

HOUSE BILL REPORT

E2SSB 6194

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: Senate Committee on Ways & Means (originally sponsored by Senators Stanford, Saldaña, Cleveland, Conway, Dhingra, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Nobles, Randall, Trudeau, Valdez, Van De Wege and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/16/24, 2/20/24 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)**

- Establishes the scope of which employees are eligible for collective bargaining at the Legislature, and establishes mandatory and prohibited subjects of bargaining.
- Makes changes to provisions related to: (1) the Public Employment Relations Commission's jurisdiction over legislative collective bargaining; (2) unfair labor practices; (3) deductions for dues; (4) strikes; (5) mediation; and (6) other procedures and limitations related to collective bargaining at the Legislature.
- Exempts certain employee bargaining representation activities from the Ethics in Public Service Act.
- Creates a temporary, three-member Legislative Commission.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

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.

Majority Report: Do pass as amended. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

Minority Report: Without recommendation. 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 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.

Summary of Amended 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 sole and exclusive authority to designate confidential employees, supervisors, and employees with managerial authority, except that the designated number may not exceed 20 percent of the total employee positions.

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, the LSC, and the CRO.

Scope of Bargaining.

The matters subject to bargaining include wages, hours, terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement (CBA). In addition to the existing list of prohibited subjects of bargaining, the following items are added:

- the employer's authority to: (1) lay off employees when there has been a change to the number of members in, or the makeup of, a caucus due to an election or appointment; (2) lay off an employee following an election, appointment, or resignation of a

- legislator; and (3) terminate an employee for engaging in partisan activities that are incompatible with the employee's job duties or position;
- 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, 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 employees' exempt statute under the civil service laws and the Fair Labor Standards Act; and
 - the right to take whatever actions are necessary to carry out the mission of the Legislature during emergencies.

The prohibition on bargaining over hours of work during legislative session does not prohibit bargaining over compensation for overtime for agreements that take effect after July 1, 2027. Bargaining over hours of work during interim is permitted.

Coalition Bargaining.

Negotiation for economic terms will be by a coalition of all exclusive bargaining representatives. Supplemental bargaining of bargaining unit specific issues is allowed.

Authority of the 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:

- the qualifications and elections and holding of office of members of the Legislature;
- any matter relating to the qualifications and elections of legislators, or the holding of office of a legislator;
- any matter relating to the Legislature or each house choosing its officers, adopting rules for proceedings, selecting committees, enacting legislation, or otherwise exercising its legislative power;
- any matter relating to legislative calendars, schedules, and deadlines; or
- 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;
- both House and Senate employees;
- partisan and nonpartisan staff;
- staff of the LSC, the LSS, or the CRO in combination with each other or with House or Senate staff; or
- staff of the majority and minority caucuses, unless a majority of staff from each caucus vote to be in a combined unit.

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.

Mediation in the Event of Impasse.

If the parties fail to reach agreement in negotiating a CBA, either party may request mediation through the PERC. 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.

The parties may agree 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 arbitrator's award is subject to the same limits applicable to 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.

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.

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.

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 a ULP, 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.

Ethics in Public Service.

The following activities conducted by or on behalf of legislative employees related to collective bargaining are exempt from state ethics restrictions relating to conflicts of interest and use of public resources:

- use of paid time and public resources for negotiating and administering CBAs for legislative employees when the employee is assigned to negotiate or administer the CBA and the use does not include state-purchased supplies or equipment, does not interfere with state business, and is consistent with the employer's policy on use of paid time;
- lobbying conducted by an employee organization, lobbyist, association, or third party on behalf of legislative employees concerning legislation that directly impacts legislative workplace conditions;
- communication with a prospective employee organization during nonwork hours and without the use of public resources; or
- conducting the day-to-day work of organizing and representing legislative employees in the workplace while serving in a legislative employee organization leadership position.

The exceptions do not affect the application of the prohibition against the use of special privileges, confidentiality requirements, or other applicable provisions of the Ethics in Public Service Act, nor do the exceptions permit any direct lobbying by a legislative employee.

Legislative Commission.

A temporary, three-member Legislative Commission 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 Commission may delegate

authority to the Director of the PERC. The Speaker of the House must appoint one member, the President of the Senate must appoint another member, and the two appointed members must jointly appoint the third member. Appointments must be made by September 30, 2024. Until the legislative commissioners are appointed, the duties required under the legislative collective bargaining statutes must be carried out by the PERC. The Legislative Commission expires on December 31, 2029, and thereafter the duties must be carried out by the PERC.

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.

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

Definitions.

Definitions for terms are provided, including definitions for "confidential employee," "employee with managerial authority," and "supervisor."

Amended Bill Compared to Engrossed Second Substitute Bill:

The striking amendment makes the following changes:

- allows bargaining over at-will status, but not over the employer's authority to: (1) lay off employees under certain circumstances related to changes due to elections, appointments, or resignations of legislators; and (2) terminate an employee for engaging in partisan activities incompatible with the employee's job duties;
- permits bargaining over hours of work during interim;
- permits bargaining over compensation for overtime for agreements taking effect after July 1, 2027;
- prohibits bargaining over exempt status under civil service laws and the federal Fair Labor Standards Act;
- prohibits bargaining units consisting of: (1) partisan and nonpartisan staff; (2) LSC, LSS, and CRO staff in combination with each other or with House or Senate staff; (3) the majority and minority caucus staff unless a majority of each caucus vote to be in a combined unit;
- provides that the employer has sole and exclusive authority to designate confidential employees, supervisors, and employees with managerial authority, except that the designated number may not exceed 20 percent of the total employee positions;
- amends the provision exempting the use of paid time and public resources for negotiating and administering a CBA from certain provisions of the Ethics Act to

specify that such activities are exempt when the employee is assigned to negotiate or administer the CBA and the use does not include state-purchased supplies or equipment, does not interfere with state business, and is consistent with the employer's policy on use of paid time; and

- creates a temporary three-member Legislative Commission within the PERC, and expires the Legislative Commission on December 31, 2029.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

(Other) Some provisions in the House bill provide more flexibility, and some provisions in the Senate bill provide more flexibility. The preference is to be more accommodating to employees around provisions related to just cause. The creation of the Legislative Commission is awkward because of the role of management in designating the adjudicator.

Persons Testifying: Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations.

Persons Signed In To Testify But Not Testifying: None.