or represented former employee. This bill died on the Senate inactive file.

Assembly Bill 729 (Roger Hernández, 2013) proposed to provide a union agent, as defined, and a represented employee or represented former employee a privilege of refusing to disclose any confidential communication between the employee or former employee and the union agent while the union agent is acting in their representative capacity, except as specified. The former Governor vetoed this bill stating:

> "*I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney. Moreover, this bill could compromise the ability of employers to conduct investigations into workplace safety, harassment and other allegations."*

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (Sponsor)
California Association of Highway Patrolmen
California Association of Psychiatric Technicians
Orange County Employees Association
Teamsters California

Opposition

Association of California Healthcare Districts
Association of California School Administrators
California Association of Recreation & Park Districts
California Association of School Business Officials
California Chamber of Commerce
California Special Districts Association

California State Association of Counties
League of California Cities
Rural County Representatives of California
Small School Districts' Association
University of California
Urban Counties of California

Analysis Prepared by: Michael Bolden / P. E. & R. / (916) 319-3957