SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1 (McKinnor)
Version: July 3, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Collective bargaining: Legislature

DIGEST

This bill establishes the Legislature Employer-Employee Relations Act (LEERA), which provides employees of the California Legislature, with certain exceptions, with collective bargaining rights.

EXECUTIVE SUMMARY

Though they are state workers, the employees of the California Legislature are not constitutionally permitted to be part of the civil service and lack a statutory basis on which they can form a union. They are "at will," meaning that their employment may be terminated at any time for any lawful reason without any required explanation. The proponents of this bill point out that this status is at odds with the Legislature's general support for collective bargaining rights. They also contend that, in the absence of the sorts of improved working conditions and heightened workplace protections that can often be obtained through collective bargaining, legislative employees have limited avenues for addressing arbitrary, unfair, and occasionally even abusive employment practices, to the detriment of both legislative employees and the integrity of the institution as a whole.

This Committee considered the question of whether to authorize a Legislative employee union last year. AB 1577 (Stone, 2022) was a gut-and-amend and would have enacted a version of LEERA similar to the one presented in this bill. This Committee passed AB 1577 and, after amendments on the Senate floor, the bill returned to the Assembly, where it died in the Assembly Public Employment and Retirement Committee on a 2 to 3 vote.

AB 1 brings LEERA back. Like AB 1577, the bill provides a statutory framework that would enable legislative employees to form a union and bargain collectively, should

they elect to do so. Leadership and managerial staff would be excluded, as is typically the case with collective bargaining units. AB 1 also makes improvements on, and clarifications to, AB 1577, including requiring memoranda of understanding adopted between the Legislature and unions to be adopted by resolution (rather than statute), and clarifying that collective bargaining units may not be based on political affiliation. AB 1 would become operative on July 1, 2026.

This bill is sponsored by the California Labor Federation. There is no known opposition. The Senate Labor, Public Employment and Retirement Committee passed this bill with a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

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 U.S.C. §§ 151 et seq.)

2) 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.)

3) 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.)

4) Places a limit on the total expenditures of the Legislature for compensation of members and employees, and for operating expenses and equipment, calculated per member.
    a) The total aggregate expenditures for the year may not exceed the amount equal to the expenditure for the prior year, adjusted and compounded by an amount equal to the percentage increase in the appropriations limit for the state established in Article XIIIB of the California Constitution.
    a) The starting point for the calculation in 4)(a) was a per-member expenditure of $950,000 in the 1991 budget or 80 percent of the prior year's expenditure for the purpose, whichever was lower. (Cal. Const., art. IV, § 7.5.)

5) 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.)

6) Exempts officers and employees appointed or employed by the Legislature, in either house, or legislative committees from the state civil service. (Cal. Const., art. VII, § 4(a).)

7) Establishes limitations on state appropriations, including a requirement that the total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as specified. (Cal. Const., art. XIIIB.)

8) 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 Dills Act excludes managers and confidential employees from bargaining rights. (Gov. Code, §§ 3512 et seq.)

9) 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. (Gov. Code, §§ 3517 et seq.)

10) Establishes the Judicial Council Employer-Employee Relations Act (JCEERA) which provides collective bargaining rights to Judicial Council employees, as specified. (Gov. Code, §§ 3524.50 et seq.)

11) 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 and 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. (Gov. Code, §§ 3541 et seq.)

12) Provides that it is the public policy of the state that negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees; that governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control; and that it is necessary that the individual worker have full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to 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. (Lab. Code, § 923.)

This bill:

1) Enacts LEERA, which will become operative on July 1, 2026.

2) Makes findings and declarations regarding the purpose of LEERA, including to promote 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.

3) Defines the following relevant terms:
    a) "Employee of the Legislature" or "employee" means any employee of either house of the Legislature and excludes:
        i. Members of the Legislature.
        ii. Appointed officers of the Legislature such as the Secretary of the Senate and Chief Clerk of the Assembly.
        iii. 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.
        iv. Confidential employees, who are employees who are 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.

b) "Employee organization" is 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.
c) "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.

4) 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 $1,000.

5) Provides the PERB's authority, as follows:
   a) PERB has exclusive jurisdiction over the initial determination as to whether 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.
   b) PERB shall promulgate procedures for investigating, hearing, and deciding cases under (a), which must include provisions for any employee, employee organization, or the Legislature to file an unfair practice charge, except that PERB shall not issue a complaint for a charge based on an event that occurred more than six months before the complaint was filed or respecting conduct for which the parties have not exhausted the grievance machinery of their agreement, if any.
   c) PERB shall not enforce agreements between the parties or issue a complaint on any charge based on an alleged violation of an agreement that would not also constitute an unfair practice under LEERA.
   d) PERB may 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 backpay, as will effectuate the policies of LEERA.

6) Grants employees of the Legislature the right to collectively organize as follows:
   a) Employees of the Legislature may form, join, and participate in, or to refuse to join or participate in, the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations; however, nothing shall preclude the parties from agreeing to a maintenance of membership provision pursuant to a memorandum of understanding.
   b) Employees of the Legislature retain the right to represent themselves individually in their employment relations with the Legislature and to appear

on their own behalf in the employee's employment relations with the Legislature.

7) Establishes the representation rights and limitations of employee organizations, as follows:
    a) Employee organizations 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.
    b) 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
    c) An employee organization may establish reasonable restrictions regarding who may join and to make reasonable provisions for the dismissal of individuals from membership.
    d) An employee organization has the right to have membership dues, initial fees, membership benefit programs, and general assessments deducted, as specified, until it is recognized as the exclusive unit for employees in an appropriate unit, and then any deductions as to any employee in the negotiating unit are not permissible except as to the exclusive representative.
    e) Once an employee is recognized as the exclusive representative of an appropriate unit, it may enter into an agreement with the Legislature providing for organizational security in the form of a maintenance of membership deduction. The Legislature shall furnish the recognized employee information with specified information and deduct the fees as provided.
    f) The scope of representation is limited to wages, hours, and other terms and conditions of employment, except that the scope of representation does not include consideration of the merits, necessity, or organization of any service or activity provided by law; the scope of representation excludes, consistent with the powers and responsibilities vested in the Legislature pursuant to the Constitution:
        i. Any matter relating to the qualifications and elections of members of the Legislature, or the holding of office of members of the Legislature.
        ii. 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 the State.
        iii. Any matters relating to legislative calendars, schedules, and deadlines of the Legislature.
        iv. Laws, rules, policies, or procedures regarding ethics or conflict of interest.

8) Requires the Legislature, except in cases of emergency, 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, and that in cases of emergency when the Legislature determines that a law, rule, or resolution must be adopted immediately without prior notice or meeting with the recognized employee organization, the Legislature must provide notice and an opportunity to meet and confer in good faith at the earliest practical time following adoption of the law, rule, or resolution.

9) Establishes the following requirements with respect to the "meet and confer" process:
    a) The Legislature must 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.
    b) "Meet and confer in good faith" means 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 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, and in which the process should include adequate time for the resolution of impasses.
    c) The Legislature must freely provide to representatives of recognized employee organizations nonconfidential information that is necessary and relevant to their scope of representation; the Legislature need not provide confidential information, which includes information contained in records that are exempt from public disclosure under federal or state law, but does not include any information contained in records that are exempt from public disclosure under federal or state law. "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.

10) Establishes procedures for the adoption of an employment agreement as follows:
    a) If an agreement is reached between the Legislature and the recognized employee organization, the parties must jointly prepare a written memorandum of understanding (MOU) reflecting terms of the agreement, which must be presented, when appropriate, to the Legislature for adoption as a resolution.

b) A side letter, appendix, or other addendum to a properly ratified MOU must be expressly identified by the parties if such addenda is to be incorporated in a subsequent MOU submitted to the Legislature for adoption as a resolution.
c) If the Legislature does not fully fund any provision of the MOU that requires the expenditure of funds, either party may reopen negotiations on all or part of the MOU; but the parties are not precluded from agreeing to and effecting those provisions of the MOU that do not require legislative action for passage of a statute.

11) Provides the following regarding the effect of an expired MOU and impasse procedures:
    a) If a MOU has expired, and the Legislature and a recognized employee organization have not agreed to a new MOU and have not reached an impasse in negotiations, as defined, the parties must continue to give effect to the expired MOU provisions, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no-strike provisions, and any agreements regarding matters covered in the Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201 et seq.).
    b) If the Legislature and a recognized employee organization reach an impasse in negotiations for a new MOU, the Legislature may implement its last, best, and final officer (LBFO) through adoption of a resolution, except that, implementation of the LBFO does not relieve the parties of the obligation to bargain in good faith and reach agreement on a MOU if circumstances change and does not result in a waiver of rights that the recognized employee organization has pursuant to other provisions established by the LEERA.
    c) If, after a reasonable period of time, the Legislature and a recognized employee organization fail to reach an agreement, the Legislature and recognized employee organization may agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request the PERB to appoint a mediator, with costs to be paid as specified.

12) Requires a reasonable number of the recognized employee organizations' employee representatives to be granted 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, during periods when an MOU is not in effect.

13) Provides that it is unlawful for the Legislature to:
    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 this chapter. 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 11).

14) Provides that it is unlawful for an employee organization to:
a) Cause or attempt to cause the Legislature to do an act prohibited in 13).
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 11).

15) Provides the following processes for judicial review:
a) Judicial review of a unit determination to either (1) 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; or (2) when a party raises the issue as a defense to an unfair practice complaint.
b) A reviewing court shall not stay a PERB order directing an election pending judicial review.
c) A party to the case may 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.
d) Any charging party, respondent, or intervenor aggrieved by a PERB final decision or order in an unfair practice case may 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. The petition shall be filed within 30 days after the issuance of the order, pursuant to specified procedures, and PERB shall file a certified record of the proceeding within 10 days of the clerk's notice. The court has jurisdiction to grant to the board any temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive, and the proceeding shall be governed by the Code of Civil Procedure's provisions relating to writs, except where specifically superseded.
e) If the time to petition for extraordinary relief from a PERB decision has expired, the PERB may 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, after a hearing, the court determines that the order was issued pursuant to procedures established by the PERB and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus. The court shall not review the merits of the order.

16) Establishes the following requirements for granting exclusive recognition to employee organizations:
    a) The Legislature must grant exclusive recognition to employee organizations designated or selected pursuant to PERB-established rules for employees of the Legislature or an appropriate unit of the Legislature, subject to the right of an employee to self-represent, and the PERB must establish reasonable procedures for petitions, holding elections, and determining appropriate units, as specified.
    b) The PERB, as it determines appropriate bargaining units, may not include employees of the Legislature in a bargaining unit that includes employees other than those of the Legislature, and may not comingle employees from both the Assembly and Senate within the same bargaining unit.
    c) The PERB must establish procedures whereby a majority vote of the employees are authorized to 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.

17) Requires the Legislature to adopt reasonable rules for registering employee organizations, as defined; determining the status of organizations as employee organizations; and, identifying the officers and representatives who officially represent employee organizations.

18) Provides that, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision is the final order of the PERB, if the PERB does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

19) Establishes criteria relating to the PERB determining an appropriate unit and a prohibition on PERB directing an election, including:
    a) The PERB shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding seeks or agrees to an election in the unit.
    b) In determining an appropriate unit, the PERB shall take into consideration all of the following criteria:

i. The internal and occupational community of interest among the employees, including the extent to which they form functionally related services or work toward established common goals, the history of employee representation in state government and in similar employment, and the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements.
ii. The effect that the protected unit will have on meet-and-confer relationships, emphasizing the availability of the Legislature's representatives to deal effectively with employee organizations representing the unit, and taking into account specified factors relating to the effect on the existing classification structure.
iii. The effect of the proposed unit on efficient operations of the Legislature and the compatibility of the unit with the responsibility of the Legislature and its employees to serve the public.
iv. 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.
v. The impact on the meet-and-confer relationship created by fragmentation of employees or any proliferation of units among the employees of the Legislature.

d) Political affiliation shall not constitute a community of interest for purposes of determining an appropriate unit.

20) Establishes the following procedures for the meet-and-confer process:
a) All initial meet-and-confer proposals of the recognized employee organizations, and all meet-and-confer proposals or counterproposals of the Legislature must be presented to the other at a public meeting and become a public record.
b) Except in cases of emergency as provided, no meeting and conferring may take place on any proposal, subject to (a) until no fewer 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; thereafter, the Legislature must hear public comment on all matters related to the meet and confer proposals in an open meeting.
c) Forty-eight hours after any proposal that includes any substantive subject that has not been presented in proposals for public reaction, as specified, is offered during any meeting and conferring session, the proposal and the position, if any, taken by representatives of the Legislature become a public record.

21) Specifies that LEERA does not apply section 923 of the Labor Code to employees of the Legislature.

22) Provides that nothing in LEERA modifies or eliminates any existing wages, hours, or terms and conditions of employment for employees of the Legislature, and that all existing wages, hours, and terms and conditions of employment for employees of the Legislature must 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.

23) Includes a severability clause.

COMMENTS

1. Author's comment

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.

2. LEERA redux

Last year, this Committee passed AB 1577 (Stone, 2022), a bill that would have enacted a version of LEERA substantially similar to the one in this bill. After being amended by the Senate Appropriations Committee, the bill passed on the Senate Floor and returned to the Assembly for a concurrence vote. AB 1577 then died in the Assembly Public Employment and Retirement Committee on a vote of 2 to 3. As a result, employees of the California Legislature are still an outlier in terms of lacking legal permission to unionize.[1]

The benefits, pros, and cons of unionization listed in the Committee's analysis of AB 1577 remain the same; that analysis is incorporated herein by reference. In brief, there is power in a union. Other legislation this session has called out the frequency with which Legislative staff are leaving public employment for the private sector, but proposed to fix the problem by restricting employees' choices. Collective bargaining, by contrast, could benefit employees and the State by making it easier for talented and capable people to remain in the Legislature.

[1] The NLRA excludes public sector employees, so there is no federal collective bargaining mandate (29 U.S.C. §§ 151 et seq.), but state laws authorized executive branch and Judicial Council employees to form collective bargaining units (Gov. Code, §§ 3512 et seq., 3524.50 et seq.).

The landscape for legislative unions writ large has changed, however. The attempt to unionize legislative employees in Congress has hit a roadblock: the Rules for the House of Representatives adopted by the new Republican-controlled House purport to nullify the regulations authorizing legislative unionization for the duration of the 118th Congress.[2] On the other hand, pending legislation here in California would ask the voters to approve a constitutional amendment giving all Californians the right to join a union.[3] If adopted, this amendment would presumably supersede lack of statutory authorization for a legislative employee union, albeit without the guidance provided by this bill.

AB 1 authorizes employees of the Legislature to collectively bargain without the delay of a ballot measure. This bill implements LEERA in largely the same form as AB 1577 when it was heard by this Committee, with a few key changes:

- AB 1 clarifies that the two houses of the Legislature would be required to form separate bargaining units. This clarification is consistent with the fact that the houses operate separately in employment matters.
- AB 1 defines who is a "department or office leader" excluded from the definition of employees who may unionize. The definition includes supervisory employees who have the authority to, among other things, hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees.
- AB 1 clarifies that confidential employees (e.g., workers in human resources positions) are not included within the definition of legislative employees who may unionize. This is consistent with existing labor laws.[4]
- AB 1 requires that the Legislature freely provide to representatives of recognized employee organizations specified nonconfidential information necessary to the scope of the representation, for purposes of the meeting and conferring process.
- AB 1 deletes a requirement from AB 1577 that any side letter or other addendum to a ratified MOU that requires an expenditure of $250,000 or more, if certain conditions are met, be reviewed by the Joint Legislative Budget Committee.
- AB 1 requires MOUs and addenda to MOUs to be adopted by a resolution, rather than by statute.
- AB 1 clarifies that PERB may not separate employees into bargaining units solely based on political affiliation and that political affiliation shall not constitute a community of interest for purposes of determining an appropriate unit.
- AB 1 will become operative on July 1, 2026.

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[2] H. Res. 5, 118th Cong., 1st Sess. (2023).
[3] SCA 7 (Umberg, 2023).
[4] *See, e.g., NLRB v. Hendricks County Rural Elec. Membership Corp.* (1981) 454 U.S. 170, 177 (upholding NLRB's longstanding exclusion of confidential employees from the definition of "employee" under the NLRA).

3. Policy considerations

The overall policy questions presented by this bill are unchanged from those at issue in AB 1577. This analysis raises areas specific to this Committee's jurisdiction, including matters that have been resolved in AB 1 as well as matters that the author and sponsor may wish to consider going forward.

a. Separation of powers issues

The California Constitution establishes the powers of state government as legislative, executive, and judicial powers and prohibits a person charged with one power from exercising the others, except where expressly provided for in the Constitution.[5]

When heard by this Committee, AB 1577 required the Legislature to adopt MOUs and addenda through statute. This gave rise to a potential separation of powers concern, because statutes have to be signed by the Governor, giving the Governor literal veto power over the Legislature's internal employment decisions. AB 1 has eliminated that concern by requiring MOUs and related agreements to be adopted by resolution rather than statute.

A second separation of powers question remains, however. AB 1 grants the PERB—an executive agency—the exclusive jurisdiction to adjudicate LEERA unfair practice claims. While PERB would not be actually exercising legislative power by ruling on the Legislature's labor disputes, giving the executive branch such significant control over the Legislature's internal administration does seem to violate the separation of powers clause's prohibition of one branch "improperly interfering with the essential operations of either of the other two branches."[6] The unique nature of this bill means that the availability of judicial review (or lack thereof) does not ease the constitutional conundrum, because the judicial branch is likewise constitutionally prohibited from excessively interfering with the Legislature's operations.[7] Thus, while PERB is the logical choice to adjudicate labor disputes from the perspective of function and expertise, the author may wish to consider whether adjudication should be performed by an independent or intra-Legislative body instead.

b. Legislative business issues

As currently in print, AB 1 requires the Legislature, in case of emergency, 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

[5] Cal. Const., art. III, § 3.
[6] *Butts v. State of California* (1992) 4 Cal.4th 668, 700, fn. 4.
[7] The potential for judicial review also distinguishes this bill from the statutes authorizing unions for employees of the judicial branch; there, the fact that a dispute might ultimately end up in the courts serves to return the labor dispute to the body having the dispute, not shunt it over to yet another branch.

proposed to be adopted by the Legislature, and shall give such recognized employee organizations the opportunity to meet and confer with the Legislature. Not only is the term "directly" potentially vague, but this provision appears to grant special access to Legislative unions not available to any other stakeholders. The Committee may wish to amend the bill to strike out "law, rule, or resolution" and replace those words with "policy or procedure" so that the provision would read as follows:

Amendment

3599.61.

(a) Except in cases of emergency as provided in subdivision (b), the ~~Legislature~~ employer shall give reasonable written notice to each recognized employee organization affected by any ~~law, rule, or resolution~~ policy or procedure directly relating to matters within the scope of representation proposed to be adopted by the ~~Legislature~~ employer, and shall give such recognized employee organizations the opportunity to meet and confer with the ~~Legislature~~ employer.

(b) In cases of emergency when the ~~Legislature~~ employer determines that a ~~law, rule, or resolution~~ policy or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the ~~Legislature~~ employer shall 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~~ policy or procedure.

AB 1 is also silent on the right of Legislative employees to strike. Under the existing statutes authorizing public employees to unionize, public sector employees may generally strike unless doing so would "result in imminent danger to public health and safety."[8] The determination of whether the basic public interest overrides the right to strike is determined on a case-by-case basis.[9] Certain jobs, however—such as firefighters—are expressly prohibited from striking.[10] To be sure, most Legislative employees do not face the same *imminent* life-or-death scenarios as firefighters. But because the Legislature has certain constitutionally mandated deadlines,[11] strikes at certain times could cause significant harm that would be felt across the state.

Both Oregon and Washington State authorized collective bargaining for legislative employees in 2022. Oregon bars strikes altogether (as well as refusing to perform official duties). Washington bars strikes, work stoppages and refusing to perform official duties during session. Oregon's statute states that, "Nothing contained in this chapter permits

[8] *County Sanitation Dist. No. 2. V. Los Angeles County Employees Assn.* (1985) 38 Cal.3d 564, 585.
[9] *City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 605.
[10] Lab. Code, § 1962.
[11] *E.g.*, Cal. Const., art. IV, §§ 10, 12.

or grants to any legislative employee the right to strike or refuse to perform their official duties." (Section 6, Chp. 283, Stats of 2022 (HB 2124, Mannix)) Washington State authorized legislative bargaining in 2022. A December 2022 report from the Director of the Office of State Legislative Labor Relations cites this provision on strikes: "During a legislative session or committee assembly days, nothing contained in this chapter permits or grants to any legislative employee the right to strike, participate in a work stoppage, or refuse to perform their official duties." (RCW 44.90.060.) The Committee therefore may wish to consider whether the bill should set forth limitations on strikes such as those that exist in Washington state and Oregon.

Amendment

3599.81.

(a) Employees shall not have the right to strike during times when the Legislature is in session, or to recognize a picket line of an employee organization while in the course of the performance of their official duties.
(b) Notwithstanding subdivision (a), an essential employee shall not have the right to strike at any time. For purposes of this subdivision, "essential employee" means an employee whose duties are essential to maintaining public health or safety, including an employee whose absence would impair the ability of the employer to meet its constitutional obligations. The employer shall have the sole and exclusive authority to determine who is an essential employee.

Finally, the Committee may wish to consider whether the list of excluded employees is overbroad with respect to employees who perform assignment- and direction-related tasks. Constitutional strictures on the Legislature's schedule and other factors mean that even individuals in jobs with some discretion over employee assignments and similar functions may not be free to exercise the type of discretion typically associated with management positions. An overly narrow definition of "employee" could, perversely, result in employees declining promotions if accepting meant losing union membership. The Committee may wish to reexamine the categories of excluded employees. On the other hand, the list of included employees may include employees that should be excluded to ensure the Legislature is capable of discharging their Constitutional and statutory obligations. The Committee may wish to follow the model of the Judicial Council Employer-Employee Relations Act whereby the employer, in this case Senate Committee on Rules and Assembly Committee on Rules, have the right to determine who are excluded employees with specified limitations. Specifically, Government Code section 3524.53, with respect to Judicial Council Employees, provides: "The Judicial Council shall have the sole authority and discretion to designate Judicial Council state employee positions as excluded positions, provided that managerial, supervisory, confidential, and excluded positions not included in bargaining units under this chapter shall not exceed one-third of the total authorized Judicial Council positions as stated in the Department of Finance Salaries and Wages Supplement. Designation of the

excluded positions under this section shall not be subject to review by the board." The Committee may wish to include a similar provision in the bill.

Amendment

3599.52.

For purposes of this chapter:
(a) "Board" means the Public Employment Relations Board. The powers and duties of the board described in Section 3541.3 also apply, as appropriate, to this chapter, except as otherwise provided in this chapter. Notwithstanding this chapter or any other law, the board shall not intrude on the Legislature's core function of efficient and effective lawmaking.
(b) (1) "Employee ~~of the Legislature~~" ~~or "employee"~~ means any employee of either house of the Legislature, except all of the following:
(~~1~~A) Members of the Legislature.
(~~2~~B) Appointed officers of the Legislature, such as the Secretary of the Senate and the Chief Clerk of the Assembly.
(~~3~~C) 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.
(4D) 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.
(2) For purposes of this subdivision, the employer shall have the sole and exclusive authority to determine and designate employees or positions as excluded employees or positions.
(3) Notwithstanding any provisions in this Chapter the employer shall have the sole authority and discretion to designate employee positions as excluded positions, provided that confidential employees, department or office leader, and excluded positions not included in bargaining units under this Chapter shall not exceed one-third of the total authorized employer positions. Designation of the excluded positions under this section shall not be subject to review by the board.
(c) "Employee organization" means any organization that includes ~~employees of the Legislature~~ employees and that has as one of its primary purposes representing these employees in their relations with the ~~Legislature~~ employer.

(d) "~~Legislature~~Employer" 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~~employer" 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~~ employer 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~~ employer as the exclusive representative of the employees in an appropriate unit.

4. Arguments in support

According to the California Labor Federation, the sponsor of the bill:

> The Legislature stands as the only branch of California government whose employees cannot reap the benefits and protections that come with the right to collective bargaining. Legislative employees are also exempt from civil service rules, can be hired and fired at will, and lack many of the workplace protection laws that cover employees in private and other public employment settings. This imbalance of power leaves legislative employees little to no opportunity to shape their workplace conditions or address their concerns in a meaningful way…
>
> In any workplace, an imbalance of power leaves workers with little to no recourse to make their voices 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. Senate Labor, Public Employment and Retirement Committee suggested amendments in their analysis[12]

The Senate Labor, Public Employment and Retirement Committee analysis suggested the following amendments to AB 1:

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. [. . .]
- Expressly acknowledge the Legislature's continued right to meet in closed session for specified matters as determined in the constitution.

[12] *See* Senate Committee on Labor, Public Employment and Retirement Committee analysis for AB 1 (McKinnor), hearing date June 28, 2023.

(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 [Senate Labor, Public Employees and Retirement] 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 though 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.

- [. . .]

6. Mock-up of Senate Labor, Public Employment and Retirement Committee's suggested amendments and issues raised in this Senate Judiciary Committee analysis

The attached mock-up reflects the amendments suggested in the Senate Labor, Public Employment and Retirement Committee analysis and issues raised in this Committee's analysis.

SUPPORT

California Labor Federation (sponsor)
American Federation of State, County and Municipal Employees (AFSCME), California, AFL-CIO
California Alliance for Retired Americans (CARA)
California Association of Psychiatric Technicians
California Civil Liberties Advocacy
California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California Faculty Association
California Federation of Teachers, AFL-CIO
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 (SMART-TD)
California Teachers Association
California Teamsters Public Affairs Council
Ella Baker Center for Human Rights
Engineers & Scientists of California, Local 20, IFPTE, AFL-CIO
Faculty Association of California Community Colleges
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Los Angeles County Federation of Labor, AFL-CIO
Northern California District Council of The International Longshore and Warehouse Union (ILWU)
Professional & Technical Engineers, Local 21, IFPTE, AFL-CIO
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
State Building and Construction Trades Council of Ca
Transport Workers Union of America, AFL-CIO
United Auto Workers, Local 2865

United Auto Workers, Local 5810
United Domestic Workers/AFSCME, Local 3930
United Food & Commercial Workers Western States Council Utility Workers Union of America
UNITE-HERE, Local 11
UNITE HERE, AFL-CIO
Utility Workers Union of America, AFL-CIO
One individual

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SCA 7 (Umberg, 2023) amends the California Constitution to provide that all Californians have the right to join a union and to negotiate with their employers, as specified, and that on or after January 1, 2023, no ordinance or statute shall be passed, enacted, or adopted that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over specified matters. SCA 7 is pending before the Senate Elections and Constitutional Amendments Committee.

Prior Legislation:

AB 1577 (Stone, 2022) was substantially similar to this bill. AB 1577 died on a 2-3 concurrence vote in the Assembly Public Employment and Retirement Committee.

AB 314 (Lorena Gonzalez, 2021) would have enacted a LEERA that was similar to the one enacted in this bill. AB 314 was never referred to a policy Committee.

AB 969 (Lorena Gonzalez, 2019) would have enacted a LEERA that was similar to the one enacted in this bill. AB 969 was never heard in the Assembly Public Employment and Retirement Committee.

AB 2048 (Gonzalez, 2018) would have enacted a LEERA that was similar to the one enacted in this bill. AB 2048 died in the Assembly Public Employment, Retirement, and Social Security Committee.

AB 83 (Santiago, Ch. 835, Stats. 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. This measure failed passage in the Assembly Committee on Public Employees, Retirement, and Social Security.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)
Assembly Floor (Ayes 68, Noes 5)
Assembly Appropriations Committee (Ayes 12, Noes 3)
Assembly Public Employment and Retirement Committee (Ayes 6, Noes 1)
****

MOCK-UP OF AMENDMENTS TO AB 1 REFLECTING ISSUES RAISED IN THE SENATE COMMITTEE ON JUDICIARY AND SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT COMMITTEE ANALYSES:

SECTION 1.

Chapter 12.5 (commencing with Section 3599.50) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 12.5. Legislature Employer-Employee Relations

3599.50.

This chapter shall be known, and may be cited, as the Legislature Employer-Employee Relations Act.

3599.51.

The Legislature finds and declares that it is the purpose of this chapter to promote full communication between ~~the Legislature~~ each employer and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the ~~Legislature~~ employer and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the ~~Legislature~~ employer by providing a uniform basis for recognizing the right of its employees ~~of the Legislature~~ to join organizations of their own choosing and be represented by those organizations in their employment relations with ~~the Legislature~~ their employer. It is further the purpose of this chapter, in order to foster peaceful employer-employee relations, to allow the 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.

3599.52.

For purposes of this chapter:
(a) "Board" means the Public Employment Relations Board. The powers and duties of the board described in Section 3541.3 also apply, as appropriate, to this chapter, except as otherwise provided in this chapter. Notwithstanding this chapter or any other law, the board shall not intrude on the Legislature's core function of efficient and effective lawmaking.
(b) (1) "Employee ~~of the Legislature~~" ~~or "employee"~~ means any employee of either house of the Legislature, except all of the following:
(~~1~~A) Members of the Legislature.

(~~2~~B) Appointed officers of the Legislature, such as the Secretary of the Senate and the Chief Clerk of the Assembly.
(~~3~~C) 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.
(~~4~~D) 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.
(2) For purposes of this subdivision, the employer shall have the sole and exclusive authority to determine and designate employees or positions as excluded employees or positions.
(3) Notwithstanding any provisions in this Chapter the employer shall have the sole authority and discretion to designate employee positions as excluded positions, provided that confidential employees, department or office leader, and excluded positions not included in bargaining units under this Chapter shall not exceed one-third of the total authorized employer positions. Designation of the excluded positions under this section shall not be subject to review by the board.
(c) "Employee organization" means any organization that includes ~~employees of the Legislature~~ employees and that has as one of its primary purposes representing these employees in their relations with the ~~Legislature~~ employer.
(d) "~~Legislature~~Employer" 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~~employer" 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~~ employer 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~~ employer as the exclusive representative of the employees in an appropriate unit.

3599.54.

Any person who willfully resists, prevents, impedes, or interferes with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, 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).

3599.55.

The initial determination as to whether charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, is a matter within the exclusive jurisdiction of the board, except that, in an action to recover damages due to an unlawful strike, the board shall not award strike-preparation expenses as damages, and shall not award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. The employer is expressly authorized to reject or decline to implement a decision or remedy that, in the employer's reasonable determination, intrudes on the Legislature's core function of efficient and effective lawmaking. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:
(a) Any employee or employee organization, or the ~~Legislature~~employer, has the right to file an unfair practice charge, except that the board shall not do either of the following:
(1) Issue a complaint respecting a charge based upon an alleged unfair practice that occurred more than six months prior to the filing of the charge.
(2) Issue a complaint respecting 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 binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedures would be futile, their exhaustion is not necessary. The board has discretionary jurisdiction to review a settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that the settlement or arbitration award is repugnant to the purposes of this chapter, 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. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in paragraph (1) to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not enforce agreements between the parties or issue a complaint on any charge based on an alleged violation of an agreement that would not also constitute an unfair practice under this chapter.
(c) The board may 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 backpay, as will effectuate the policies of this chapter~~.~~, except that the board shall not issue any decision or order that intrudes on the Legislature's core function of efficient and effective lawmaking. The employer is expressly authorized to reject or decline to implement a decision or remedy that, in the employer's reasonable determination, intrudes on the Legislature's core function of efficient and effective lawmaking.

3599.56.

Employees ~~of the Legislature~~ have 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. Employees ~~of the Legislature~~ also have the right to refuse to join or participate in the activities of employee organizations, except that the parties are not precluded from agreeing to a maintenance of membership provision pursuant to a memorandum of understanding. In any event, employees ~~of the Legislature~~ have the right to represent themselves individually in their employment relations with the ~~Legislature~~ employer.

3599.57.

Employee organizations have the right to represent their members in their employment relations with the ~~Legislature~~employer, except 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~~ employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. This section does not prohibit any employee from appearing on the employee's own behalf in the employee's employment relations with the ~~Legislature~~ employer.

3599.58.

All employee organizations have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Section 1152 and Section 1153 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 are not permissible except to the exclusive representative.

3599.59.

(a) Once an employee organization is recognized as the exclusive representative of an appropriate unit, it may enter into an agreement with the ~~Legislature~~ employer providing for organizational security in the form of a maintenance of membership deduction.
(b) The ~~Legislature~~ employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee. These fees shall 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.

3599.60.

(a) The scope of representation is limited to wages, hours, and other terms and conditions of employment, except that the scope of representation does not include consideration of the merits, necessity, or organization of any service or activity provided by law.
(b) In view of the powers and responsibilities vested in the Legislature pursuant to the Constitution, decisions regarding the following matters shall not be included within the scope of representation:
(1) Any matter relating to the qualifications and elections of Members of the Legislature, or the holding of office of Members of the Legislature.
(2) 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.
(3) Any matter relating to legislative calendars, schedules, and deadlines, or the hours of operation of the Legislature.
(4) Laws, rules, policies, or procedures regarding ethics or conflicts of interest.
(5) Design, construction, and location of legislative facilities.

3599.61.

(a) Except in cases of emergency as provided in subdivision (b), the ~~Legislature~~ employer shall give reasonable written notice to each recognized employee organization affected by any ~~law, rule, or resolution~~ policy or procedure directly relating to matters within the scope of representation proposed to be adopted by the ~~Legislature~~ employer, and shall give such recognized employee organizations the opportunity to meet and confer with the ~~Legislature~~ employer.
(b) In cases of emergency when the ~~Legislature~~ employer determines that a ~~law, rule, or resolution~~ policy or procedure must be adopted immediately without prior notice or

meeting with a recognized employee organization, the ~~Legislature~~ employer shall 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~~ policy or procedure.

3599.62.

(a) The ~~Legislature~~ employer shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall 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. For purposes of this section, the term "meet and confer in good faith" means that the ~~Legislature~~ employer 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. The process should include adequate time for the resolution of impasses.
(b) The ~~Legislature~~ employer shall freely provide to representatives of recognized employee organizations nonconfidential information that is necessary and relevant to their scope of representation. However, this chapter does not require the ~~Legislature~~ employer to provide confidential information to representatives of recognized employee organizations. For purposes of this subdivision, "confidential information" means any information contained in records that are exempt from public disclosure under federal or state law. "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~~ employer, for employees in the bargaining unit of the recognized employee organization.

3599.63.

If an agreement is reached between the ~~Legislature~~ employer and the recognized employee organization, the parties shall jointly prepare a written memorandum of understanding reflecting the terms of the agreement, which shall be presented, when appropriate, to the ~~Legislature~~ employer for adoption as a resolution.

3599.64.

A side letter, appendix, or other addendum to a properly ratified memorandum of understanding shall be expressly identified by the parties if that side letter, appendix, or other addendum is to be incorporated in a subsequent memorandum of understanding submitted to the ~~Legislature~~ employer for adoption as a resolution.

3599.65.

If the ~~Legislature~~ employer does not fully fund any provision of the memorandum of understanding that requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding. The parties are not precluded from agreeing to and effecting those provisions of the memorandum of understanding that do not require legislative action for passage of a ~~statute~~ resolution.

3599.66.

(a) If a memorandum of understanding has expired, and the ~~Legislature~~ employer and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, 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.).
(b) If the ~~Legislature~~ employer and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the ~~Legislature~~ employer may implement any or all of its last, best, and final offer through adoption of a resolution. Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if circumstances change, and does not result in a waiver of rights that the recognized employee organization has under this chapter.

3599.67.

If, after a reasonable period of time, the ~~Legislature~~ employer and the recognized employee organization fail to reach an agreement, the ~~Legislature~~ employer and the recognized employee organization may agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request the board to appoint a mediator. When both parties mutually agree upon a mediator, the costs of mediation shall be divided one-half to the ~~Legislature~~ employer and one-half to the recognized employee organization. If the board appoints the mediator, the costs of mediation shall be paid by the board.

3599.68.

A reasonable number of employee representatives of recognized employee organizations shall be granted reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the ~~Legislature~~ employer on matters within the scope of representation. This section applies only to employees, as defined by Section 3599.52, and only for periods when a memorandum of understanding is not in effect.

3599.69.

~~It is unlawful for the Legislature to~~ An employer shall not do any of the following:
(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
(b) Deny to employee organizations rights guaranteed to them by this chapter.
(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.

3599.70.

~~It is unlawful for an~~ An employee organization ~~to~~ shall not do any of the following:
(a) Cause or attempt to cause the ~~Legislature~~ employer to violate Section 3599.69.
(b) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise 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~~ employer 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.

3599.71.

~~(a) Judicial review of a unit determination is allowed only under either of the following circumstances:~~
~~(1) When the board, 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 review.~~
~~(2) When the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.~~
~~(b) Upon receipt of a board order joining in a request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.~~
(~~c~~a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a

complaint in such a case, may petition for a writ of extraordinary relief from the decision or order.
(~~d~~b) The petition shall be filed in the Court of Appeal for the Third Appellate District~~district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred~~. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless the time is extended by the court for good cause shown. The court has jurisdiction to grant to the board any temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs, except where specifically superseded herein, apply to proceedings pursuant to this section.
(~~e~~c) If the time to petition for extraordinary relief from a board decision has expired, the board may 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, after a hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus. The court shall not review the merits of the order.

3599.72.

(a) The ~~Legislature~~ employer shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees ~~of the Legislature~~ or an appropriate unit thereof, subject to the right of an employee to self-represent.
(b) The board shall establish reasonable procedures for petitions and for holding elections ~~and determining appropriate units~~ pursuant to subdivision (a).
(c) The employer shall have the sole and exclusive authority to determine appropriate bargaining units. The ~~board~~ employer, as it determines appropriate bargaining units, shall not include employees ~~of the Legislature~~ in a bargaining unit that includes employees other than those of the ~~Legislature~~ employer. The ~~board~~ employer shall not include within a bargaining unit employees from both the Assembly and Senate. The ~~board~~ employer shall not separate employees into bargaining units solely based on political affiliation.
(d) The board shall establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the

employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

3599.73.

The ~~Legislature~~ employer shall adopt reasonable rules for all of the following:
(a) Registering employee organizations, as defined by subdivision (c) of Section 3599.52.
(b) Determining the status of organizations as employee organizations.
(c) Identifying the officers and representatives who officially represent employee organizations.

3599.74.

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision is the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

3599.75.

(a) In determining an appropriate unit, the ~~board~~ employer is governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding seeks or agrees to an election in the unit.
(b) In determining an appropriate unit, the ~~board~~ employer shall take into consideration all of the following criteria:
(1) The internal and occupational community of interest among the employees, including, but not limited to, all of the following:
(A) The extent to which they perform functionally related services or work toward established common goals.
(B) The history of employee representation in state government and in similar employment.
(C) The extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements.
(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of the ~~Legislature's~~ employer's 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~~ employer, 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.

(3) The effect of the proposed unit on efficient operations of the ~~Legislature~~ employer and the compatibility of the unit with the responsibility of the ~~Legislature~~ employer and its employees to serve the public.
(4) The number of employees and classifications in a proposed unit and its effect on the operations of the ~~Legislature~~ employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.
(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees ~~of the Legislature~~.
(c) Political affiliation shall not constitute a community of interest for purposes of determining an appropriate unit.

3599.76.

(a) (1) All initial meet and confer proposals of recognized employee organizations shall be presented to the ~~Legislature~~ employer at a public meeting, and those proposals thereafter are a public record.
(2) All initial meet and confer proposals or counterproposals of the ~~Legislature~~ employer shall be presented to the recognized employee organization at a public meeting, and those proposals or counterproposals thereafter are a public record.
(b) Except in cases of emergency as provided in subdivision (d), meeting and conferring shall not take place on any proposal subject to subdivision (a) 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, the ~~Legislature~~ employer shall, in an open meeting, hear public comment on all matters related to the meet and confer proposals.
(c) Forty-eight hours after any proposal that includes any substantive subject that has not first been presented in proposals for public reaction pursuant to this section is offered during any meeting and conferring session, the proposal and the position, if any, taken by the representatives of the ~~Legislature~~ employer are a public record.
(d) Subdivision (b) does not apply when the ~~Legislature~~ employer 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~~ employer or recognized employee organization, it 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 results of the meeting and conferring shall be made public as soon as reasonably possible.
(e) This section does not affect the authority of each house of the Legislature and the committees thereof to hold closed meetings pursuant to paragraphs (3) and (4) of subdivision (c) of Section 7 of Article IV of the Constitution and Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2.

3599.77.

This chapter does not apply Section 923 of the Labor Code to employees ~~of the Legislature.~~

3599.78.

This chapter does not modify or eliminate any existing 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~~ shall remain in effect unless and until changed in accordance with the ~~Legislature's~~ employer's procedures or pursuant to a memorandum of understanding or agreement between the ~~Legislature~~ employer and a recognized employee organization.

3599.79.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity shall not affect any other provision or application of this chapter that can be given effect without the invalid provision or application and, to this end, the provisions of this chapter are severable.

3599.80.

Expenses incurred by the ~~Legislature~~ employer in relation to a properly ratified memorandum of understanding pursuant to this chapter are subject to Section 7.5 of Article IV of the California Constitution.

3599.81.

(a) Employees shall not have the right to strike during times when the Legislature is in session, or to recognize a picket line of an employee organization while in the course of the performance of their official duties.
(b) Notwithstanding subdivision (a), an essential employee shall not have the right to strike at any time. For purposes of this subdivision, "essential employee" means an employee whose duties are essential to maintaining public health or safety, including an employee whose absence would impair the ability of the employer to meet its constitutional obligations. The employer shall have the sole and exclusive authority to determine who is an essential employee.

3599.82.

Notwithstanding any other law, the expression of any views, arguments, or opinions, or the dissemination thereof in any form, by a Member of the employer, an employee, or excluded employee or position, related to this chapter or to matters within the scope of representation, shall not constitute, or be 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.

3599.83.

Notwithstanding Article 3.5 (commencing with Section 9070) of Chapter 1.5 of Part 1 of Division 2 of Title 2 or any other law, the employer is not required to disclose legislative records related to activities governed by this chapter, 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 this chapter.

~~**3599.81**~~ **3599.84.**

This chapter shall become operative on July 1, 2026.

SEC. 2.

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.