ASSEMBLY BILL No. 969

Introduced by Assembly Member Gonzalez
(Coauthors: Assembly Members Boerner Horvath, Gloria, Kalra, McCarty, Salas, and Mark Stone) Mark Stone, Bonta, Carrillo, Cervantes, Smith, Ting, and Wicks)
(Coauthor: Senator Durazo)

February 21, 2019

An act to add Chapter 12.5 (commencing with Section 3599.50) to Division 4 of Title 1 of the Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL’S DIGEST

AB 969, as introduced, Gonzalez. Collective bargaining; Legislature.
Existing law, the Ralph C. Dills Act (Dills Act), governs collective bargaining between the state and recognized state public employee organizations. Existing law excludes certain employees from coverage under the Dills Act, including, among others, managerial employees, supervisory employees, and confidential employees, as defined. Existing law creates the Public Employment Relations Board and authorizes it, among other things, to determine appropriate state employee bargaining units, as specified.

This bill would enact the Legislature Employer-Employee Relations Act, to provide employees of the Legislature, including some supervisory and managerial employees, the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. The bill would prescribe rights, duties, and prohibitions in this context that parallel those in the Dills Act. The bill would prohibit the Public Employment Relations Board from
including employees of the Legislature in a bargaining unit that includes employees other than those of the Legislature. The bill would make it a misdemeanor for any person to willfully resist, prevent, impede, or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to its provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program. The bill would provide that the provisions of the Legislature Employer-Employee Relations Act are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.


The people of the State of California do enact as follows:

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

Chapter 12.5. Legislature Employer-Employee Relations

3599.50. This chapter shall be known and may be cited as the Legislature Employer-Employee Relations Act.

3599.51. The Legislature finds and declares that it is the purpose of this chapter to promote full communication between the Legislature and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the Legislature and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the Legislature by providing a uniform basis for recognizing the right of employees of the Legislature to join organizations of their own choosing and be represented by those organizations in their employment relations with the Legislature. It is further the purpose of this chapter, in order to foster peaceful employer-employee relations, to allow employees of the Legislature to select one employee organization as the exclusive representative of the employees in an appropriate
unit and to permit the exclusive representative to receive financial
support from those employees who receive the benefits of this
representation.

3599.52. For purposes of this chapter:
(a) “Board” means the Public Employment Relations Board.
The powers and duties of the board described in Section 3541.3
shall also apply, as appropriate, to this chapter.
(b) “Employee of the Legislature” or “employee” means any
employee of either house of the Legislature, except all of the
following:
(1) Members of the Legislature.
(2) Appointed officers of the Legislature, such as the Secretary
of the Senate and the Chief Clerk of the Assembly.
(3) Department or office leaders, such as chief-of-staffs, staff
directors, and chief consultants.
(c) “Employee organization” means any organization that
includes employees of the Legislature and that has as one of its
primary purposes representing these employees in their relations
with the Legislature.
(d) “Legislature” or “employer,” means the Assembly and the
Senate, except that, for the purposes of bargaining or meeting and
conferring in good faith, “Legislature” or “employer” means 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.
(e) “Maintenance of membership” means that all employees
who voluntarily are, or who voluntarily become, members of a
recognized employee organization shall remain members of that
employee organization in good standing for a period as agreed to
by the parties pursuant to a memorandum of understanding,
commencing with the effective date of the memorandum of
understanding. A maintenance of membership provision shall not
apply to any employee who within 30 days prior to the expiration
of the memorandum of understanding withdraws from the
employee organization by sending a signed withdrawal letter to
the employee organization and a copy to the Controller’s office.
(f) “Mediation” means effort by an impartial third party to assist
in reconciling a dispute regarding wages, hours, and other terms
and conditions of employment between representatives of the
public agency and the recognized employee organization or
recognized employee organizations through interpretation, suggestion, and advice.

(g) “Recognized employee organization” means an employee organization that has been recognized by the Legislature as the exclusive representative of the employees in an appropriate unit.

3599.54. Any person who willfully resists, prevents, impedes, or interferes with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars ($1,000).

3599.55. The initial determination as to whether charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter shall be a matter within the exclusive jurisdiction of the board, except that, in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) Issue a complaint respecting a charge based upon an alleged unfair practice that occurred more than six months prior to the filing of the charge.

(2) Issue a complaint respecting conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedures would be futile, their exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review a settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that the settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide
the case on the merits; otherwise, it shall dismiss the charge. The
board shall, in determining whether the charge was timely filed,
consider the six-month limitation set forth in paragraph (1) of this
subdivision to have been tolled during the time it took the charging
party to exhaust the grievance machinery.
(b) The board shall not have authority to enforce agreements
between the parties, and shall not issue a complaint on any charge
based on an alleged violation of an agreement that would not also
constitute an unfair practice under this chapter.
(c) The board shall have the power to issue a decision and order
directing an offending party to cease and desist from the unfair
practice and to take such affirmative action, including, but not
limited to, the reinstatement of employees with or without backpay,
as will effectuate the policies of this chapter.
3599.56. Employees of the Legislature shall have the right to
form, join, and participate in the activities of employee
organizations of their own choosing for the purpose of
representation on all matters of employer-employee relations.
Employees of the Legislature also shall have the right to refuse to
join or participate in the activities of employee organizations,
except that nothing shall preclude the parties from agreeing to a
maintenance of membership provision pursuant to a memorandum
of understanding. In any event, employees of the Legislature shall
have the right to represent themselves individually in their
employment relations with the Legislature.
3599.57. Employee organizations shall have the right to
represent their members in their employment relations with the
Legislature, except that once an employee organization is
recognized as the exclusive representative of an appropriate unit,
the recognized employee organization is the only organization that
may represent that unit in employment relations with the
Legislature. Employee organizations may establish reasonable
restrictions regarding who may join and may make reasonable
provisions for the dismissal of individuals from membership. This
section shall not prohibit any employee from appearing in the
employee’s own behalf in the employee’s employment relations
with the Legislature.
3599.58. All employee organizations shall have the right to
have membership dues, initiation fees, membership benefit
programs, and general assessments deducted pursuant to
subdivision (a) of Section 1152 and Section 1153 until an employee
organization is recognized as the exclusive representative for
employees in an appropriate unit, and then any deductions as to
any employee in the negotiating unit shall not be permissible except
to the exclusive representative.

3599.59. (a) Once an employee organization is recognized as
the exclusive representative of an appropriate unit, it may enter
into an agreement with the Legislature, collectively, providing for
organizational security in the form of a maintenance of membership
deduction.

(b) The Legislature shall furnish the recognized employee
organization with sufficient employment data to allow the
organization to calculate membership fees, and shall deduct the
amount specified by the recognized employee organization from
the salary or wages of every employee for the membership fee.
These fees shall be remitted monthly to the recognized employee
organization along with an adequate itemized record of the
deductions, including, if required by the recognized employee
organization, machine readable data.

3599.60. The scope of representation shall be limited to wages,
hours, and other terms and conditions of employment, except, that
the scope of representation shall not include consideration of the
merits, necessity, or organization of any service or activity provided
by law.

3599.61. (a) Except in cases of emergency as provided in
subdivision (b), the employer shall 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 shall
give such recognized employee organizations the opportunity to
meet and confer with the administrative officials or their delegated
representatives as may be properly designated by law.

(b) 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,
the administrative officials or their delegated representatives as
may be properly designated by law shall provide notice and
opportunity to meet and confer in good faith at the earliest practical
time following the adoption of the law, rule, or resolution.
3599.62. 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, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. For purposes of this section, the term “meet and confer in good faith” means that the Speaker of the Assembly and the President pro Tempore of the Senate, or their designated representatives, and representatives of recognized employee organizations shall have the mutual obligation to personally meet and confer promptly upon request by either party and continue to meet and confer for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

3599.63. If an agreement is reached between the Speaker of the Assembly and the President pro Tempore of the Senate, or their designated representatives, and the recognized employee organization, the parties shall jointly prepare a written memorandum of understanding reflecting the terms of the agreement, which shall be presented, when appropriate, to the Legislature for passage of a statute providing for an appropriation of funding and amendment of any related statutes.

3599.64. (a) Any side letter, appendix, or other addendum to a properly ratified memorandum of understanding 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 memorandum of understanding or the Budget Act shall be reviewed by the Joint Legislative Budget Committee. The Joint Legislative Budget Committee shall 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 memorandum of understanding and thereby requires legislative action to pass a statute to ratify the side letter, appendix, or other addendum.
(b) A side letter, appendix, or other addendum to a properly ratified memorandum of understanding that does not require the expenditure of funds shall be expressly identified by the parties if that side letter, appendix, or other addendum is to be incorporated in a subsequent memorandum of understanding submitted to the Legislature for passage of a statute providing for appropriation or statutory amendment.

3599.65. If the Legislature does not pass a statute to fully fund any provision of the memorandum of understanding that requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding. Nothing herein shall prevent the parties from agreeing to and effecting those provisions of the memorandum of understanding which do not require legislative action for passage of a statute.

3599.66. (a) If a memorandum of understanding has expired, and the Speaker of the Assembly and the President pro Tempore of the Senate, or their designated representatives, and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including provisions that supersede existing law, arbitration provisions, no-strike provisions, and agreements regarding matters covered in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.).

(b) If the Speaker of the Assembly and the President pro Tempore of the Senate, or their designated representatives, and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the Legislature may implement any or all of its last, best, and final offer. Any proposal in the Legislature’s last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature, collectively, for passage of a statute providing for an appropriation of funding, and any related statutory changes shall be controlling without further legislative action. Implementation of the last, best, and final offer shall not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if circumstances change, and shall not result in
a waiver of rights that the recognized employee organization has
under this chapter.

3599.67. If after a reasonable period of time, the Speaker of
the Assembly and the President pro Tempore of the Senate, or
their designated representatives, and the recognized employee
organization fail to reach an agreement, the Speaker of the
Assembly and the President pro Tempore of the Senate, or their
designated representatives, and the recognized employee
organization may agree upon the appointment of a mediator
mutually agreeable to the parties, or either party may request the
board to appoint a mediator. When both parties mutually agree
upon a mediator, the costs of mediation shall be divided one-half
to the Legislature and one-half to the recognized employee
organization. If the board appoints the mediator, the costs of
mediation shall be paid by the board.

3599.68. A reasonable number of employee representatives of
recognized employee organizations shall be granted reasonable
time off without loss of compensation or other benefits when
formally meeting and conferring with the Legislature on matters
within the scope of representation. This section applies only to
employees, as defined by Section 3599.52, and only for periods
when a memorandum of understanding is not in effect.

3599.69. It shall be unlawful for the Legislature to do any of
the following:
(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 this chapter.
(c) Refuse or fail to meet and confer in good faith with a
recognized employee organization.
(d) Dominate or interfere with the formation or administration
of any employee organization, or contribute financial or other
support to it, or in any way encourage employees to join any
organization in preference to another.
(e) Refuse to participate in good faith in the mediation procedure
set forth in Section 3599.68.
It shall be unlawful for an employee organization to do any of the following:

(a) Cause or attempt to cause the Legislature to violate Section 3599.69.

(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 Section 3599.67.

Judicial review of a unit determination shall only be allowed under either of the following circumstances:

(1) When the board, in response to a petition from the Legislature or an employee organization, agrees that the case is one of special importance and joins in the request for the review.

(2) When the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in a request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from the decision or order.

(c) The petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board’s final order, order denying reconsideration, or order joining in the request for judicial review, as applicable.

Upon the filing of the petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk’s notice unless the time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board any
temporary relief or restraining order it deems just and proper and
in like manner to make and enter a decree enforcing, modifying,
or setting aside the order of the board. The findings of the board
with respect to questions of fact, including ultimate facts, if
supported by substantial evidence on the record considered as a
whole, shall be conclusive. The provisions of Title 1 (commencing
with Section 1067) of Part 3 of the Code of Civil Procedure relating
to writs shall, except where specifically superseded herein, apply
to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board
decision has expired, the board may seek enforcement of any final
decision or order in a district court of appeal or a superior court
in the district where the unit determination or unfair practice case
occurred. If, after a hearing, the court determines that the order
was issued pursuant to procedures established by the board and
that the person or entity refuses to comply with the order, the court
shall enforce the order by writ of mandamus. The court shall not
review the merits of the order.

3599.72. (a) The Legislature shall grant exclusive recognition
to employee organizations designated or selected pursuant to rules
established by the board for employees of the Legislature or an
appropriate unit thereof, subject to the right of an employee to
self-represent.

(b) The board shall establish reasonable procedures for petitions
and for holding elections and determining appropriate units
pursuant to subdivision (a).

(c) The board, as it determines appropriate bargaining units,
shall not include employees of the Legislature in a bargaining unit
that includes employees other than those of the Legislature.

(d) The board shall establish procedures whereby recognition
of employee organizations formally recognized as exclusive
representatives pursuant to a vote of the employees may be revoked
by a majority vote of the employees only after a period of not less
than 12 months following the date of such recognition.

3599.73. The Legislature shall adopt reasonable rules for all
of the following:

(a) Registering employee organizations, as defined by
subdivision (c) of Section 1150, and bona fide associations, as
defined by subdivision (d) of Section 1150.
(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.

3599.74. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

3599.75. (a) In determining an appropriate unit, the board shall be governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in the unit.

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, all of the following:

(A) The extent to which they perform functionally related services or work toward established common goals.

(B) The history of employee representation in state government and in similar employment.

(C) The extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the Legislature, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the Legislature and its employees to serve the public.
(4) The number of employees and classifications in a proposed unit and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

3599.76. (a) (1) All initial meet and confer proposals of recognized employee organizations shall be presented to the employer at a public meeting, and those proposals thereafter shall be a public record.

(2) All initial meet and confer proposals or counterproposals of the employer shall be presented to the recognized employee organization at a public meeting, and those proposals or counterproposals thereafter shall be a public record.

(b) Except in cases of emergency as provided in subdivision (d), no meeting and conferring shall take place on any proposal subject to subdivision (a) until not less than seven consecutive days have elapsed to enable the public to become informed, and to publicly express itself regarding the proposals, as well as regarding other possible subjects of meeting and conferring, and thereafter, the employer shall, in an open meeting, hear public comment on all matters related to the meet and confer proposals.

(c) Forty-eight hours after any proposal that includes any substantive subject that has not first been presented in proposals for public reaction pursuant to this section is offered during any meeting and conferring session, the proposal and the position, if any, taken by the representatives of the employer shall be a public record.

(d) Subdivision (b) shall not apply when the employer determines that, due to an act of God, natural disaster, or other emergency or calamity affecting the state, and that is beyond the control of the employer or recognized employee organization, it must meet and confer and take action upon a proposal immediately and without sufficient time for the public to become informed and to publicly express itself. In those cases, the results of the meeting and conferring shall be made public as soon as reasonably possible.

3599.77. This chapter shall not be construed to apply Section 923 of the Labor Code to employees of the Legislature.
Nothing in this chapter shall be construed as modifying or eliminating any existing wages, hours, or terms and conditions of employment for employees of the Legislature. All existing wages, hours, and terms and conditions of employment for employees of the Legislature shall remain in effect unless and until changed in accordance with the Legislature’s procedures or pursuant to a memorandum of understanding or agreement between the Legislature and a recognized employee organization.

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

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

REVISIONS:

Heading—Line 3.