SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1577 (Stone)
Version: June 15, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
TSG/AWM

SUBJECT

Collective bargaining: Legislature

DIGEST

This bill would provide employees of the California Legislature, with specified exclusions, 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 that they can be fired 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. With these considerations in mind, this 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.

The bill is sponsored by the California Labor Federation. Support comes primarily from other organized labor groups who contend that legislative employees ought to have the same right to collectively bargain as other workers. Opposition comes from a general advocacy group who argues that the bill sets up many conflicts of interest. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

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.
   b) 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) Requires the Administrative Director of the Courts, or their designated representatives, acting with the authorization of the Chairperson of the Judicial Council, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and to consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. (Gov. Code, §§ 3524.63 et seq.)

12) Requires the Administrative Director of the Courts and the recognized employee organization, if they reach an agreement, to jointly prepare a written memorandum of the agreement, which the Administrative Director of the Courts shall present, when appropriate, to the Legislature for appropriation of funding and amendment of any related statutes. (Gov. Code, §§ 3524.63 et seq.)

13) Establishes the Public Employee Relations Board (PERB), a quasi-judicial administrative agency, to administer the collective bargaining statutes covering public employees including school, college, state, local agency, and trial court employees. PERB consists of five members appointed by the Governor by 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.)

14) 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 the Legislature Employer-Employee Relations Act (LEERA) for the purpose of promoting full communication between the Legislature and its employees by providing a reasonable method of resolving disputes regarding wages, hour, and other terms and conditions of employment between the Legislature and public employee organizations.

2) Defines the following relevant terms:
   a) "Employee of the Legislature" or "employee" means any employee of either house of the Legislature excluding (1) members of the Legislature, (2) appointed officers of the Legislature such as the Secretary of the Senate and Chief Clerk of the Assembly, and (3) department or office leaders such as chiefs of staff, staff directors, and chief consultants.
   b) "Legislature" or "employer" means the Assembly and the Senate; except that, for the purposes of bargaining or meeting and conferring in good faith under LEERA, the terms refer to the Speaker of the Assembly and the President pro Tempore of the Senate, or their designated representatives, acting with the authorization of their respective houses.

3) 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.

4) Provides PERB with exclusive jurisdiction over the initial determination as to whether the 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.

5) Authorizes PERB to establish procedures for investigating, hearing, and deciding LEERA cases, subject to all of the following:
   a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that PERB shall not issue a complaint (1) based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; or (2) based on conduct that is also prohibited by the collective bargaining agreement before the provided-for grievance mechanism has been adopted, except under specified circumstances.
   b) 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 this chapter.
   c) PERB shall have the power to issue a decision and order 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 back pay, as will effectuate the policies of this chapter.

6) Grants employees of the Legislature the right to 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.

7) Provides that 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 and 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.

8) Authorizes employee organizations to establish reasonable restrictions regarding who may join and to make reasonable provisions for the dismissal of individuals from membership.

9) Provides that 8)-9) do not prevent an employee from otherwise representing themselves individually or appearing on their own behalf in their employee relations with the Legislature.

10) Establishes requirements relating to when dues, initiation fees, and other assessments may be charged and how they may be remitted, in circumstances where

there are multiple employee organizations and when there is a recognized exclusive representative of an appropriate unit, as specified.

11) Requires the Legislature to furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and to deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee.

12) Provides that the scope of representation of an employee organization is limited to wages, hours, and other terms and conditions of employment and does not include consideration of the merits, necessity, or organization of any service or activity provided by law.

13) Requires the employer 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 employer, and to give the recognized employee organizations the opportunity to meet and confer with the administrative officials or their delegated representatives.

14) Requires the administrative officials or their delegated representatives to 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 in cases of emergency when the employer determines that a law, rule, or resolution must be adopted immediately without prior notice or meeting with a recognized employee organization.

15) Requires the Assembly and Senate leaders, as specified, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and to consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.
    a) "Meet and confer in good faith" means that the Assembly and Senate leaders, as specified, and representatives of recognized employee organizations have the mutual obligation personally to meet and confer promptly upon request by either party and continue to meet and confer for a reasonable period of time in order to freely exchange 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.

16) Requires Assembly and Senate leaders, as specified, and the recognized employee organization to jointly prepare a written memorandum of understanding (MOU) if an agreement is reached between the parties and for the former to present it, when appropriate, to the Legislature for appropriation of funding and amendment of any related statutes.

17) Requires the Joint Legislative Budget Committee to review any side letter, appendix, or other addendum to a properly ratified MOU that requires the expenditure of two hundred fifty thousand dollars ($250,000) or more related to salary and benefits and that is not already contained in the original MOU or the Budget Act.

18) Requires the Joint Legislative Budget Committee to determine, within 30 days after receiving the side letter, appendix, or other addendum, whether it presents substantial additions that are not reasonably within the parameters of the original MOU and thereby requires legislative action to ratify the side letter, appendix, or other addendum.

19) Authorizes either party to reopen negotiations on all or part of the MOU if the Legislature does not fully fund any MOU provision that requires the expenditure of funds.

20) Provides that nothing shall prevent the parties from agreeing and effecting those MOU provisions which do not require legislative action.

21) Requires, in the event that an MOU expires before a new one is approved, the parties must give continued 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.).

22) Authorizes the Legislature to implement any or all of its last, best, and final offer (LBFO) if the Assembly and Senate leaders, as specified, and the recognized employee organization reach an impasse in negotiations for a new MOU.

23) Provides that, if any proposal in the Legislature's LBFO that, if implemented, would conflict with existing statutes or require the expenditure of funds, to be presented to the Legislature, collectively, for passage of a statute providing for appropriation of funding, and provides that any related statutory changes are controlling without further legislative action.

24) Provides that LBFO implementation does not relieve the parties of the obligation to bargain in good faith and reach an agreement on an MOU if circumstances change, and does not waive rights that the recognized employee organization has under LEERA.

25) Authorizes the Assembly and Senate leaders, as specified, and the recognized employee organization, if after a reasonable period of time they fail to reach agreement on an MOU, to agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request PERB to appoint a mediator, selected and compensated as specified.

26) Requires Assembly and Senate leaders, as specified, to grant a reasonable number of the recognized employee organizations' employee representatives 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.

27) 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 26).

28) Provides that it is unlawful for an employee organization to:
    a) Cause or attempt to cause the Legislature to do an act prohibited in 27?).
    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 26).

29) Limits judicial review of a unit determination only to either of the following circumstances:
    a) 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.
    b) When a party raises the issue as a defense to an unfair practice complaint. A reviewing court shall not stay a PERB order directing an election pending judicial review.

30) Permits a party to the case to 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.

31) Authorizes any charging party, respondent, or intervenor aggrieved by a PERB final decision or order in an unfair practice case to 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.

32) Provides procedural and service requirements for writ requests relating to a unit determination or PERB order.

33) Gives the court jurisdiction to grant PERB any temporary relief or restraining order the court deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside PERB's order.

34) Provides that PERB's findings are conclusive with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole.

35) Authorizes PERB to 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 the time to petition for extraordinary relief from the PERB decision has expired.

36) Requires the court to enforce the PERB order by writ of mandamus if, after hearing, the court determines that the order was issued pursuant to procedures established by PERB and that the person or entity refuses to comply with the order. The court shall not review the merits of the order in such a proceeding.

37) Requires the Legislature to grant exclusive recognition to employee organizations designated or selected pursuant to PERB established rules for employees of the Legislature or an appropriate unit thereof, subject to the right of an employee to self-represent.

38) Prohibits PERB from including employees of the Legislature in a bargaining unit that includes non-legislative employees.

39) Requires PERB to establish procedures for the revocation of recognition of an employee organization, as specified.

40) Requires the Legislature to adopt reasonable rules and regulations for all of the following:
    a) Registering employee organizations and bona fide associations, as specified.
    b) Determining the status of organizations and associations as employee organizations or bona fide associations.
    c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

41) Provides, notwithstanding any other law, that an administrative law judge's decision regarding the recognition or certification of an employee organization becomes PERB's final order if a party appeals the decision and if PERB does not issue a ruling that supersedes the decision on or before 180 days after the party filed the appeal.

42) Requires PERB to be governed by specified criteria in determining an appropriate bargaining unit, provided that one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit.

43) Provides that specified exclusive employee representative and employer initial meet and confer proposals must be presented at a public meeting, and those proposals thereafter are a public record. If proposals are offered during a meet and confer session that include a substantive subject the Legislature has not first presented as a proposal for reaction, the proposal and the position taken, if any, becomes a public record within 48 hours

44) Prohibits, except in cases of emergency, any meeting and conferring to take place on any proposal until not 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, and thereafter, the employer shall, in an open meeting, hear public comment on all matters related to the meet and confer proposals.

45) Provides that the requirement to wait seven days after publicly presenting a proposal before meeting and conferring does not apply when the employer determines that, due to specified circumstances that are beyond the control of the employer or recognized employee organization, the parties 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 Legislature shall make the results of the meeting and conferring public as soon as reasonably possible.

46) Provides that LEERA does not apply Section 923 of the Labor Code to employees of the Legislature.

47) Provides that nothing in LEERA modifies or eliminates any wages, hours, or terms and conditions of employment for employees of the Legislature, which shall 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.

48) Includes a severability clause.

COMMENTS

1. Background: the state of the union(s)

After a period of relative disfavor, unions have regained popularity in recent years—perhaps in response to the soaring income inequality that coincided with the decline in union membership. The public service and political sectors are no exception: as the authors note, in the 2020 campaign cycle many Democratic presidential candidates had unionized campaign staff, and this year the United States House of Representatives passed a resolution granting political and apolitical staffers the legal protections to form a union.

Within the California government, legislative employees are an outlier in terms of lacking legal permission to unionize. The NLRA excludes public sector employees, so there is no federal collective bargaining mandate.[1] State law has filled that gap with respect to employees of the executive branch and the Judicial Council, who have statutory authorization to form collective bargaining units along with several other government employee sectors.[2] Legislative staff not only lack this statutory authorization; they are also constitutionally prohibited from enjoying civil service protections.[3] It is an unpleasant lacuna.

The authors of the bill point to a number of events and conditions that illustrate the importance of giving legislative employees the right to form collective bargaining units:

- The #MeToo Movement, which brought to light hidden and not-so-hidden harassment and inappropriate conduct by bosses toward their legislative staff.
- Fear of, and actual, retaliation against legislative staff for reporting incidents, including #MeToo incidents. Committee staff have received statements of support for this bill from employees of the Legislature who do not wish to be quoted, even anonymously, for fear of retaliation.
- The inadequacy of the Workplace Conduct Unit (WCU). Founded in the wake of the #MeToo Movement to address employee reports of misconduct, investigate reporting suggests that the WCU may have done more harm than good, e.g., by revealing the identities of anonymous complainants and leading to retaliation against individuals who have lodged complaints.[4] Proponents of the bill argue that the power differential that exists between many bosses and employees in the Legislature demands a trustworthy, reliable, and worthwhile procedure through which employees can report instances of misconduct so as to ensure that the

---

[1] 29 U.S.C. §§ 151 et seq.
[2] Gov. Code, §§ 3512 et seq., 3524.50 et seq.
[3] Cal. Const., art. VII, § 4(a).
[4] Bollag, *California created a new unit to address harassment in the Legislature. Is it making things worse?* San Francisco Chronicle (Apr. 12, 2022, updated Apr. 16, 2022), *available at* https://www.sfchronicle.com/politics/article/California-legislature-workplace-harassment-17078756.php (last visited Jun. 25, 2022).

Legislature is a safe place to work. They argue that the WCU's shortcomings stand in disheartening contrast to the legislation the Legislature has enacted to protect workers at other workplaces.
- The workplace safety issues that arose with the COVID-19 pandemic and the health risks some staffers were required to bear.
- General poor working conditions.
- Low wages, which are bad for the employees, the Legislature, and the public good when the Legislature loses talented staffers to higher-paying lobbying jobs.

2. Policy pros and cons[5]

a. The pros

Collective bargaining improves labor conditions. Let us count the ways:
- Better wages. Committee staff have received support for this bill from a former staffer who reported that they watched later-hired staffers be compensated at higher rates but, despite making their case to leadership, being denied a commensurate salary increase. The Legislature loses many good workers to lobbying firms and other private sector employers because it does not pay competitively. Collective bargaining could benefit employees and the state in terms of making it easier for talented people to remain in the Legislature.[6]
- Better grievance procedures. As noted above, legislative staff have reported—on and off the record—a fear of and/or actual retaliation for expressing dissatisfaction with employers, job conditions, or other negative aspects of their jobs. Proponents of the bill argue that existing anti-retaliation measures are insufficient to make employees comfortable with reporting their bosses and to alleviate fear of retaliation. Grievance procedures established through a union could provide the security needed to ensure all employees feel safe reporting inappropriate conduct.
- Ineffectiveness of existing procedures. Related to the above, many legislative employees have expressed dissatisfaction with the Workplace Conduct Unit. A grievance procedure through a collective bargaining unit could better address the "who watches the watchers?" conundrum.
- Do as I say, not as I do? The Legislature has, in recent history, been supportive of labor rights. Committee staff have not received arguments suggesting a principled basis for treating a legislative employee union any differently.

---

[5] This section—indeed, this whole analysis—presents a challenge because of the conflict of interest arising from an employee of the Legislature analyzing a bill that would affect their own collective bargaining rights. Committee staff have attempted to be as objective as possible in drafting this analysis.
[6] It feels necessary to note that most legislative employees care passionately about their work and improving the lives of Californians; this is simply an acknowledgement that doing good work and being paid a fair wage should not be an either/or proposition, and commitment to the cause should not be gauged in willingness to accept a low salary.

b. The cons

The cons of this bill generally relate to the specific terms of the bill, not to the general wisdom of allowing some or all of the employees of the Legislature to unionize. Potential cons presented to Committee staff include:

- Overly disparate roles among legislative employees. There are a wide range of roles among legislative employees, and not all resemble each other. Some jobs (such as committee jobs) are closely tied to the legislative calendar, while others (such as district office jobs) are much more regular. Some jobs are performed from a fixed location, while others may involve traveling with a member. Some may involve regular hours, whereas others…not so much. The analysis of the Senate Labor, Public Employment and Retirement Committee (incorporated herein by reference) suggested that the diversity of the legislative employment experience, it may be difficult for collective bargaining units to effectively represent large numbers of legislative employees.
- Different houses, different unions? The analysis of the Senate Labor, Public Employment and Retirement Committee also raised the issue that this bill would allow cross-house bargaining units, which could be present obstacles given the traditional separation between management of Senate and Assembly employees by their respective houses.
- The constraints of Proposition 140. In 1990, the voters passed Proposition 140, also known as the Political Reform Act of 1990. The measure added several governance-related measures to the California Constitution including term limits, contributions for members' retirements, and gubernatorial election requirements. Relevant to this bill are the limits put in place on the expenditures for members' own compensation, the compensation for members' employees, and members' operating budgets, which Proposition 140 capped at a set fraction of the budget.[7] Thus, unlike a privately owned company—which can, for example, increase employee compensation by moving funds from other areas, such as executive compensation or stock buybacks—the Legislature is constitutionally constrained in how much can be expended on members' employees' salaries. This could make collective bargaining difficult.

3. How LEERA works

At a high level, this bill establishes a statutory framework that authorizes legislative employees to form collective bargaining units and sets the terms on which the leadership of the Legislature would have to negotiate with those units. The bill requires PERB to establish rules for the Legislature to follow in granting exclusive recognition to a bargaining unit and gives PERB the exclusive jurisdiction over any disputes between the Legislature and the bargaining units. The bill establishes a framework for negotiations between the Legislature and the employee bargaining units, including

[7] *See id.*, art. IV, § 4.5.

requiring all proposals and counterproposals to be made public and available for public comment.

This bill is clear that no legislative employee would be required to be part of a collective bargaining unit or give up their right to represent themselves with respect to their employment relationship with the Legislature. For employees who do opt to join a collective bargaining unit, the bill permits the unit to establish fees, dues, or other assessments as a condition of membership. The bill specifies that it is unlawful for the Legislature to take specified actions to deter the establishment of collective bargaining units or fail to negotiate in faith with those units, and that it is unlawful for a bargaining unit to engage in specified reprisal actions or fail to negotiate in good faith.

As noted above, PERB has the exclusive jurisdiction to determine whether a party violated LEERA, so judicial review is limited. A party may seek review of a PERB order when PERB agrees that judicial review is warranted and joins the request for review, or when such an issue is raised as a defense to an unfair practice complaint. A party may also seek relief from a PERB order through a petition for extraordinary relief; in such a proceeding, PERB's findings with respect to questions of fact, including ultimate facts, are conclusive unless they are not supported by substantial evidence.

LEERA is modeled after the Judicial Council's collective bargaining statutory scheme, JCEERA. The current version of the bill was put in place on June 15, 2022, as a gut-and-amend, at which point it was referred to the Senate Labor, Employment Relations and Retirement Committee and this Committee. As such, the normal period of time in which a bill of this significance could be analyzed was significantly curtailed. It does appear, however, that in moving the text of JCEERA over to the legislative context, some nuances of the Legislature's unique circumstances may have been overlooked. For example, this bill provides no clear guidance as to the right to strike, which is both essential to the collective bargaining process and, due to the strict constitutional deadlines for passing bills and the budget,[8] potentially disastrous. Govern for California, writing in opposition, also suggests that the bill presents potential conflicts of interest that could arise when, e.g., the Legislature considers bills related to collective bargaining rights or bills supported by the employees' union. Clearly these issues are not insurmountable—other states and the United States House of Representatives have successfully provided for collective bargaining for legislative employees—but further work may be needed on this bill. This bill will be referred to the Senate Appropriations Committee if it is passed by this Committee, so there is still time to do that work.

4. Constitutional considerations

The California Constitution establishes the powers of state government as legislative, executive, and judicial powers and prohibits a person charged with one power from

[8] Cal. Const., art. IV, §§ 10, 12.

exercising the others, except where expressly provided for in the Constitution.[9] This bill grants 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."[10] 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.[11] Thus, while PERB is the logical choice to adjudicate labor disputes from the perspective of function and expertise, it may be that, in this particular circumstance, adjudication needs to be performed by an independent or intra-Legislative body instead.

Relatedly, the implicit need for the Governor to sign off on Legislative labor decisions might also run afoul of the separation of powers principle. The bill requires MOUs to be passed by statute, which necessarily require the Governor's signature; what if the Governor refuses? Similarly, what if MOUs require statutory changes or appropriations that the Governor is unwilling to make? The Legislature could, in theory, override a veto,[12] but that would place members in a very difficult position. Giving the Governor literal veto power over the Legislature's employment decisions may create conflicts of interest that cannot be impossible, reinforcing the importance of separation of powers in the first instance.

5. Arguments in support of the bill

According to the author:

> The Legislature remains the only branch of government that prohibits its employees from unionizing. Legislative staff are drawn to this line of work to improve the material conditions of others. However, once they enter legislative work, the trade-off becomes clear. If staff would like to participate in meaningful policymaking, then they risk entering unhealthy working conditions. If the California Legislature claims to be pro-worker, then it must be pro-worker for all workers, including its own employees.

---

[9] Cal. Const., art. III, § 3.

[10] *Butts v. State of California* (1992) 4 Cal.4th 668, 700, fn. 4.

[11] The potential for judicial review also distinguishes this bill from JCEERA; 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.

[12] Cal. Const., art. III, § 10(a).

As sponsor of the bill, the California Labor Federation writes:

> 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 support, a coalition of 28 labor organizations writes:

> 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 the statute due to their at will-status. AB 1577 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.

6. <u>Arguments in opposition to the bill</u>

In opposition to the bill, Govern for California writes:

> AB 1577, while well-intentioned, is replete with potential conflicts of interest that could easily frustrate the Legislature's critical work. As legislative employees play an indispensable role assisting elected officials to serve their constituents, how could they maintain this service if a union representing them could take contrary positions to bills proposed by Assemblymembers or Senators? Politically, these unions could also work to defeat legislators and significantly affect the employment of the very people charged with serving these elected officials. Rather than allowing legislative employees to unionize, we recommend that the Legislature thoroughly evaluate the basic protections granted to private sector employees and work to extend those protections to employees of the legislative branch. This would also send the salutary message that the California Legislature is willing to subject itself to the same requirements it imposes on the private sector.

SUPPORT

California Labor Federation (sponsor)
American Federations of State, County, and Municipal Employees - California
California Alliance for Retired Americans
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Professional Firefighters
California School Employees Association
California State Council of Laborers
California State Legislative Board of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division
California Teachers Association
California Teamsters Public Affairs Council
Engineers and Scientists of California, IFPTE, Local 20
Los Angeles County Federation of Labor
Professional & Technical Engineers, IFPTE, Local 21
Service Employees International Union California State Council
Service Employees International Union, Local 1000
SMART Transportation Division
State Building & Construction Trades Council of California
Transport Workers Union of America
UNITE HERE
UNITE HERE, Local 11
United Auto Workers, Local 2865
United Auto Workers, Local 5810
United Domestic Workers/AFSCME, Local 3930
United Food & Commercial Workers - Western States Council
Utility Workers Union of America
1 individual

OPPOSITION

Govern for California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 314 (Lorena Gonzalez, 2021) would have established a LEERA that is substantially similar to this bill. AB 314 died at the Assembly Desk.

AB 969 (Lorena Gonzalez, 2019) would have established a LEERA that is substantially similar to this bill. AB 969 died in the Assembly Public Employment and Retirement Committee.

AB 2048 (Gonzalez, 2018) would have established a LEERA that is substantially similar to this bill. 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)[13]

****

[13] As noted above, this bill was gutted and amended on June 15, 2022, so the Assembly committee and floor votes taken in 2021 are not applicable to the bill currently in print.