
THIRD READING

Bill No: AB 288
Author: McKinnor (D), et al.
Amended: 8/29/25 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 6/18/25
AYES: Smallwood-Cuevas, Cortese, Durazo, Laird
NOES: Strickland

SENATE JUDICIARY COMMITTEE: 11-1, 7/8/25
AYES: Umberg, Allen, Arreguín, Ashby, Caballero, Durazo, Laird, Stern, Wahab,
Weber Pierson, Wiener
NOES: Niello
NO VOTE RECORDED: Valladares

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/29/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 68-2, 6/2/25 - See last page for vote

SUBJECT: Employment: labor organization

SOURCE: California Federation of Labor Unions
International Brotherhood of Boilermakers, Western States Section
SEIU California State Council
California Teamsters Public Affairs Council

DIGEST: This bill permits private sector employees and their unions to petition the Public Employment Relations Board (PERB) over unfair labor practice charges, including determinations of union elections and union certifications, regulated by the National Labor Relations Act (NRLA) if the National Labor Relations Board (NLRB) fails to adjudicate those petitions in a timely fashion. This bill also authorizes PERB to adjudicate those petitions, as specified.

ANALYSIS:

Existing Law:

- 1) 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. 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 have no collective bargaining rights absent specific statutory authority establishing those rights. (29 United States Code §§151 et seq.)
- 2) Provides under the U.S. Constitution that federal law preempts state law when the two conflict. (U. S. Const., Art. VI, cl. 2.)
- 3) Requires under U.S. Supreme Court jurisprudence that “[w]hen an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board”. (*San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959))¹
- 4) 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. (See e.g., the Meyers-Milias-Brown Act (MMBA) which governs employer-employee relations for local public employers and their employees.) (Government Code §§ 3500 et seq.)
- 5) Establishes the PERB, a quasi-judicial administrative agency charged with administering certain statutory frameworks governing California state and local public employer-employee relations, resolving disputes, and enforcing the

¹ As restated by Justice Barret in *Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174*, 598 U.S. 771 (2023), “Preemption under the NLRA is unusual, though, because our precedent maintains that the NLRA preempts state law even when the two only arguably conflict. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959) (‘When an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board’). This doctrine—named Garmon preemption after the case that originated it—thus goes beyond the usual preemption rule. Under Garmon, States cannot regulate conduct ‘that the NLRA protects, prohibits, or arguably protects or prohibits.’ *Wisconsin Dept. of Industry v. Gould Inc.*, 475 U. S. 282, 286 (1986).”

statutory duties and rights of public agency employers, employees, and employee organizations. (Government Code §3541 et seq.)

- 6) Establishes the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), which makes it unlawful for public employers to deter or discourage public employees or applicants to be public employees from: a) becoming or remaining members of an employee organization; b) authorizing representation by an employee; or, c) authorizing dues or fee deductions to an employee organization. (Government Code §§3550 et seq.)
- 7) Establishes the Public Employee Communication Chapter (PECC), which provides California public employee unions with specific rights designed to provide them with meaningful access to, and the ability to effectively communicate with, their represented members. (Government Code §§3555 et seq.)

This bill:

- 1) Seeks to provide private sector employees and their unions an alternative forum to redress their collective bargaining rights under the NLRA when the NLRB will not or cannot provide that redress for specified reasons. For a detailed analysis of this bill's provisions and related background please see the policy analyses of the Senate Labor, Public Employment and Retirement (LPER) Committee and of the Senate Judiciary Committee, both of which are incorporated herein by reference.
- 2) To the extent permitted under law, this bill may provide greater protections to those workers and their unions than that provided by the NLRA by asserting and incorporating collective bargaining rights guaranteed under the state constitution and state labor code.
- 3) In summary, does the following:
 - a) Prohibits the state and its political subdivisions from directly or indirectly denying, burdening, or abridging specified rights (except as necessary to serve a compelling state interest achieved by the least restrictive means) to workers whose collective bargaining rights the National Relations Labor Board (NLRB) fails to address, as specified.
 - b) Grants private sector workers the right to petition the PERB, as specified, to vindicate their right to organize and collectively bargain.

- c) Defines “worker” based on the worker’s status in relation to the NLRB’s inefficacy to protect the worker’s rights under the National Relations Labor Act (NLRA).
 - d) Authorizes PERB to adjudicate private sector workers’ and their unions’ petitions pursuant to its own procedures in the manner that most expansively “effectuates” the workers’ rights using its decisions, rules, and regulations or NLRB’s precedent.
 - e) Authorizes PERB to order employers (but not unions) to binding arbitration, as specified, and to order any appropriate remedy, including injunctive relief and penalties.
 - f) Authorizes PERB to decide pending objections or challenges to an NLRB union election, to certify workers’ union, as specified, and to assess civil penalties against employers engaged in a pattern or practice of committing unfair labor practices of \$1,000 per worker per violation.
 - g) Authorizes state appellate courts of competent jurisdiction to review any PERB action pursuant to this bill’s provisions.
- 4) Additionally, the current version of this bill does the following:
- a) Adds legislative findings and declarations to buttress the justification for the use of the state’s general welfare and policing powers to regulate private sector labor relations.
 - b) Clarifies that this bill does not apply to workers who are subject to the jurisdiction of the Agricultural Labor Relations Board.
 - c) Adds to the categories of workers covered under the bill by including a worker who “seeks to have the NLRB protect and enforce their rights to full freedom of association, self-organization, or designation of representatives of their own choosing, but the putative employer has caused undue delay by publicly challenging their status as employer.”
 - d) Clarifies that covered workers may petition PERB to require employers to participate in binding arbitration to resolve any differences between the parties, as specified. Previously, this bill erroneously cited binding mediation (see Senate LPER committee policy analysis regarding mediation, “binding mediation”, and binding arbitration).

- e) Requires a covered worker to file an unfair practice charge with PERB to access PERB's jurisdiction, and to include the original charge and all supporting documentation and evidence filed with the NLRB, as specified.
- f) Prohibits PERB from serving the documentation and evidence on the employer, requires PERB to maintain the supporting documentation and evidence as confidential as part of its investigatory file, and exempts the documentation and evidence from the California Records Act.
- g) Requires PERB to process a filed unfair practice charge according to its existing procedures.
- h) Authorizes PERB to assess civil penalties against employers engaged in a pattern or practice of committing unfair labor practices \$1,000 per worker per violation.
- i) Allows the employer the opportunity to review and dispute the allegations against it pursuant to PERB's procedures.
- j) Provides PERB discretion, if it has insufficient resources, whether to process charges from some categories of covered workers, as specified, but does not provide that discretion to the first five categories of covered workers.
- k) Requires PERB to process and prioritize charges of the first five categories of workers, as specified, if it determines that it has insufficient resources to process all charges brought under this bill's provisions.
- l) Adds several additional categories of covered workers who could petition PERB, as specified.
- m) Defines "Charging party" to mean the party bringing an unlawful practices charge (i.e., the worker or union, since this bill does not provide employers any rights to bring unlawful practice charges to PERB).
- n) Defines "Respondent" to mean the party that allegedly committed the unfair practice (i.e., the employer).
- o) Adds constitutionally required language and finding to support this bill's exemption of NLRB documentation from the California Public Records Act.

Background

Need for this Bill? According to the author:

“California has a responsibility to ensure that workers can freely exercise their inalienable rights, including their right to organize and to freely assemble with their coworkers. These rights are not only guaranteed in the Federal Constitution and in California’s constitution, but the state Labor Code, Section 923, also declares that the public policy of the state of California is for workers to have the freedom to organize free from interference or intimidation and the right to collectively bargain. The state cannot sit idly by as workers are systematically denied the right to organize due to employer intransigence and federal agency inaction, delays, and potential inability to make decisions because of a lack of a quorum or because of pending court cases enjoining the NLRB from acting or finding the NLRB to be unconstitutional.”

Related/Prior Legislation

AB 283 (Haney, 2025) would establish the In-Home Supportive Services (IHSS) Employer-Employee Relations Act to shift collective bargaining with IHSS providers from the county or public authority to the state and provide PERB jurisdiction of labor relations between the state and IHSS workers. *This bill is currently pending on the Senate Floor.*

AB 672 (Caloza, 2025) would grant PERB the right, upon timely application, to intervene in a civil action arising from a labor dispute involving public employee strike actions that PERB claims implicates the constitutionality, interpretation, or enforcement of a statute administered by PERB. *This bill was placed on the Senate Inactive File at the request of the author.*

AB 1340 (Wicks, 2025) would establish the Transportation Network Company (TNC) Drivers Labor Relations Act to require PERB to protect TNC drivers collective bargaining rights under the Act. *This bill is currently pending on the Senate Floor.*

SCA 7 (Umberg, 2023) would have established a broad-based constitutional right for any person in California to form or join a union and for that union to represent the person in collective bargaining with the person’s respective employer. *This measure died in the Senate Elections and Constitutional Amendments Committee.*

AB 2524 (Kalra, Chapter 789, Statutes of 2022) transferred jurisdiction over Santa Clara Valley Transportation Authority’s employer-employee labor relations disputes from superior court to PERB.

SB 598 (Pan, Chapter 492, Statutes of 2021) transferred jurisdiction over Sacramento Regional Transit District's employer-employee labor relations disputes from superior court to PERB.

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

According to the Senate Appropriations Committee:

- PERB's administrative costs would likely reach, at a minimum, the millions of dollars annually (General Fund).
- This bill could result in increased in penalty revenue to the State. The magnitude is unknown, but probably minor (Public Employment Relations Board Enforcement Fund).
- By allowing a state court to review newly authorized PERB decisions, this bill could result in potentially significant cost pressures to the courts; the magnitude is unknown (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under the bill also is unknown; however, it generally costs about \$10,500 to operate a courtroom for an eight-hour day. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The enacted 2025-26 budget includes \$38 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.

SUPPORT: (Verified 8/31/25)

California Federation of Labor Unions (Co-source)
 International Brotherhood of Boilermakers, Western States Section (Co-source)
 Service Employees International Union, California (Co-source)
 California Teamsters Public Affairs Council (Co-source)
 AFSCME California
 Air Line Pilots Association
 Alliance San Diego
 Association of Flight Attendants
 Bluegreen Alliance
 Building Justice San Diego (Homework San Diego)
 California Alliance for Retired Americans
 California Association of Psychiatric Technicians
 California Catholic Conference
 California Coalition for Worker Power
 California Conference Board of the Amalgamated Transit Union

California Conference of Machinists
California Democratic Party
California Environmental Voters
California Federation of Teachers
California IATSE Council
California Nurses Association
California Professional Firefighters
California Safety and Legislative Board of SMART – Transportation Division
California School Employees Association
California State Pipe Trades Council
California Teachers Association
California Working Families Party
Center on Policy Initiatives
Cleaneearth4kids.org
Coalition for Humane Immigrant Rights of Los Angeles
Coalition of Black Trade Unionists, San Diego County Chapter
Culver City Democratic Club
Employee Rights Center
Engineers and Scientists of California, IFPTE Local 20
International Alliance of Theatrical Stage Employees
International Brotherhood of Electrical Workers, Local 1245
Koreatown Immigrant Workers Alliance
Los Angeles Alliance for a New Economy
Los Angeles Black Worker Center
National Union of Healthcare Workers
Northern California District Council of Laborers
Office & Professional Employees International Union, Local 30
Partnership for the Advancement of New Americans
Peace and Freedom Party of California
Peace Officers Research Association of California
Pillars of the Community
Professional and Technical Engineers, IFPTE Local 21
San Diego Black Workers Center
San Mateo County Central Labor Council
Screen Actors Guild–American Federation of Television and Radio Artists
Service Employees International Union, Local 1000
Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 104
Sheet Metal, Air, Rail, and Transportation Workers, Local Union No.105
South Bay Labor Council
State Building and Construction Trades Council of California

UAW Region 6

Unite Here

United Domestic Workers Local 3930

United Food and Commercial Workers, Western States Council

United Nurses Associations of California/ Union of Health Care Professionals

United Public Employees

United Steelworkers District 12

United Taxi Workers of San Diego

Utility Workers Union of America

Writers Guild of America West

OPPOSITION: (Verified 8/31/25)

California Chamber of Commerce

Orange County Business Council

ARGUMENTS IN SUPPORT:

According to a coalition of labor unions and worker advocates, including the California Federation of Labor Unions:

“AB 288 respects the framework of federal labor law and requires workers covered by the NLRA to seek redress first before the NLRB. But if workers are unable to get a timely remedy at the federal level, this bill ensures the state can step in to vindicate their fundamental rights. It makes the right to organize meaningful in California by clarifying that all workers subject to the jurisdiction of the NLRA as of January 1, 2025, who are not able to freely exercise the right to organize and collectively bargain because they have not received a response or remedy from the NLRB within the specified statutory timelines can seek relief at the state level from PERB.

The right for workers to join a union and bargain collectively is essential to economic security and human dignity, and California must do everything possible to protect it. Our ability to fight inequity and injustice depends on the ability of workers to act collectively. Justice delayed is justice denied. California can, and should, step in to protect workers when federal agencies are unable to do so.”

ARGUMENTS IN OPPOSITION:

According to the California Chamber of Commerce:

“The NLRA provides for workers’ rights to organize. The NLRA exclusively governs those rights. The NLRB is an independent federal agency established by

the NLRA. Its primary role is to enforce labor laws related to union activities and collective bargaining by investigating and prosecuting unfair labor practices in the private sector. It also oversees representation elections seeking to certify or decertify unions as the representative of employees. The NLRB has regional offices located throughout the country.

Because the NLRA establishes and solely governs workers' rights to organize, courts have repeatedly held that states are prohibited from regulating this space under the longstanding doctrine of preemption. AB 288's attempt to give PERB the ability to adjudicate issues in lieu of the NLRB is a clear example of *Garmon* preemption. See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

The present lack of a quorum at the NLRB and hypothetical scenarios about what *may* happen does not allow AB 288 to escape preemption. The NLRA is still law, and it continues to be enforced by the NLRB's regional offices. Those offices are continuing to process elections, certifications, petitions, and unfair labor practice charges. This is also not the first time the NLRB has operated without a quorum."

ASSEMBLY FLOOR: 68-2, 6/2/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Fariás, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Chen, Connolly, Davies, Elhawary, Flora, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NOES: DeMaio, Ellis

NO VOTE RECORDED: Castillo, Dixon, Gallagher, Jeff Gonzalez, Hadwick, Lackey, Macedo, Sanchez, Tangipa

Prepared by: Glenn Miles / L., P.E. & R. / (916) 651-1556
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