

HOUSE BILL REPORT

HB 2325

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to state legislative employee collective bargaining.

Brief Description: Concerning state legislative employee collective bargaining.

Sponsors: Representatives Fitzgibbon, Riccelli, Berry, Walen, Gregerson, Bateman, Doglio, Nance, Ramel, Macri, Pollet and Ormsby.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/19/24, 1/26/24 [DPS].

Brief Summary of Substitute Bill

- Establishes the scope of which employees are eligible for collective bargaining at the Legislature.
- Establishes provisions related to mandatory and prohibited subjects of bargaining.
- Requires the appointment of a legislative commissioner in the Public Employment Relations Commission to decide matters related to collective bargaining at the Legislature, including determining bargaining units and issuing rulings, with certain limitations.
- Makes changes to provisions related to: (1) unfair labor practices; (2) deductions for dues; (3) strikes; (4) mediation; and (5) other procedures and limitations related to collective bargaining at the Legislature.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Ormsby and Ortiz-Self.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmidt, Ranking Minority Member; Rude and Ybarra.

Staff: Trudes Tango (786-7384).

Background:

Legislation enacted in 2022 granted legislative employees the right to organize, bargain collectively, and to refrain from any or all such activities, effective May 1, 2024. Collective bargaining negotiations for legislative employees may commence after May 1, 2024, but no agreement may take effect prior to July 1, 2025.

The duration of a collective bargaining agreement (CBA) may not exceed one fiscal biennium. Once a bargaining unit has been certified, negotiations must commence no later than July 1st of each even-numbered year.

The Public Employment Relations Commission (PERC) shall determine all questions pertaining to ascertaining exclusive bargaining representatives and collectively bargaining. An employee organization cannot be certified as the exclusive bargaining representative, unless it receives the votes of a majority of employees in the petitioned-for bargaining unit in a secret election by mail ballot, administered by the PERC.

Bargaining over management rights is prohibited. Management rights, in addition to all powers, duties, and rights established by constitutional provision or statute, includes: (1) the functions and programs of the employer, the use of technology, and the structure of the organization, including the size and composition of standing committees; (2) the right to direct and supervise employees; (3) the employer's budget and size of the workforce and financial basis for layoffs; (4) the hours of work during legislative session and the cutoff calendar; and (5) retirement plans and retirement benefits.

The right to strike, refuse to perform official duties, or engage in work stoppages during a legislative session or legislative committee assembly days is not granted.

The 2022 legislation also created the Office of State Legislative Labor Relations (OSLLR) to assist the House of Representatives (House), the Senate, and legislative agencies in implementing and managing the process of collective bargaining. The Director of the OSLLR has the duty to conduct negotiations on behalf of the employer. The Director was also required to study issues related to the implementation of collective bargaining for legislative employees and submit a final report by October 1, 2023. The report examined issues such as: (1) mandatory, permissive, and prohibited subjects of bargaining; (2) employer representation; (3) bargaining unit determination; and (4) approval and funding procedures.

Summary of Substitute Bill:

Applicability.

For purposes of determining the applicability of the collective bargaining statutes, the term "employee" is defined as:

- any regular partisan employee of the House or the Senate who is covered by the collective bargaining chapter;
- any regular employee who is staff of the: (1) Legislative Support Services (LSS); (2) Legislative Service Center (LSC); (3) Office of the Code Reviser (CRO), who during any legislative session, do not work full time on drafting and finalizing legislative bills to be included in the Revised Code of Washington; and (4) House and Senate administrations; and
- temporary staff hired to perform substantially similar work to that performed by employees listed above.

All other regular employees and temporary employees, including casual employees, interns, and pages, and employees in the Office of Program Research and Senate Committee Services are excluded from the definition.

The collective bargaining statutes do not apply to:

- any employee who has managerial authority, is a confidential employee, or who does not meet the definition of employee;
- elected or appointed members of the Legislature;
- any person appointed to office under statute, ordinance, or resolution for a specific term of office as a member of a multimember board, commission, or committee;
- caucus chiefs of staff and caucus deputy chiefs of staff;
- the Speaker of the House's attorney, house counsel, and leadership counsel to the minority caucus of the House; and
- counsel for the Senate who provide direct legal advice to the administration of the Senate.

The employer has the sole and exclusive authority to designate confidential employees, supervisors, and employees who have managerial authority, except that those designated employees may not, collectively, exceed 20 percent of the total employee positions of the employer.

For purposes of collective bargaining, the "employer" means:

- the Chief Clerk of the House, or the Chief Clerk's designee, for employees of the House;
- the Secretary of the Senate, or the Secretary's designee, for employees of the Senate; and
- the Chief Clerk and the Secretary of the Senate, acting jointly, or their designee, for the regular employees who are staff of the LSS, LSC, and the CRO.

Scope of Bargaining.

Unless otherwise provided, the matters subject to bargaining include wages, hours, terms and conditions of employment, and the negotiation of any question arising under a CBA. The prohibition over bargaining hours of work during legislative session is removed. The following items are added to the list of prohibited subjects of bargaining:

- matters relating to the qualifications and elections of legislators, or the holding of office of a legislator;
- matters relating to the Legislature or each house choosing its officers, adopting rules for its proceedings, selecting committees necessary for the conduct of business, considering or enacting legislation, or otherwise exercising its legislative power;
- matters relating to legislative calendars, schedules, and deadlines;
- laws, rules, policies, or procedures regarding ethics or conflicts of interest;
- health care benefits and other employee insurance benefits. The amount paid by a legislative employee for health care premiums must be the same as that paid by represented state employees under the Personnel System Reform Act;
- the employer's authority to: (1) lay off employees when there has been a change to the number of members in, or the make-up of, a caucus due to an election or appointment that necessitates a change in the number of staff; and (2) terminate an employee for engaging in partisan activities that are incompatible with the employee's job duties or position;
- the right to take whatever actions are necessary to carry out the mission of the Legislature and its agencies during emergencies; and
- employees' status as exempt from the civil service statutes and the federal Fair Labor Standards Act, except bargaining over terms related to hours of work and overtime are permitted.

Coalition Bargaining.

Negotiation for economic terms will be by a coalition of all exclusive bargaining representatives. The OSLLR Director and the exclusive bargaining representative may enter into supplemental bargaining of bargaining unit specific issues.

Authority of Public Employment Relations Commission and the Courts.

The PERC or the court must determine all questions described by the collective bargaining statutes as being under the PERC's authority, except that such authority may not result in an order or rule that intrudes upon or interferes with the Legislature's core function of efficient and effective law making or the essential operation of the Legislature. An order or rule may not:

- modify any matter relating to the qualifications and elections of legislators, or the holding of office of a legislator;
- modify any matter relating to the Legislature or each house choosing its officers, adopting rules for its proceedings, selecting committees necessary for the conduct of business, considering or enacting legislation, or otherwise exercising its legislative power;
- modify any matter relating to legislative calendars, schedules, and deadlines; or

- modify laws, rules, policies, or procedures regarding ethics or conflicts of interest.

No member of the Legislature may be compelled by subpoena or other means to attend a proceeding related to matters covered by the collective bargaining statutes during a legislative session, committee assembly days, or for 15 days before commencement of each session.

The PERC must adopt rules that provide for at least the following:

- secret balloting;
- consulting with employee organizations;
- access to lists of employees, job titles, work locations, and home mailing addresses;
- absentee voting;
- procedures for the greatest possible participation in voting;
- campaigning on the employer's property during working hours; and
- election observers.

Certification of an Exclusive Bargaining Representative and Bargaining Units.

The requirement that certification of the exclusive bargaining representative be by a vote in a secret election by mail ballot is amended to remove the requirement for mail ballots. Questions concerning representation may not be raised if fewer than 12 months have passed since the last certification or election. In addition, if a valid CBA exists covering the unit, no questions concerning representation may be raised except for the period of no more than 120 calendar days, nor less than 90 calendar days before the expiration of the contract.

In each application for certification of an exclusive bargaining representative and after hearing upon reasonable notice to all interested parties, the PERC must decide the bargaining units appropriate for certification. The PERC must consider the: (1) duties, skills, and working conditions of the employees; (2) history of collective bargaining; (3) extent of organization among the employees; (4) desires of the employees; and (5) avoidance of excessive fragmentation.

A bargaining unit is not appropriate if it includes:

- both supervisors and nonsupervisory employees. A unit that includes only supervisors may be considered appropriate if a majority of the supervisory employees indicates by vote that they desire to be included in such a unit; or
- both House and Senate employees.

If a single employee organization is the exclusive bargaining representative for two or more units, upon petition of the employee organization, the units may be consolidated into a single larger unit if the PERC considers the larger unit to be appropriate. The certified exclusive bargaining representative is responsible for representing the interests of all the employees in the bargaining unit. However, the exclusive bargaining representative has discretion to refuse to process grievances of employees that are unmeritorious.

Appointment of Legislative Commissioner.

A Legislative Commissioner position is established in the PERC exclusively for the purpose of certifying bargaining representatives, adjusting and settling complaints, grievances, and disputes, and otherwise carrying out the duties required of the PERC under the legislative collective bargaining statutes. The Legislative Commissioner may delegate authority to the Director of the PERC. The Speaker of the House and the President of the Senate must jointly appoint the Legislative Commissioner, who serves for a term of five years. Until a Legislative Commissioner is appointed, the duties required under the legislative collective bargaining statutes must be carried out by the PERC.

Mediation in the Event of Impasse.

If the parties fail to reach agreement in negotiating a CBA, either party may request assistance from the PERC for an impartial third party mediator. If a previously negotiated CBA expires while negotiations are underway, the terms and conditions specified in the CBA remain in effect for up to one year from the expiration date. Thereafter, the employer may unilaterally implement according to law.

Nothing prohibits the employer and exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses or to use any other governmental or other agency or person in lieu of the PERC.

Grievance Procedures.

A CBA must contain provisions for a grievance procedure of all disputes arising over the interpretation or application of the CBA. Procedures are established for arbitration if the parties agree to final and binding arbitration under grievance procedures. The procedures include selection of an arbitrator, the arbitrator's authority to compel a witness' attendance, setting hearings, and the jurisdiction of the court if a party that agreed to arbitration refuses to submit a grievance for arbitration or refuses to comply with an arbitrator's award. The arbitrator's award is subject to the same limits applicable orders by the PERC and the court.

Dues.

Procedures are established for the payment of dues. Upon authorization of an employee within the bargaining unit, and after certification or recognition of the unit's exclusive bargaining representative, the employer must deduct from payments to the employee the monthly amount of dues as certified by the exclusive bargaining representative's secretary. The employer must transmit the amount to the exclusive bargaining representative's treasurer.

The employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer must forward that request as soon as practicable to the exclusive bargaining representative.

The employee's authorization remains in effect until expressly revoked by the employee. The employee's request to revoke must be in writing and submitted to the exclusive bargaining representative. After the employer receives confirmation of the employee's revocation, the employer must end deductions no later than the second payroll after receipt of the confirmation.

The employer must rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

Unfair Labor Practices.

The PERC is empowered and directed to prevent any unfair labor practice (ULP) and to issue appropriate remedial orders. A complaint may not be processed for any ULP occurring more than six months before the filing of the complaint with the PERC or with the court. This power may not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may be established by law. If the PERC or the court determines that any person has engaged in an ULP, the PERC or the court must issue a cease and desist order and take affirmative action to effectuate the purposes and policy of the collective bargaining statutes, such as the payment of damages.

The expression of any views, arguments, or opinions, or the dissemination thereof in any form, by a member of the Legislature related to the legislative staff collective bargaining statutes or matters within the scope of representation does not constitute an unfair labor practice, unless the employer has authorized the member to express that view, argument, or opinion on behalf of, or as, the employer.

Access to New Employees.

The employer must provide the exclusive bargaining representative reasonable access to new employees of the bargaining unit for the purpose of presenting information about the exclusive bargaining representative to the new employees. The presentation may occur at a new employee orientation or at another time mutually agreed to by the employer and the bargaining representative. No employee may be mandated to attend the meetings or presentations by the exclusive bargaining representative.

Reasonable access means that the access occurs within 90 days of the employee's start date and the access is for no less than 30 minutes. The access must occur during the employee's regular work hours at the employee's regular worksite, unless another time and place is mutually agreed to by the employer and bargaining representative.

Strikes.

The time period limiting the strike provision to legislative session and committee assembly days is removed; therefore, nothing in the collective bargaining statutes permits or grants legislative employees the right to strike, participate in a work stoppage, or refuse to perform their official duties.

Miscellaneous Provisions.

The OSLLR Director's duties include establishing bargaining teams.

Procedures are created for the OSLLR Director to submit ratified CBAs, with cost estimates, to the employer and for submitting a request for funds necessary to implement the CBA to be included in the Governor's budget. If the Legislature or the Governor fails to provide the funds for a CBA, either party may reopen all or part of the CBA or the exclusive bargaining agreement may seek mediation. If a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the Governor or by resolution of the Legislature, both parties must immediately enter into bargaining for a mutually agreed upon modification to the CBA.

Provisions are established to determine effective dates of a CBA agreed to after the termination date of the previous CBA.

Definitions.

"Confidential employee" means an employee designated by the employer to assist in a confidential capacity, or serve as counsel to, persons who formulate, determine, and effectuate employer policies with regard to labor relations and personnel matters or who has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies, strategies, or process to the extent that such access creates a conflict of interest, or who assists or aids an employee with managerial authority.

"Employee with managerial authority" means any employee designated by the employer who, regardless of job title: (1) directs the staff who work for a legislative chamber, caucus, agency, or subdivision thereof; (2) has substantial responsibility in personnel administration, or the preparation and administration of the employer's budgets; and (3) exercises authority that is not merely routine or clerical in nature and requires the use of independent judgment.

"Supervisor" means an employee designated by the employer to provide supervision to and have authority over legislative employees on an ongoing basis as part of the employee's regular and usual job duties. Supervision includes the authority to direct employees, approve and deny leave, and effectively recommend decisions to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances when the exercise of the authority is not of a merely routine nature but requires the exercise of individual judgment.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- removes the prohibition on bargaining employees' at-will status, except that the parties may not bargain over the employer's authority to: (1) lay off employees when there has been a change to the number of members in, or the make-up of, a caucus

- due to an election or appointment necessitating a change to the number of staff; or (2) terminate an employee for engaging in partisan activities that are incompatible with the employee's job duties or position;
- removes the provision prohibiting the PERC from issuing orders to reinstate an employee;
 - removes the prohibition against bargaining hours of work during legislative session and the employees' exempt status under the Minimum Wage Act;
 - makes explicit that bargaining over terms related to hours of work and overtime are permitted;
 - amends the definition of "supervisor;"
 - creates the position of legislative commissioner within the PERC;
 - clarifies language regarding when an employee organization that represents multiple bargaining units; and
 - makes technical corrections to fix grammatical errors.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 26, 2024.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on May 1, 2024.

Staff Summary of Public Testimony:

(In support) This bill is a framework, and there are topics that still need to be discussed. Washington will have the most expansive legislative collective bargaining law in the country. Legislative assistants could benefit from collective bargaining especially when they have to deal with their member who is sexually harassing them. Collective bargaining will help create safe work places. Too many legislative assistants have to navigate difficult work environments on their own and do not have the power to report their members.

(Opposed) None.

(Other) The biggest issue is the prohibition on negotiating over just cause and overtime, which are important tools. Excluding just cause undermines the basic tenet of collective bargaining. Overtime work impacts people's lives. Collective bargaining is about job stability. The Legislature is a unique work environment and negotiations will look different than other sectors. Section 11(2) is a good faith effort to protect free speech, but as written it does not address an individual member's language directed at an employee that otherwise could be an unfair labor practice. The bill prohibits having a discussion about mutually beneficial options for working overtime.

Persons Testifying: (In support) Representative Joe Fitzgibbon, prime sponsor; Sarah

Tucker; Daniel Lugo; and Kendra Coburn.

(Other) Kati Durkin, Washington Federation of State Employees; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; and Seamus Petrie, Washington Public Employees Association.

Persons Signed In To Testify But Not Testifying: None.