

SENATE BILL REPORT

E2SSB 6194

As Amended by House, February 29, 2024

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, Lias, Lovelett, Nobles, Randall, Trudeau, Valdez, Van De Wege and Wilson, C.).

Brief History:

Committee Activity: Labor & Commerce: 1/18/24, 1/25/24 [DPS-WM, DNP].
Ways & Means: 2/02/24, 2/05/24 [DP2S, DNP].

Floor Activity: Passed Senate: 2/9/24, 27-22.
Passed House: 2/29/24, 56-37.

Brief Summary of Engrossed Second Substitute Bill

- Establishes which legislative employees have the right to collectively bargain.
- Adds mandatory and prohibited subjects of bargaining for legislative employees.
- Grants the Public Employment Relations Commission (PERC) and the courts the authority to determine, with limitations, questions arising under the legislative employee collective bargaining law.
- Establishes criteria PERC must consider when establishing bargaining units of legislative employees.
- Adds provisions related to the funding of collective bargaining agreements, dispute resolution, and dues deductions.

SENATE COMMITTEE ON LABOR & COMMERCE

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: That Substitute Senate Bill No. 6194 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Hansen and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6194 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Pedersen, Randall, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Torres and Wagoner.

Staff: Amanda Cecil (786-7460)

Background: Legislative Collective Bargaining. In 2022 the Legislature granted legislative employees the right to collectively bargain. Legislative employees also have the right to refrain from any or all such activities. Collective bargaining negotiations may commence after May 1, 2024, however, no agreement may take effect prior to July 1, 2025.

Collective bargaining negotiations must commence no later than July 1st of each even-numbered year after a bargaining unit has been certified, and the duration of an agreement may not exceed one fiscal biennium.

The Office of State Legislative Labor Relations (OSLLR) was created to assist the House of Representatives (House), the Senate, and legislative agencies in implementing and managing the process of collective bargaining. The director of OSLLR's (director), in addition to other duties, conducts negotiations on behalf of the employer.

The director was required to submit a report to the Legislature by October 1, 2023, on collective bargaining related matters, including:

- which employees of the Legislature for whom collective bargaining may be appropriate;

- mandatory, permissive, and prohibited subjects of bargaining;
- definitions of relevant terms;
- who would be considered an employer for the purpose of collective bargaining;
- common frameworks related to grievance procedures and processes for disciplinary actions; procedures related to PERC certifying and determining bargaining units, adjudicating unfair labor practices, and coalition bargaining;
- the efficiency and feasibility of coalition bargaining; procedures for submitting requests for funding; and
- approaches taken by other state Legislatures.

The Public Employment Relations Commission. The Public Employment Relations Commission (PERC) must determine all questions pertaining to ascertaining exclusive bargaining representatives, except that no employee organization may be certified unless it receives the votes of a majority of employees in the bargaining unit in a secret election by mail ballot.

Prohibited Acts. The employer and the exclusive bargaining representative of a bargaining unit of legislative employees may not enter into a collective bargaining agreement (CBA) that requires the employer to deduct, from the salary or wages of an employee, contributions for payments for political action committees sponsored by employee organizations with legislative employees as members.

During a legislative session or committee assembly days, legislative employees are not granted the right to strike, participate in a work stoppage, or refuse to perform their official job duties.

Prohibited Subjects of Bargaining. The employer shall not bargain over the rights of management, which, in addition to all powers, duties, and rights established by constitutional provision or statute, includes the following:

- 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;
- the employer's budget and the size of the employer's workforce, including determining the financial basis for layoffs;
- the right to direct and supervise employees;
- the hours of work during legislative session and the cutoff calendar for a legislative session; and
- retirement plans and retirement benefits.

Conflicts with a Collective Bargaining Agreement. Except for an applicable code of conduct policy adopted by a chamber of the Legislature or a legislative agency, if a conflict exists between policies adopted by the Legislature relating to wages, hours, and terms and conditions of employment and a provision of a CBA, the CBA. A provision of a CBA that conflicts with a statute or an applicable term of a code of conduct policy adopted by a chamber of the Legislature or a legislative agency is invalid and unenforceable.

Summary of Engrossed Second Substitute Bill: Employer and Employees. For the purposes of collective bargaining, the employer is:

- the Chief Clerk of the House for employees of the House;
- the Secretary of the Senate for employees of the Senate; and
- the Chief Clerk and the Secretary of the Senate, acting jointly, for the regular employees who are staff of the Office of Legislative Support Services (LSS), Legislative Service Center (LSC) and the Office of the Code Reviser (CRO).

An employee is any regular partisan employee of the House or Senate, and any regular employee who is staff of:

- LSS;
- LSC;
- CRO, who, during legislative session, does not work full time on drafting and finalizing legislative bills to be included in the Revised Code of Washington; and
- House and Senate administrations.

An employee is also temporary staff hired to perform substantially similar work to that performed by employees included in the bill.

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

Exclusions from Bargaining. The following positions are excluded from collective bargaining:

- any legislative 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's attorney, House counsel, and leadership counsel to the minority caucus of the House; and
- the counsel for the Senate that provide direct legal advice to the administration of the Senate.

A confidential employee is 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.

An employee with managerial authority is any employee designated by the employer who,

regardless of job title:

- directs the staff who work for a legislative chamber, caucus, agency, or subdivision;
- has substantial responsibility in personnel administration, or the preparation and administration of the employer's budgets; and
- exercises authority not merely routine or clerical in nature and requires the use of independent judgment.

The Public Employment Relations Commission. The Public Employment Relations Commission (PERC) and the courts have authority to determine all questions related to collective bargaining of legislative employees, except that 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:

- require the Legislature to reinstate an employee;
- modify any matter relating to the qualifications and elections of members of the Legislature, or the holding of office of members of the Legislature;
- modify any matter relating to the Legislature adopting rules for its proceedings, selecting committees necessary for the conduct of business, considering or enacting legislation, or otherwise exercising legislative power; modify any matter relating to legislative calendars, schedules, and deadlines of the Legislature; 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 collective bargaining matters during a legislative session, committee assembly days, or for 15 days before commencement of each session.

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 work hours; and
- election observers.

Scope of Bargaining. The matters subject to bargaining are wages, hours, terms and conditions of employment, and the negotiation of any question arising under a CBA.

The following subjects are added to the prohibited subjects of bargaining:

- reinstatement of an employee;
- the qualifications and elections of members of the Legislature, or the holding of office of members of the Legislature;
- the Legislature adopting rules for its proceedings, selecting committees necessary for the conduct of business, considering or enacting legislation, or otherwise exercising

- legislative power;
- any matter relating to legislative calendars, schedules, and deadlines of the Legislature;
- laws, rules, policies, or procedures regarding ethics or conflicts of interest;
- the employer's right to hire, terminate, and promote employees;
- health care benefits and other insurance benefits. The amount paid by a legislative employee for health care premiums must be the same as that paid by represented state employees; and
- the right to take whatever actions are deemed necessary to carry out the mission of the Legislature and its agencies during emergencies.

The prohibition on bargaining over hours of work during legislative session does not prohibit bargaining over compensation for hours worked in excess of 40 hours in a workweek in agreements that take effect after July 1, 2027.

Unfair Labor Practices. PERC is empowered and directed to prevent any unfair labor practices and to issue appropriate remedial orders. A complaint may not be processed for an unfair labor practice occurring more than six months prior to the complaint. If PERC or a court determines that any person has engaged in, or is engaging in, an unfair labor practice, they must issue an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy the collective bargaining law, such as the payment of damages. PERC may petition the Thurston County Superior Court for enforcement of its order and for appropriate temporary relief.

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

Bargaining Units. PERC must decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, PERC must consider:

- the duties, skills, and working conditions of the employees;
- the history of collective bargaining;
- the extent of organization among the employees;
- the desires of the employees; and
- the avoidance of excessive fragmentation.

A 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.

A supervisor is 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.

A provision requiring certification of an exclusive bargaining representative of a bargaining unit by mail ballot is removed, making the requirement a majority of employee votes in a secret election, rather than a secret election by mail ballot.

The exclusive bargaining representative must represent the interests of all the employees in the bargaining unit, but this does not limit the exclusive bargaining representative's discretion to refuse to process unmeritorious employee grievances.

If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if PERC considers the larger unit to be appropriate.

Questions of representation may not be raised if fewer than 12 months have elapsed since the last certification or election. If a valid CBA exists for a bargaining unit, no questions of representation may be raised except for period of 90 to 120 days before the expiration of the contract.

Collective Bargaining Processes. The parties to a CBA must reduce the agreement to writing and execute it. The CBA must contain provisions that provide for a grievance procedure of all disputes arising over the interpretation or application of the CBA that is valid and enforceable under its terms.

The director must submit ratified CBAs, with cost estimates, to the employer by October 1st before the legislative session at which the request for funds are to be considered. The transmission of costs estimates submitted by the Legislature to the Governor currently required by law must include a request for funds necessary to implement the provisions of all CBAs covering legislative employees.

If the Legislature or Governor fail to provide funds for a CBA, either party may reopen all or part of the agreement, or the exclusive bargaining representative may seek mediation or other agreed-to procedures for resolving impasse. 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 collective bargaining for a mutually agreed upon modification of the agreement.

Negotiation for economic terms will be by a coalition of all exclusive bargaining representatives and any provisions agreed to by the employer and the coalition must be included in all CBAs negotiated by the parties. Supplemental bargaining of bargaining unit specific issues is authorized.

Should the parties fail to reach an agreement during negotiations, either party may request mediation through PERC. PERC must bear the cost for mediator services. The parties may, at their own expense, agree to their own procedure for resolving impasses. If the parties agree to final and binding arbitration, they may agree on one or more permanent arbitrators or select arbitrators from any available source. If the parties cannot agree on an arbitrator, PERC must supply a list of names. The parties may go to superior court to compel a party that refuses arbitration and to enforce an arbitration order.

If an agreement expires during negotiations, the terms and conditions of the CBA remain in effect for one year after the expiration date of the agreement. After a year, the employer may unilaterally implement according to law.

If a CBA is concluded after the termination date of the previous CBA, the effective date of the CBA may be the day after the termination of the previous CBA, and all benefits included in the new CBA, including wage or salary increases, may accrue beginning with that effective date.

Dues Deductions and New Employee Orientation. After certification of an exclusive bargaining representative, and upon authorization of an employee within the bargaining unit, the employer must deduct from the payments to the employee the monthly amount of dues and must transmit the amount to the treasurer of the exclusive bargaining representative. An 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 in writing by the employee to the exclusive bargaining representative.

Current law that requires the employer to provide the exclusive bargaining representative reasonable access to new employees of the bargaining unit for the purposes of presenting information about the exclusive bargaining representative is applied to legislative employees.

Right to Strike. References to the time periods during legislative session and committee assembly days are removed. Legislative employees are not permitted to strike, participate in work stoppages, or refuse to perform their official job duties.

Office of State Legislative Labor Relations. Establishing bargaining teams is added to the duties of the director. Requirements for the director to contract with an external consultant

to gather input from employees and to submit reports to the Legislature are removed.

Ethics. 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;
- 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 on 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is based on the one provided by Office of State Legislative Labor Relations as part of its report. This bill is a starting point. Without a union or the security of a contract, reporting harassment can put someone's job in danger. Workers should be able to bargain for a safer workplace. Too many legislative assistants have to navigate complicated workplace issues on their own without help. Retaliation and other workplace issues highlight the need to include just cause in the bill. The bill would allow for inclusion of more marginalized employees in the workplace.

OTHER: Former legislative staff have made a good case for forming a union. There are issues with certain areas of the bill, such as the prohibition on negotiating overtime and just cause termination. These are usually basic parts of labor negotiations. Employees need protections from arbitrary termination. The bill should not throw out basic tenets of labor law and should not predetermine an outcome. The bill may allow a lawmaker to threaten

retaliation over bargaining.

Persons Testifying (Labor & Commerce): PRO: Senator Derek Stanford, Prime Sponsor; Sarah Tucker; Daniel Lugo.

OTHER: Seamus Petrie, Washington Public Employees Association; Abbie Hart; Joe Kendo, Washington State Labor Council, AFL-CIO.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* Other: Some of the language is pretty good but this should not prohibit negotiating overtime compensation and just cause terminations as these are crucial to collective bargaining.

Persons Testifying (Ways & Means): OTHER: Joe Kendo, Washington State Labor Council, AFL-CIO.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Establishes a temporary three-member legislative commission within PERC, and expires the legislative commission on December 31, 2029.
- Includes, in the definition of confidential employee, employees whose duties normally require access to confidential information that contributes to the development of the employer's collective bargaining policies or bargaining strategies, and specifies that the employees may include employees whose primary functions include supporting the offices of the Secretary of the Senate or Chief Clerk of the House or conducting accounting, payroll, labor management, collective bargaining, or human resources activities.
- Provides that the employer has sole and exclusive authority to designate supervisors, confidential employees, and employees with managerial authority, and that the designated number of confidential and managerial employees may not exceed 20 percent of the total number of employees eligible to bargain. However, for LSS, LSC, and CRO, the number of designated confidential and managerial employees may not exceed 20 percent of the total employees in each of those respective agencies.
- Specifies that the collective bargaining statutes do not apply to the Deputy Secretary of the Senate and Deputy Chief Clerk of the House, the Senate Human Resources Officer, the Human Resources Director of the House, and the human resources officers or directors of LSS, LSC, and CRO, and the directors of accounting for the House, Senate, LSS, LSC, and CRO.
- Removes the prohibition on PERC and the courts making orders or rules that require the Legislature to reinstate an employee.
- Adds, to the list of inappropriate bargaining units, bargaining units that include:
 1. both partisan and nonpartisan employees;

2. employees of the majority party caucus and the minority party caucus, unless a majority of the employees of each caucus indicate by vote that they desire to be included together in the same unit; and
 3. employees of LSC, LSS, and CRO in any combination with each other or in any combination with employees of the house of representatives or employees of the Senate.
- Adds, in addition to the prohibition on bargaining over hours of work during legislative session, prohibitions on bargaining over hours of work during the 60 days before legislative session and the 20 days after legislative session. Allows bargaining over compensation for hours of work in excess of a 40-hour workweek and hours of work during periods not otherwise prohibited after July 1, 2027.
 - Removes the inclusion of the employer's right to hire, terminate, and promote employees in the list of management rights prohibited from bargaining, as well as the provision stating that Legislative employees hold their positions at the employer's pleasure.
 - Adds to the list of management rights that are excluded from bargaining, 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 that necessitates a change in the number of staff;
 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.
 - Changes the provision exempting the use of paid time and public resources for negotiating and administering a CBA from certain state ethics restrictions 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.