OFFICE OF STATE LEGISLATIVE LABOR RELATIONS

October 1, 2023

Members of the Legislature,

As required by RCW 44.90.030(4)(b), I am pleased to provide the attached final report prepared by the Office of State Legislative Labor Relations.

If you have any questions or comments about the attached report or if I can be of assistance, please contact me. I may be reached at (360) 786-6444 or debbie.brookman@leg.wa.gov.

Best regards,

Debbie Brookman
Director

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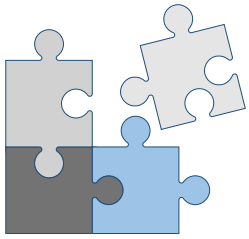

October 1, 2023

Final Report to the Legislature

Engrossed Substitute House Bill 2124, Chapter 283, Laws of 2022

Prepared By

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Executive Summary[1]

In March 2022, the Washington State Legislature passed ESHB 2124. The bill enacted a new statute, Chapter 44.90 RCW. In doing so, the Washington State Legislature became one of the first in the nation to allow legislative employees collective bargaining rights.

Much of the new statute will not go into effect until May 1, 2024. In the meantime, the bill created a new legislative agency, the Office of State Legislative Labor Relations (OSLLR, or LLR less formally), tasked with researching how to implement legislative employee collective bargaining for the Washington State Legislature.

On December 1, 2022, OSLLR provided the Legislature with a preliminary report. The report covered available information on legislative employee bargaining in other states and the results of an October 2022 legislative employee survey on the topic.

This final report builds on the information in the preliminary report and represents OSLLR's research on options and best practices to fully implement legislative employee collective bargaining. Each recommendation has been considered against the feedback received from the 2022 legislative employee survey when available and appropriate, and reviewed by the Secretary of the Senate, the Chief Clerk of the House, and the directors of the legislative agencies. Feedback from these stakeholders has been incorporated into the final recommendations.

Generally, OSLLR recommends the Legislature adopt into its own, separate statute many of the labor relations concepts that apply to other public sector collective bargaining statutes in Washington State, in particular those contained in Chapter 41.80 RCW, the state employee collective bargaining law. However, modifications are recommended to address the specific needs of the Legislature and legislative employees. Recommendations include the following highlights:

- Limit legislative employee collective bargaining eligibility to the approximately 225 regular, full-time partisan staff in the House of Representatives and the Senate, plus partisan session staff (an additional 60+/- legislative employees). Under this recommendation, the employer for the purpose of collective bargaining would be the Chief Clerk of the House and the Secretary of the Senate for bargaining units formed in their respective chambers. See Issues #1 and #3 for more details.

[1] This report reflects the research and recommendations of the Director of OSSLR. It does not reflect the official position or opinions of the Washington State Legislature. With this disclaimer, the Office of State Legislative Labor Relations hopes that the report provides an informative overview of the options available to fully implement legislative employee collective bargaining in Washington State.

- Allow bargaining units to form based on "community of interest" criteria and alignment with existing organizational structures (House employees and Senate employees would be in separate bargaining units). See Issue #6.

- Require coalition bargaining for all legislative employee bargaining units for economic terms. Allow supplemental bargaining to discuss bargaining unit specific issues. See Issue #7.

- Set a deadline of October 1 for tentative agreements to be provided to the employer for costing and inclusion in the Legislature's budget proposals. See Issue #9.

- Utilize existing budget processes to fund legislative employee collective bargaining agreements. An up/down vote on funding the agreement as a whole is recommended See Issue #9.

In addition to OSLLR's recommendations, alternative options are offered when available to allow the Legislature to determine how best to implement the goals and ideals of the Legislature. For both recommendations and alternatives, details are provided explaining the goals and impacts of each choice.

Throughout this report recommendations are identified with hashmarks: 〉〉〉

All recommendations and alternatives are summarized in the tables in Attachment A.

OSLLR's recommendations are also available in the draft model bill in Attachment B.

Considerations on Ten Issues as Required by ESHB 2124

ESHB 2124, passed during the 2022 legislative session, created the Office of State Legislative Labor Relations (OSLLR) and asked the new legislative agency to research and identify recommendations on ten issues related to legislative employee collective bargaining. These issues are discussed in the sections that follow. While fulfilling the Legislature's request, OSLLR identified additional considerations to ensure a complete statutory framework will exist once legislative employee collective bargaining is implemented on May 1, 2024. These are covered in the "Additional Considerations" section of this report.

As part of OSLLR's research, the Legislature directed that legislative employee feedback be gathered. At a minimum, an employee survey needed to be conducted. A professional consulting firm, National Business Research Institute, was hired and a survey was conducted in October 2022. An analysis of the survey results can be found in OSLLR's preliminary report. The survey results helped OSLLR formulate some of the recommendations found in this final report, especially when considering which legislative employees are appropriate for collective bargaining and recommendations for bargaining unit configurations.

ESHB 2124 also directed OSLLR to work with a consultant on formulating recommendations. Unfortunately, OSLLR was unable to find a consultant for hire with experience in both conducting employee surveys and public sector collective bargaining. Expertise in public sector collective bargaining primarily exists amongst the Labor and Personnel Division of the Attorney General's Office, the Public Employment Relations Commission, the Office of Financial Management State Human Resources Labor Relations section, and a small set of private law firms.[2] OSLLR was unable to find an appropriate consultant for hire, but OSLLR has sought information from some of these resources in preparing final recommendations.

For this final report, each of the ten issues specifically requested be addressed are presented in the order listed in the statute. An overview of the issue and a brief explanation of how such questions are answered for non-legislative public employees in Washington State is provided when appropriate. Then, the unique considerations that may apply to the legislative workplace are covered with OSLLR's recommendations, along with alternative options the Legislature may consider, if any. All recommendations and alternative options are summarized in the table in Attachment A. Recommendations have also been incorporated into a draft model bill in Attachment B.

NOTE, wording from the original bill has been modified to form the question that introduces each of the following issues.

[2] Of the law firms identified by OSLLR, many represent public sector unions. Only a few provide expertise to public sector employers. These firms provide similar expertise to cities and counties as that provided state government by the AGO's Labor and Personnel division and OFM's Labor Relations section.

Issue #1: Which employees of the House of Representatives, the Senate, and Legislative agencies are appropriate for collective bargaining?

When considering the question of which legislative employees are appropriate for collective bargaining, OSLLR first reviewed the 2022 employee survey results. Not every legislative employee participated in the survey, but the results clearly indicate that the employees most interested in collective bargaining are partisan employees in the House and Senate.[3] OSLLR recommends limiting collective bargaining to these employees, and provides analysis based on:

- Traditional exclusions from collective bargaining based on avoiding conflicts of interest;
- Maintaining operational effectiveness; and
- Reducing the likelihood of jurisdictional disputes.

The Current Traditional Public Sector Approach to Exemptions

Traditionally, Washington State's public employee bargaining statutes and precedents are intended to extend collective bargaining rights to public employees as broadly as is reasonable. Exemptions are limited to employees for whom collective bargaining is determined to be incompatible with job duties. These exemptions have included those with managerial decision-making authority, confidential employees, internal auditors, civil service exempt employees, and others. Over time, however, the Legislature has reconsidered some of these exemptions. Recent examples of employees who were exempt but are now allowed to collectively bargain include Assistant Attorneys' General in 2019,[4] legislative employees in 2022,[5] and some Washington Management Service employees in 2023.[6]

Some exemptions to collective bargaining rights are unlikely to change. For example, the exemption of employees with managerial decision-making authority, confidential employees, and internal auditors will likely continue. For these employees, inclusion in a bargaining unit would constitute a conflict of interest that would be difficult to overcome. A more detailed explanation of the recommended exclusions for employees with managerial authority and confidential employees is included under Issue #4, Definitions.

Elected and appointed officials and commissioners, appointed board members, and executive heads of agencies are also traditionally not covered by collective bargaining statutes. The employees who provide direct administrative and executive assistance to such officials are generally exempted from collective bargaining due to the confidential nature of their work which may include participation in or access to meetings and documents where the employer's bargaining strategy is discussed or documented.

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[3] These are also the employees least interested in collective bargaining when survey results are broken down by party affiliation. See Attachment B, page 4, of the 2022 OSLLR preliminary report for additional details.
[4] SSB 5297, 2019 - 2020
[5] HB 2124, 2021-2022
[6] HB 1122, 2023 -2024

Temporary employees often perform the same or very similar work as regular employees. If temporary employees are excluded from the bargaining unit, it can give rise to jurisdictional issues over who has the right to perform "bargaining unit work." As a result, many temporary employees are eligible for collective bargaining under most of Washington's public sector collective bargaining rules.[7] However, temporary casual employees who work limited hours[8] and interns who have a more limited relationship with the employer and the bargaining unit compared to other employees are usually exempted from inclusion in a bargaining unit.

Recommendations Based on Issues Unique to the Washington State Legislature

Employees with Managerial Authority and Confidential Employees

Many of the concepts that apply to traditional public sector exemptions to collective bargaining are applicable to the Legislature, too. Starting with those legislative employees who have managerial authority or perform confidential work, such employees are not appropriate for collective bargaining for the same reasons they are exempted elsewhere. These positions include the Chief Clerk of the House, Deputy Chief Clerk of the House, Secretary of the Senate, and Deputy Secretary of the Senate; the administrative personnel of the Chief Clerk's office and Secretary of the Senate's office who are confidential employees; directors and assistant directors of legislative agencies; and counsel for the House of Representatives and the Senate that provide direct legal advice to the administration of the House of Representatives and the Senate, respectively. There are also some partisan positions which OSLLR recommends be specifically identified as exempt from collective bargaining. These partisan positions have managerial authority or perform confidential work and include:

- caucus chiefs of staff and caucus deputy chiefs of staff;
- the Speaker's attorney and leadership counsel to the minority caucus of the House of Representatives (not including staff counsel for the caucuses); and

[7] See, for example, WAC 391-35-350, Unit placement of regular part-time employees—Exclusion of casual and temporary employees.

> (1) It shall be presumptively appropriate to include regular part-time employees in the same bargaining unit with full-time employees performing similar work, in order to avoid a potential for conflicting work jurisdiction claims which would otherwise exist in separate units. Employees who, during the previous twelve months, have worked more than one-sixth of the time normally worked by full-time employees, and who remain available for work on the same basis, shall be presumed to be regular part-time employees...
>
> (2) It shall be presumptively appropriate to exclude casual and temporary employees from bargaining units.
>
> (a) Casual employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to have had a series of separate and terminated employment relationships, so that they lack an expectation of continued employment and a community of interest with full-time and regular part-time employees.
>
> (b) Temporary employees who have not worked a sufficient amount of time to qualify as regular part-time employees are presumed to lack an expectation of continued employment and a community of interest with full-time and regular part-time employees…

[8] Ibid. See (1), defining eligibility as having worked more than 1/6th of the time worked by fulltime employees.

- Legislative Assistants assigned to members on the Senate Facilities and Operations Committee and the House Executive Rules Committee who are confidential employees.

⟩⟩⟩ *In addition to general definitions that exempt employees with managerial authority or confidential duties, OSLLR recommends a new section of statute be incorporated into RCW 44.90 that identifies these partisan positions as specifically exempted from collective bargaining.*

This recommendation is included in the draft model bill in Attachment B, New Section 2.

Auditing and Legislative Ethics Board Employees

The Legislature also has auditing staff. The Joint Legislative Audit and Review Committee (JLARC) pursues its mission of making state government operations more effective, efficient, and accountable by conducting performance audits, program evaluations, and other analyses. JLARC's nonpartisan staff auditors, under the direction of the Legislative Auditor, independently seek answers to audit questions and issue recommendations to improve performance.[9] While JLARC is not often focused on programs staffed by legislative employees, JLARC frequently audits programs staffed by employees in state employee bargaining units. Allowing JLARC's auditors to affiliate with a union that may have an interest in the outcome of their audits would be a conflict of interest. Also, JLARC's effectiveness is based on the ability to provide a nonpartisan, independent and objective audit conclusions. For these reasons,

⟩⟩⟩ *OSLLR recommends that JLARC staff be specifically excluded under the legislative employee collective bargaining statute as their positions are not appropriate for collective bargaining.*

The staff for the Legislative Ethics Board (LEB) face a similar conflict of interest. Currently, the LEB is staffed by a single employee, the LEB counsel. The incumbent in this position serves as investigator and advisor to the LEB on violations of the legislative ethics rules. All legislative employees are subject to the ethics rules, and it would be a conflict of interest for LEB staff to be included in a legislative employee bargaining unit.

⟩⟩⟩ *OSLLR recommends that LEB staff be specifically excluded under the legislative employee collective bargaining statute as their positions are not appropriate for collective bargaining.*

These recommendations are included in the draft model bill in Attachment B, New Section 2.

[9] Paraphrased from JLARC's webpage.

Elected and Appointed Officials
Any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, and all elected or appointed members of the Legislature should be excluded from collective bargaining.

》》》 *OSLLR recommends individuals that are appointed or elected specifically be excluded under the legislative employee collective bargaining statute as they are not appropriate for collective bargaining.*

This recommendation is included in the draft model bill in Attachment B, New Section 2.

Temporary Employees Including Session-Only Employees
Due to the cyclical nature of the Legislature, temporary employees, including session-only employees, are common in the legislative workplace. Many of these employees perform work that overlaps with the work of regular legislative employees. Temporary/session employee job titles such as committee assistant, legislative assistant, and session aide are in this group. Because it could create jurisdictional issues over the right to perform "bargaining unit work"[10] if such employees were exempted from collective bargaining, OSLLR recommends these employees not be exempted.

However, temporary employees who perform work that is unique to their temporary position may be appropriately exempted from collective bargaining. Examples of such temporary legislative employment include House and Senate session staff that perform work unique to the session's food service needs: cooks, servers, dishwasher, chef, etc. Unrelated to the legislative session, every 10 years the Redistricting Commission hires temporary administrative, communications, social media and IT support employees to fulfill the unique mission of the Commission. It is appropriate that these temporary employees, and others like them who are hired on a limited duration to perform a unique function, be exempted from collective bargaining. Interns and pages are also appropriately exempted. Based on the above, the following concept is recommended by OSLLR as part of the definition of "employee for the purpose of collective bargaining:"

》》》 *The term employee includes temporary employees hired to perform substantially similar work to that performed by regular legislative employees. All other temporary employees, including interns, casual employees, and pages, are excluded from the definition of employee for the purposes of collective bargaining.*

This recommendation has been incorporated into the definition of "employee" in the model bill, Attachment B, Section 1.

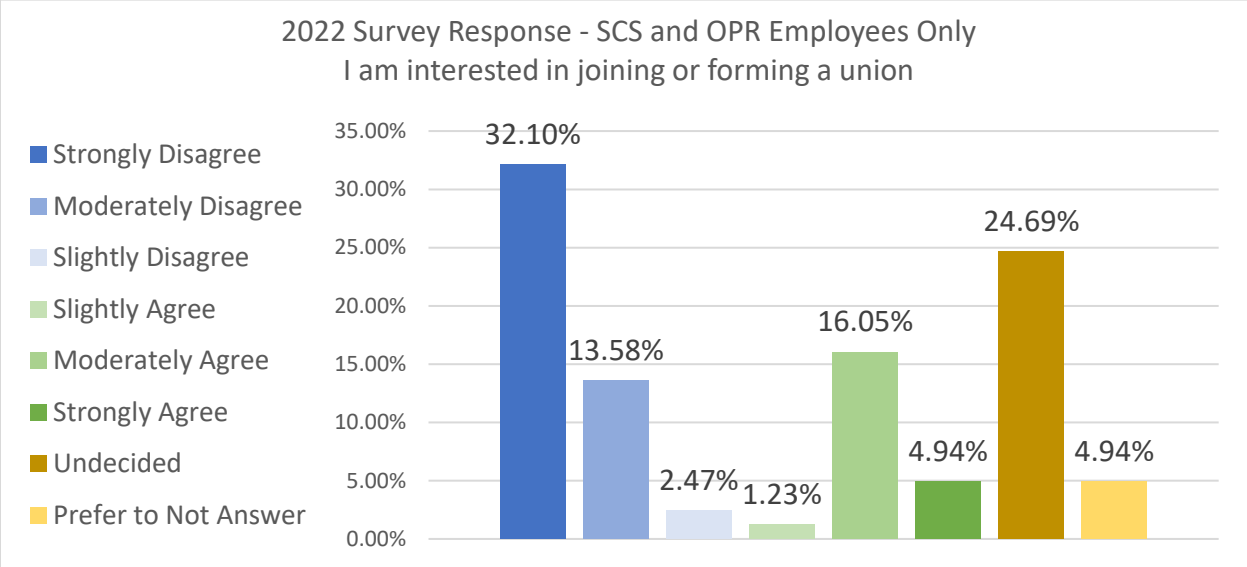
[10] "Bargaining unit work" is a phrase used to describe the body of work over which the union (and union-covered employees) have a recognized interest in performing and preserving. The scope of such work is often described as all work which is historically performed exclusively by bargaining unit employees.

Nonpartisan Employees

One consideration unique to the Legislature is the potential exclusion of nonpartisan legislative staff from collective bargaining. Unions are perceived as political and partisan, especially public sector unions.[11] For nonpartisan employees to effectively serve the Legislature as a whole, including members who have deeply held feelings on public sector unions, both pro and con, it is problematic to have (or reject) a workplace affiliation with a public sector union.

This consideration is not taken lightly. However, the October 2022 employee survey bore this concern out. Many nonpartisan legislative employees responded to the survey explaining that the choice to unionize - or to not unionize – will undermine the objectivity they work hard to foster. Nonpartisan legislative staff who work with elected legislators, especially those who perform confidential policy development work or draft collective bargaining related legislation, are particularly sensitive to this consideration.

The following chart provides the 2022 survey response from nonpartisan employees in Senate Committee Services (SCS) and the House's Office of Program Research (OPR):



A significant percentage of the 75 OPR and SCS employees who participated in the survey (out of approximately 132 OPR and SCS employees who received the survey), over 48%, disagreed with any desire to unionize. Over 24% were undecided. In the comments section of the survey, some nonpartisan employees from these two workgroups were supportive of gaining collective bargaining rights. However, more stated concerns such as, "As nonpartisan staff I'm worried about how the decision to join or not join a union would change member perceptions about my

[11] Why this view exists is explained by statistics on political contributions made by public sector unions. A detailed analysis of public sector political contributions is available on the nonpartisan website Opensecrets.org.

political beliefs," "It goes against the very nature of being nonpartisan…," and "unions are a political issue."[12]

Some of this concern may be based on anecdotes of members being reluctant or unwilling to work with certain nonpartisan staff based on concerns around impartiality. When this happens, some shuffling of work assignments may occur and, in rare cases, nonpartisan staff have been terminated from legislative employment. Taken to an extreme, collective bargaining could result in a bifurcation of OPR and SCS staff between union members/nonmembers and legislative members of one party and those of another party, etc. Even if this occurs on a limited basis, it undermines the purpose for which OPR was originally created in 1973.[13] It is fundamental that OPR and SCS staff be able to form relationships with all members based on trust and confidentiality. OSLLR recommends that these nonpartisan staff not be included in legislative employee collective bargaining.

The experience of nonpartisan professional policy development staff in the state of Maine is also indicative of the dilemma expressed by many of our OPR and SCS staff. Maine's nonpartisan staff gained collective bargaining rights in 1998. Professional staff who perform similar policy work to our OPR and SCS staff scrambled to form an independent employee association – one that does not bargain – to avoid inclusion in a bargaining unit they felt would be perceived as having partisan leanings.[14]

These concerns are not limited to OPR and SCS staff. The nonpartisan employees in the Code Reviser's Office (CRO) responded to the 2022 survey with similar results. These employees are split into two sections. The Washington Administrative Code, or WAC, section provides nonpartisan support to state agencies. The WAC section also supports the CRO's legislative functions but does not do so on a fulltime basis. The Revised Code of Washington, or RCW, section provides nonpartisan support drafting and finalizing the wording and format of bills and the Revised Code of Washington. The work performed by the CRO's staff, regardless of which section they work for, requires discretion and confidentiality. However, the work performed by the RCW section is specifically susceptible to the same operational concerns noted for OPR and SCS. These staff must be able to serve the Legislature as a whole, including those members who may have strongly held pro or anti-public sector union sentiments.

The nonpartisan employees in the Legislative Evaluation and Accountability Program (LEAP), the Office of the State Actuary staff (OSA), the Joint Transportation Committee staff (JTC), and the Redistricting Commission are inappropriate for collective bargaining based on the same consideration. Like OPR, SCS, and the RCW section of the Code Reviser's Office, the work performed by these nonpartisan staff must be trusted to be completely nonpartisan to be most

[12] A complete copy of employee comments from the 2022 legislative employee survey is available from OSLLR.
[13] House Resolution 4644, 2023-24, provides a concise summary of the purpose of OPR including, "The foundational tenet of the Office of Program Research is to provide excellent service to legislators in a confidential and nonpartisan manner while at all times maintaining the trust of all members of the House of Representatives, regardless of political affiliation…"
[14] A more thorough examination of what happened in Maine is available in OSLLR's 2022 preliminary report.

effective. The impact of losing this trust could result in vital bodies of data, analysis, and research becoming less useful to the Legislature as a whole, reducing the Legislature's operational effectiveness. Regarding JTC, OSLLR is also concerned that the small size of the office necessitates the director take an active role in helping produce the work of the office. If jurisdictional disputes arose over the definition of "bargaining unit work," it would be detrimental to the function of the JTC.

》》 *OSLLR recommends that OPR, SCS, the Code Reviser's RCW section, LEAP, OSA, JTC, and the Redistricting Commission not be included under the legislative employee collective bargaining statute as their nonpartisan positions are not appropriate for collective bargaining due to impacts on operational effectiveness.*

Legislative Employees Appropriate for Collective Bargaining

Based on OSLLR's research, the legislative employees most appropriate for collective bargaining are the approximately 225 partisan House and Senate employees, plus the 60+/- partisan session employees who perform similar work. These employees do not appear to suffer the same conflict or impacts to operational effectiveness if given the choice to unionize. Limiting collective bargaining to partisan employees, at least initially, also has the advantage of allowing the Legislature to gain experience with collective bargaining while providing bargaining rights to the legislative employees who, overall, desire it the most, i.e., partisan House and Senate staffers.[15]

This approach also has the advantage of fully addressing the concerns expressed by nonpartisan staff wishing to maintain effectiveness working for the Legislature as a whole.

This approach has one disadvantage as it may not allow collective bargaining for nonpartisan legislative employees who desire it. In response to this potential concern, OSLLR reviewed the 2022 employee survey results and, to the extent the survey results can be analyzed at the agency or program level, did not find any areas where a majority of nonpartisan survey respondents indicated an interest in unionization. OSLLR's conclusion is that this concern does not outweigh the advantages of a limited approach.

》》 *OSLLR recommends the Legislature limit collective bargaining to partisan House and Senate employees.*

This approach is reflected throughout the draft model bill in Attachment B.

If the Legislature decides to extend collective bargaining to nonpartisan staff, employees not otherwise exempted from collective bargaining who work for the House and Senate administration, e.g., security and administrative staff; those who work for Legislative Support Services (LSS); the Legislative Service Center (a.k.a. LEG-TECH); and the Code Reviser's Office

[15] These are also the employees who most dislike the idea when the results are broken down by political affiliation. See Attachment B, page 4, of the 2022 OSLLR preliminary report for more details.

WAC section may not suffer conflicts that rise to the same level as other nonpartisan staff. This is offered as an alternative in the summary table in Attachment A. However, for reasons covered under Issue #3, who should be considered the employer for purpose of legislative employee bargaining, OSLLR recommends all nonpartisan legislative staff be exempted from collective bargaining.

Summary and Recommendations

In summary, based on the considerations above OSLLR recommends the following legislative groups be considered inappropriate for collective bargaining and not be covered by the legislative employee collective bargaining statute:

These positions should be exempted by definition (Section 1 of the model bill) and/or by specific exemption (New Section 2 of the model bill). The model bill can be found in Attachment B:

- Elected and appointed officials
- Employees with managerial authority
- Confidential employees
- Joint Legislative Audit and Review Committee (JLARC) staff
- Legislative Ethics Board (LEB) staff
- Temporary employees (including session employees) who do not perform substantially similar work as regular employees, including interns, pages, and casual temporary employees

OSLLR recommends the following staff positions are inappropriate for collective bargaining and not included in the definition of "employee" for the purposes of collective bargaining:

- Office of Program Research (OPR)
- Senate Committee Services (SCS)
- Code Reviser's Office RCW Section
- Legislative Evaluation and Accountability Program (LEAP)
- Office of the State Actuary (OSA)
- Joint Transportation Committee (JTC)
- Redistricting Commission

OSLLR recommends that partisan House and Senate staff are appropriate for collective bargaining. Nonpartisan employees not otherwise exempted from collective bargaining who work for the House and Senate administration, Legislative Support Services (LSS), the Legislative Service Center (a.k.a. LEG-TECH), and the Code Reviser's Office WAC section may not have conflicts that rise to the same level as those identified in the list above. However, for reasons covered under Issue #3, who should be considered the employer for purpose of legislative employee bargaining, OSLLR recommends all nonpartisan legislative staff be exempted from collective bargaining.

Issue #2: How should mandatory, permissive, and prohibited subjects of bargaining be defined for legislative employees?

Determining what is bargainable has big impacts on a collective bargaining scheme. OSLLR recommends some modifications to a traditional approach to address issues unique to the Legislature's work environment and core functions.

The Traditional Public Sector Approach to Subjects of Bargaining
In a traditional public sector collective bargaining scheme, the following definitions and examples apply.

Mandatory subjects are those over which the public employer and the union have an obligation to collectively bargain. Generally, any substantive issue related to wages, hours, other terms and conditions of employment, and questions arising under a collective bargaining agreement may be a mandatory subject of bargaining. The following are some examples based on traditional public sector definitions:

- "Wages" includes salary rates, cost of living adjustments, overtime rates, and economic benefits such as leave accruals;

- "Hours" includes work schedules, number of hours worked per week, days worked per week, on-call requirements, and leave scheduling;[16]

- "Terms and conditions of employment" includes workplace safety, disciplinary standards, definition and application of seniority, job security, layoffs, and use of contractors;

- "Questions arising under a collective bargaining agreement" includes the meaning and application of provisions contained in the existing collective bargaining agreement between the parties.[17]

Permissive subjects are those items over which neither party has an obligation to bargain. Here are some traditional examples of permissive subjects of bargaining:

[16] For legislative employees it is important to note that some items that fall under this general category are prohibited subjects of bargaining. Per RCW 44.90.090, negotiation is prohibited over the hours of work during legislative session, the cutoff calendar, and other items.
[17] The context for this subject of bargaining is limited to negotiations of a collective bargaining agreement. Disagreements over questions that arise mid-term may be resolved through a grievance process.

- Contract negotiation ground rules such as bargaining in public, release time for union team members, and related items;[18]
- Management prerogatives such as staffing levels; and
- Policies and decisions that apply to non-bargaining unit personnel.

Prohibited or illegal subjects are those over which the parties are not allowed to collectively bargain. In addition to the subjects listed in the legislative collective bargaining law's management rights section, RCW 44.90.090(1),[19] it is also prohibited for the parties to bargain some items established by law that are intended to cover all Washington employees. Examples include workers compensation coverage and premiums, unemployment benefits and premiums, and access to and accrual of Washington Paid Sick Leave.

Impact bargaining may be required even when the underlying decision was based on a permissive or prohibited bargaining subject. For example, staffing levels are often the sole prerogative of management. When a decision to reduce staff creates tangible impacts to employees, the impacts may be subject to negotiation even though the underlying decision was not. Common bargainable impacts in this example could include increased hours for remaining staff and/or safety impacts, both of which may be mandatory subjects of bargaining.

Recommendations for the Legislature on Mandatory, Permissive, and Prohibited Subjects of Bargaining

》》 *OSLLR recommends the Legislature adopt general language to define the scope of mandatory subjects of bargaining for legislative employees. This includes "wages, hours, other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement."*

However, there are a few items that would otherwise fall under this definition that OSLLR recommends be listed as prohibited subjects of bargaining for legislative employees. These subjects are overtime exempt status, at-will employment status, and the amount paid for health care benefits.

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[18] Ground rules are permissive because neither party may unilaterally require a condition of the other party to meet their obligation under law to collectively bargain. The Legislature's new collective bargaining law, RCW 44.90.080(1)(e) states, "It is an unfair labor practice for an employer… to refuse to bargaining collectively with the exclusive bargaining representatives of its employees."

[19] RCW 44.90.090(1), "(1) The employer shall not bargain over rights of management which, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include, but not be limited to, the following:
(a) 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;
(b) The employer's budget and the size of the employer's workforce, including determining the financial basis for layoffs;
(c) The right to direct and supervise employees;
(d) The hours of work during legislative session and the cutoff calendar for a legislative session; and
(e) Retirement plans and retirement benefits."

Add a Prohibition on Bargaining Overtime Exempt Status and Preserve the Prohibition on Collective Bargaining over the "Hours of Work" during Session

Due to the nature of the Legislature's core mission, employment with the Legislature is different than many other public sector workplaces. These differences are driven, in part, by Washington's state constitution which specifies that regular legislative sessions may be no more than 105 days each odd numbered year and 60 days each even numbered year.[20] This cycle means that for many legislative employees the number of work hours needed during the legislative session is significantly different than the work hours needed during the interim.

To accommodate this cycle, legislative employees, regardless of salary rate and assigned duties, are exempted from state and federal overtime and minimum wage provisions.[21] These exemptions provide needed flexibility for the cyclical nature of legislative employment. Recognizing this, the current statute prohibits bargaining over the "hours of work" during the legislative session.[22] In addition to preserving the existing prohibition on negotiating over the hours of work during legislative session:

OSLLR recommends that bargaining over overtime exempt status be prohibited.

This recommendation is included in the draft model bill in Attachment B, Section 13.

Prohibit Bargaining over Legislative Employees' "At-Will" Status

Many legislative employees work for elected members of the legislature and for the caucuses that perform research and policy development for the majority and minority parties. Elections can change the make-up of the elected membership as well as the size of the caucuses. Legislative employees are exempt from state's civil service laws and policies, Chapter 41.06 RCW and Title 357 WAC. This exemption means, among other things, that legislative employment is "at-will," and employees have no property rights to their position.[23] This allows the Legislature to adjust staffing to the changes that come with each election cycle.

"At-will" employment is uncommon amongst collective bargaining eligible employees, and rarer still amongst such employees who form a bargaining unit. However, it is not unheard of. Examples of unionized at-will employment include attorneys in the Attorney General's Office, unionized (and nonunionized but collective bargaining eligible) attorneys in prosecuting attorneys' and public defenders' offices, and others.[24]

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[20] The legislative cycle is based on Section 12 of the Washington State constitution.

[21] Washington's Minimum Wage and Labor Standards Act, RCW 49.46.010(3)(l), and the Fair Labor Standards Act, 29 U.S.C. § 203(e)(2)(C)(ii)(V)

[22] See footnote #19, subsection (d).

[23] The nature of at-will employment is covered in more detail under Issue #5's section on disciplinary frameworks.

[24] The Assistant Attorneys General are at-will under RCW 43.10.060 and Articles 4 and 5 of the AAG's 2023-2025 collective bargaining agreement. AAG's can grieve a termination but cannot be reinstated to employment by an arbitrator. For additional examples the at-will concept in a unionized workplace, see Article 10 of the Collective

Changing at-will status by gaining "just cause" protections for termination of employment may be a key negotiation issue for legislative employees. However, if the Legislature determines that at-will employment is necessary to the function of the Legislature (or, that the opportunity to gain just cause protections would unfairly incentivize legislative employees to consider unionization) it should be preserved.

》》 *OSLLR recommends at-will employment status be on the list of prohibited subjects of bargaining for legislative employee collective bargaining using statutory language modeled on the Assistant Attorney's General employment status in RCW 43.10.060.*[25]

This will avoid creating a false expectation that the at-will standard can be changed via bargaining and allow negotiations to focus on other important issues that would remain bargainable.

This recommendation is included in the draft model bill in Attachment B, Section 13.

Further discussion and recommendations related to at-will employment in the context of disciplinary and grievance frameworks is discussed under Issue #5.

Prohibit Health Care Benefit Bargaining

Another area where OSLLR recommends subjects of bargaining be clarified is health care benefits. OSLLR identified the lack of statutory language limiting negotiation over health care insurance as a concern. Without a limit, unionized legislative employees could demand to negotiate over items such as co-pays and out-of-pocket maximums, the dollar amounts paid towards employee health care premiums, and other health care related items. The Public Employee Benefits Board may be unable to accommodate Legislature-specific health care insurance. Due to this challenge, OSLLR recommends that legislative employees be subject to the same limits on bargaining over health care benefits as apply to executive branch employees.

》》 *To achieve this, OSLLR recommends that unionized legislative employees not bargain over health care, instead defaulting to the agreement reached by the state employee coalition.*[26]

This is the current practice and ensures continuing equity with executive branch employees on health care premium amounts. An alternative would be to allow bargaining to occur in a legislative employee union only coalition with bargaining limited to the amount spent on health

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Bargaining Agreement for the Thurston County Deputy Prosecuting Attorneys Association, or Kitsap County's Deputy Prosecuting Attorneys who are at-will without an appeal or review process under Section H of their agreement.

[25] RCW 43.10.060, "The attorney general may appoint necessary assistants who shall have the power to perform any act which the attorney general is authorized by law to perform. Subject to any collective bargaining agreement, assistants shall hold office at the attorney general's pleasure."

[26] See RCW 41.80.020(3) for the executive branch health care coalition bargaining process.

care premiums. To ensure both appropriate separation of powers and that the executive branch not act as the employer for legislative employees, OSLLR does not recommend legislative employee unions join the state employee coalition that bargains with the Governor's Office over this issue.

Summary
In summary, OSLLR recommends the following concepts apply to mandatory, permissive, and prohibited subjects of bargaining for legislative employees:

- Mandatory subjects of bargaining includes wages, hours, other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement not prohibited from bargaining.
- Prohibited subjects of bargaining includes the current items listed in RCW 44.90.090 and the following additions:
    - The exemption from Washington State Civil Service laws and rules, including at-will employment status;
    - The exemption from state and federal overtime and minimum wage laws; and
    - Health care benefit premiums which will be automatically established based on the outcome of negotiations conducted by the state employee health care coalition.
- Permissive subjects as defined by case law and PERC precedent (no additional statutory language is recommended).

These recommendations are reflected in the model bill in Attachment B, Section 13.

Issue #3: Who would negotiate on behalf of the House of Representatives, the Senate, and legislative agencies, and which entity or entities would be considered the employer for the purposes of legislative employee bargaining?

After considering many different approaches, OSLLR recommends collective bargaining be limited to the approximately 225 regular, full-time partisan employees in the House of Representatives and the Senate plus approximately 60 temporary/session-only partisan staff and the employer be the Chief Clerk of the House and the Secretary of the Senate for bargaining units in their respective chambers. This approach maintains current legislative power structures and respects the desires of a majority of legislative employees. An alternative that would expand collective bargaining to appropriate nonpartisan staff by splitting bargaining authority between the House and Senate for economic terms and the appointing authority for working conditions terms is also provided.

To address the question of who will negotiate on behalf of the Legislature, OSLLR recommends that negotiations be conducted by a bargaining team led by a chief spokesperson. The team's role is to provide subject matter expertise relative to the bargaining unit(s) while the chief spokesperson provides the authority to reach agreement. The current language in Chapter 44.90 RCW addresses this issue by designating the Director of OSLLR as the Legislature's negotiator. OSLLR recommends the Director's role be expanded in statute to include establishing bargaining teams on behalf of the employer.

Traditional Approaches to Defining the "Employer"

Often, defining the public sector employer for the purpose of collective bargaining is relatively easy. The employer is the executive head of the organization. The executive may designate a representative to conduct collective bargaining on the employer's behalf. The designee (or the executive themselves) will usually work with a small team that may include a representative from Human Resources and/or counsel for the employer, plus subject matter experts such as the manager(s) for the relevant bargaining unit. The executive may be accountable to a board or commission and must ensure timely reporting on the progress of negotiations and request funding for proposals and agreements. Examples of this approach may be found in municipal and county government, school districts, and many other public organizations.

In other public sector jurisdictions, there are multiple employers that must find a way to negotiate together. The largest example of this kind of bargaining structure is Washington's state government. To keep things simple and consistent, the statutory framework for state employee collective bargaining (Chapter 41.80 RCW) centralizes bargaining authority for all state agencies with the Governor. The Governor delegates actual negotiations to the Office of Financial Management (OFM). Under the authority of the Governor, OFM bargains economic terms and, through supplemental agreements that include consultation with relevant state agencies, noneconomic (a.k.a. working conditions) terms.

A similar approach may be taken by other public jurisdictions made up of multiple employers. The statutory framework for a non-charter county such as Thurston County, Chapter 36.32 RCW, centralizes bargaining authority with the board of county commissioners, giving the board authority to bargain economic items on behalf of the entire county. However, for unionized employees in the county's court systems bargaining authority is shared. The courts have authority over hiring, firing, and negotiation of all noneconomic terms with their unionized employees. When collectively bargaining, unionized court employees have dual employment status.[27] A shared negotiation authority where one facet of the employer has bargaining authority over economic terms, and another facet of the employer has bargaining authority of noneconomic terms, may be a relevant alternative model for the Washington State Legislature's consideration.

Defining the Employer for Legislative Collective Bargaining

The most straightforward approach and the approach recommended by OSLLR is to limit legislative employee collective bargaining to partisan House and Senate employees. This would

[27] See *Zylstra v. Piva*, 85 Wn. 2d 743, 85 Wash. 2d 743, 539 P.2d 823 (Wash. 1975)

extend collective bargaining to approximately 225 regular employees plus House and Senate partisan session employees. Under this recommendation, the employer for the purposes of collective bargaining would be the Chief Clerk of the House for House employees and Secretary of the Senate for Senate employees.

》》》 *OSLLR recommends collective bargaining be limited to partisan employees and that the employer for the purposes of collective bargaining be the Chief Clerk of the House for House employees and Secretary of the Senate for Senate employees.*

This approach is reflected throughout the draft model bill in Attachment B.

OSLLR researched alternatives in case a broader approach is preferred. Unlike the Legislatures of Oregon and Maine, the only other states that currently have active legislative employee collective bargaining, the Washington State Legislature does not have a centralized, Legislature-wide authority for legislative employee relations issues.[28] Instead, the House may refer issues to the House Executive Rules Committee and/or the Chief Clerk of the House, the Senate to the Senate Facilities and Operations Committee and/or the Secretary of the Senate, and the legislative agencies to their respective agency directors and/or oversight committees. As a result, the Legislature's structure can be viewed as having several separate employers, each of whom could potentially be subject to collective bargaining.[29]

If a broader application of legislative employee collective bargaining is necessary, OSLLR recommends an approach similar to that taken by the executive branch and local jurisdictions where the employer's bargaining authority is split between economic terms and noneconomic terms.

Under this model, the "employer" for the purpose of bargaining economic terms would be the Chief Clerk of the House and the Secretary of the Senate. The "employer" for non-economic terms would be the appointing authority for the unionized group of employees, as follows:

Agency	Employer for Economic Terms	Employer for Non-Economic Terms
House employees	Chief Clerk of the House	Chief Clerk of the House
Senate employees	Secretary of the Senate	Secretary of the Senate
Legislative Support Services	Chief Clerk of the House and the Secretary of the Senate	Director of LSS
LSC (LEG-TECH)		Director of LSC
Code Reviser's Office[30]		Code Reviser

[28] Maine's legislature has a Joint Legislative Council; Oregon has a Joint Legislative Administration Committee.
[29] The House, the Senate, plus the legislative agencies.
[30] Excepting the staff who work in the RCW section of the Code Reviser's Office, who OSLLR recommends as not appropriate for collective bargaining. See Issue #1.

It is difficult for OSLLR to determine how challenging this alternative would be for the Legislature to implement in practical terms. For example, this alternative requires current legislative agency directors to relinquish some existing autonomy when it comes to economic terms for their unionized employees. This option may also require additional coordination between the Senate Facilities & Operations and House Executive Rules committees, both of which currently have oversight authority for most legislative employees on personnel policies and compensation plans.

Recommendation on Who Would Negotiate on Behalf of the House of Representatives, the Senate, and Legislative Agencies

For the day-to-day of legislative employee negotiations, OSLLR recommends the Legislature reserve flexibility to establish the right team for the specific bargain. The current statute designates the Director of OSLLR as the employer's negotiator.[31] This may be retained, and the Director's efforts supported by a team of representatives designated by the employer with the expertise and authority to address issues at the bargaining table. The specific composition of the team should be dependent upon the desires and needs of the employer and the scope of the bargaining unit(s) and issues under discussion.

》》》 *OSLLR recommends the statute be modified to expand the Director's duties to include establishing bargaining teams on behalf of the employer. No additional statutory changes are recommended for this part of Issue #3.*

This recommendation ensures coordination and creation of a bargaining team that meets the employer's needs.

Summary

In summary, OSLLR recommends:

- The employer for legislative employee collective bargaining be the Chief Clerk of the House for partisan House employees and Secretary of the Senate for partisan Senate employees; and
- The Director's duties be expanded to include establishing bargaining teams on behalf of the employer.

These recommendations are reflected throughout the draft model bill, Attachment B.

If the Legislature expands collective bargaining to nonpartisan employees in the legislative agencies, OSLLR provides an alternative that splits the employer's bargaining authority based on economic and noneconomic terms, giving legislative agency directors authority to negotiate noneconomic terms. This alternative is included in the summary tables in Attachment A.

[31] RCW 44.90.030(2)(c), "The duties of the director include, but are not limited to, conducting negotiations on behalf of the employer."

Issue #4: What terms and definitions are needed for legislative employee collective bargaining?

Overview
When comparing the legislative employee collective bargaining law's section on definitions, RCW 44.90.020, to other Washington State public sector bargaining laws, there are a few key terms and definitions that would be helpful to add. These are:

- Collective bargaining
- Confidential employee
- Employee with managerial authority
- Supervisor
- Employee
- Employer
- Labor dispute

In addition, the existing definition for "exclusive bargaining representative" may require an adjustment. Recommended definitions for each of these terms are discussed below.

Discussion and Recommendations

Collective Bargaining
The term collective bargaining includes the act of bargaining itself. Under public sector collective bargaining laws, the definition of collective bargaining describes an obligation to bargain in good faith and to meet at reasonable times.[32] The definition should also describe the scope of bargainable topics, including an explanation or reference to mandatory subjects of bargaining (see Issue #2). The term collective bargaining also plays a critical role in adjudicating unfair labor practice charges as the employer and union must not "refuse to bargain collectively…"[33] Based on these considerations, OSLLR recommends the Legislature adopt the following definition:

》》》 *"**Collective bargaining**" means the performance of the mutual obligations of the employer and the exclusive bargaining representative to meet at reasonable times,*

[32] For example, RCW 41.56.030(4), covering public sector employees, "'"Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures, subject to RCW 41.58.070, and collective negotiations on personnel matters, including wages, hours, and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter."
[33] RCW 44.90.080 Unfair Labor Practices (effective May 1, 2024), "(1) It is an unfair labor practice for an employer in the legislative branch of state government…(e) To refuse to bargain collectively with the exclusive bargaining representative of its employees." The union is subject to the same obligation under subsection (2)(d).

except that neither party may be compelled to negotiate during a legislative session or on committee assembly days, to confer and negotiate in good faith, and to reach a written agreement with respect to the subjects of bargaining specified under RCW 44.90.090. The obligation to bargain does not compel either party to agree to a proposal or to make a concession unless otherwise provided in this chapter.

Employees with Managerial Authority, Confidential Employees, and Supervisors
Defining the terms "confidential employee," "employees with managerial authority," and "supervisor" is important as it helps determine which positions may appropriately be included in a bargaining unit.

There are some employees who are not appropriate for bargaining because they are directly involved in development of an employer's labor relations policy and strategy (termed "confidential" employees). Confidential employees have access to information that, if shared with a union, could significantly undermine the employer's strategic approach to collective bargaining. Due to this conflict of interest, such employees are excluded from inclusion in a bargaining unit. OSLLR recommends the Legislature adopt the following definition for confidential employees:

》》》 ***"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, or who assists or aids an employee with managerial authority.*

This definition allows the legislative employer to designate such employees, ensuring a reasonable number of confidential employees are available to participate in and support collective bargaining on the employer's behalf, even as needs are still being determined.[34]

Employees with managerial authority must make decisions that have material impacts, both good and bad, on employees in a bargaining unit. These decisions often must prioritize the needs of the employer. Union affiliation with the affected bargaining unit would undermine the objectivity of the managerial employee's decision-making process. As a result, such employees are excluded from inclusion in bargaining units. The Legislature does not commonly use the term "manager" in job titles but does have employees with managerial authority who should be excluded from bargaining. OSLLR recommends the Legislature adopt the following definition for these employees:

》》》 ***"Employee with managerial authority"*** *means any employee designated by the employer who, regardless of job title, (a) directs the staff who work for a legislative*

[34] As an example of the burden of proof a less flexible definition may create, see *Clark College*, Decision 10044-A (PSRA, 2008).

chamber, caucus, agency, or subdivision thereof; (b) has substantial responsibility in personnel administration, or the preparation and administration of budgets; and (c) exercises authority that is not merely routine or clerical in nature and requires the use of independent judgment.

Unlike private sector supervisors, Washington's collective bargaining rules allow public sector supervisors to unionize. However, it is not appropriate for supervisors to be in the same bargaining unit as those they supervise. This is due to inherent conflicts of interest between a supervisor and the interests of the nonsupervisory bargaining unit employees, particularly in promotional and disciplinary decisions.

The flexible nature of some legislative supervisory assignments, i.e., supervisory assignments that are intermittent, rotating, or based on leading a particular project, may not rise to the level of authority required by PERC to exempt a supervisory position from a nonsupervisory bargaining unit. OSLLR recommends the Legislature adopt a more flexible definition of the term than is in use elsewhere in Washington State public service. This definition is intended to ensure that only those employees who hold on-going supervisory authority will be exempted (and may join a union with other legislative supervisors, if desired) while also ensuring undue conflicts of interest in the legislative workplace are avoided:

» *"**Supervisor**" means an employee designated by the employer to provide supervision to legislative employees on an on-going basis. Supervision includes the authority to direct employees, approve and deny leave, and participate in 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.*

Employee

Another important term for defining appropriate bargaining units is "employee." In the context of collective bargaining, this term is used to describe which employees are covered by collective bargaining. Legislative employees are employed as fulltime and parttime regular[35] employees, temporary employees, interns, and pages.

Unless the employee has managerial authority, is confidential, or otherwise exempted from collective bargaining, all fulltime and parttime regular employees may fall under the definition of employee for the purposes of collective bargaining.

Temporary employees may also be included as employees for the purposes of collective bargaining, but OSLLR recommends some exceptions. The Legislature employs many temporary employees on a session-only (a.k.a., "session employees"), seasonal, and/or project basis. Of the various temporary employees who work for the Legislature, only those who perform

[35] The terms "permanent" and "regular" are interchangeable and describe an employee hired to fill a full or parttime legislative position that is on-going and benefits eligible. The term "regular" is used in this report.

substantially similar work to that of regular employees should be included in the definition of employee for collective bargaining purposes. Allowing the inclusion of these temporary employees will help avoid jurisdictional disputes over bargaining unit work. Interns, pages, casual employees (temporary employees who work on a very limited basis), and temporary employees who do not perform the same work as regular employees may all be appropriately exempted.[36]

Given these considerations and OSLLR's recommendations on who is appropriate for legislative employee collective bargaining, OSLLR recommends the following definition for employee:

> *"**Employee**" means any regular partisan employee of the House of Representatives or the Senate who is covered by this chapter. The term employee also includes temporary staff hired by the House or the Senate to perform substantially similar work to that performed by regular partisan House and/or Senate employees. All other regular employees and temporary employees including casual employees, interns, and pages are exempted from the definition of "employee" for the purposes of this chapter.*

An alternative "employee" definition based on expanded collective bargaining for appropriate nonpartisan employees is provided in the summary table in Attachment A.

> *OSLLR recommends the definition of legislative employees covered by collective bargaining be further clarified by the adoption of a section of statute that identifies many of the specific positions that are exempted from legislative employee collective bargaining.*

This recommendation is described in more detail in Issue #1, above and is provided in the draft model bill, Attachment B, Section 2.

Employer

The term "employer" is discussed in detail in Issue #3, above. OSLLR recommends the following definition:

> *"**Employer**" means the House of Representatives and the Senate. The Chief Clerk of the House, or designee, shall represent the House and the Secretary of the Senate, or designee, shall represent the Senate in collective bargaining negotiations with the certified exclusive representatives of all appropriate bargaining units of employees of the Legislature.*

An alternative "employer" definition based on expanded collective bargaining for appropriate nonpartisan employees is provided in the summary table in Attachment A.

Labor Dispute

[36] There is more discussion of this under Issue #1.

Defining the term "labor dispute" helps provide scope to a collective bargaining statute. OSLLR recommends the Legislature adopt the same language as used for state employee collective bargaining in RCW 41.80.005(11):

> *"**Labor dispute**" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.*

Exclusive Bargaining Representative

Finally, the existing statute defines the term "exclusive bargaining representative," but the statute does not clearly specify whether the duty of fair representation will apply to legislative employee unions. Consistent with Washington's other public sector collective bargaining statutes, OSLLR recommends that each union that acts as an exclusive bargaining representative on behalf of legislative employees be bound by balanced duty of fair representation requirement. To achieve this, OSLLR recommends the following language be added to RCW 44.90.050:

> (*New subsection) (4) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.*

OSLLR's recommended definitions are included in the model bill, Attachment B, Section 1.

No other definitions or statutory changes are recommended to address Issue #4. Alternative definitions for "employer" and "employee" based on expanding collective bargaining to nonpartisan employees are provided in the summary table of recommendations and alternatives, Attachment A.

Issue #5: What are common public employee collective bargaining agreement frameworks related to grievance procedures and processes for disciplinary actions?

This section breaks the issue into two different discussions. First, frameworks related to grievance procedures. Then, frameworks for disciplinary actions.

Grievance Procedure Frameworks

Traditional Approaches to Grievance Procedure Frameworks

The most common framework for grievance procedures, prevalent throughout Washington State's various public sector collective bargaining schemes, is a multistep procedure that starts with the aggrieved employee's supervisor and progresses through the chain of command. At each step, the employee and union present their case and proposed remedy. If an agreed upon resolution is not reached by these steps, the grievance may proceed to non-binding mediation (most often conducted by a PERC mediator). If mediation is unsuccessful or the parties are unwilling to mediate, the grievance may then proceed to binding arbitration.

Arbitration is a procedure wherein both parties present their case to a mutually agreed upon neutral 3rd party (the arbitrator) in a quasi-judicial proceeding. Some jurisdictions use a 3-party panel, consisting of a neutral arbitrator plus one representative selected by the union and one selected by the employer. Arbitrators and arbitration panels can be selected individually for each case, or the parties can agree to a permanent umpire that will hear all cases between the employer and union. The outcome of arbitration is a binding decision.[37]

Movement through the grievance steps is usually the prerogative of the union, or, at the very least, subject to union participation.[38] This is because arbitration can be expensive and risky. The union is recognized as having an interest in ensuring grievances are not used to create precedents that undermine the union's interpretation of the collective bargaining agreement. For example, a case that involves an aggrieved employee who refuses a reasonable settlement offer or asserts an untenable interpretation of the collective bargaining agreement is not likely to further the interests of the union. Neither the union nor the employer will want to arbitrate

[37] Technically, either party can appeal an arbitration decision to court. Appeals are not common as the basis for a successful appeal needs to include evidence that the arbitration decision was arbitrary and capricious, in violation of public policy, fraudulent, or that the arbitrator engaged in misconduct such as corruption or partiality.

[38] This can be product of negotiation. Public employees (but not state employees covered by RCW 41.80), have some limited rights around the ability to process grievances on their own under RCW 41.56.080, "PROVIDED, That any public employee at any time may present his or her grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance."

such a case and the union, not the employee, often has sole authority to decide if the case will move forward.[39]

Typically, the details of a grievance procedure are the product of bargaining rather than law. The exception being access to binding arbitration. State employees are guaranteed access to grievance arbitration under statute.[40] Other public employees are allowed to propose such for their collective bargaining agreements but are not guaranteed access to binding grievance arbitration. Instead, they must negotiate for it.[41]

Recommendation to Address Issues Specific to the Legislature – Grievance Procedures
If the Legislature is willing to accept the decision of a neutral arbitrator like other public employers with unionized employees, OSLLR recommends the legislative employee collective bargaining statute contemplate a grievance procedure that allows for, but does not require, binding grievance arbitration.

》》 *OSLLR recommends the Legislature adopt similar language to that in RCW 41.56.122, covering public employees:*

A collective bargaining agreement may provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

This recommendation is reflected in the model bill, Attachment B, New Section 7.

The alternative would be to *require* binding arbitration be part of the negotiated agreement, as is the case for state employees under RCW 41.80.030(2)(a). A requirement for binding arbitration negates negotiation over the existence of such a procedure, and it is possible the parties will prefer to come up with an alternative to arbitration.[42] However, this approach is offered as an alternative.

Based on the OSLLR recommendation that binding arbitration is allowed (but not required), some rules for potential arbitration may be included in the legislative employee collective bargaining statute. These rules include the authority of an arbitrator to require evidence be provided, compel witness attendance at arbitration hearings via subpoenas, and ensure compliance with decisions. The state employee collective bargaining statute includes necessary provisions under RCW 41.80.130, and OSLLR recommends the same language be utilized for

[39] Under the duty of fair representation, unions must make such decisions in a fair and reasonable manner.
[40] RCW 41.80.030(2)(a)
[41] RCW 41.56.122
[42] Examples of alternatives to binding arbitration may include limiting grievance steps to non-binding mediation, grievance panels made up of peers, or retaining final decision-making authority at the top "employer" level. There are other approaches.

legislative employee collective bargaining, with modifications for the Legislature's unique constitutional requirements.[43]

OSLLR recommends the Legislature adopt similar language to that in RCW 41.80.130, covering state employees. This language allows for the following if the parties agree to binding arbitration, with some modification for the Legislature:

- *Arbitrators are chosen by mutual agreement;*
- *Arbitrators have the authority to subpoena evidence and witnesses (with limits that protect members' constitutional rights);*
- *Arbitration awards are in writing;*
- *Places a limit on an arbitrator's order interfering with the Legislature's core functions;*
- *Provisions for a party's refusal to submit a grievance for arbitration;*
- *Requiring disputes over coverage of an arbitration clause to be resolved in favor of arbitration; and*
- *Provisions for a party's refusal to comply with an arbitration decision.*

This recommendation is reflected in the model bill, Attachment B, New Section 15.

Discipline Procedure Frameworks

Traditional Approaches to Discipline

In a unionized environment, disciplinary action is most often premised on two integrated concepts: the just cause standard and progressive discipline.

Just cause is an employment standard that ensures discipline is imposed in a fair, evidence-based, and consistent fashion. If the union feels a disciplinary action is unfair, inconsistent, or lacking sufficient evidence a grievance may result.

Progressive discipline is based on the principle that, in most cases, discipline should correct rather than punish the employee. In a unionized workplace, there is often an agreed upon list of available disciplinary actions that range from least to most severe.[44] The employer may skip steps on the list if warranted by the employee's actions. For example, if the employee has a record of prior discipline or documented non-disciplinary coaching and counseling, especially for the same or similar behavior, a more severe disciplinary action may be implemented. This includes jumping straight to termination in extreme cases such as violence or theft. If the union feels a disciplinary action is too severe, even if the union agrees discipline is warranted, a grievance may result.

[43] These constitutional requirements and limits are covered in detail under Issue #6.

[44] A common list consists of 1) documented oral reprimand, 2) written reprimand, 3) suspension, 4) demotion, and 5) termination. Temporary reduction in pay is also included in some agreements.

In addition to just cause and progressive discipline, many disciplinary frameworks include a negotiated timeframe after which prior discipline is removed from consideration. This timeframe can commonly be as short as one year to as long as six years, with variations in length and applicable caveats,[45] depending on the parties' priorities. The purpose of such provisions is to allow employees to clear their record if the behavior is corrected. Washington State's records retention rules must be considered when drafting such provisions.

For unionized employees who are at-will,[46] both just cause and progressive discipline may apply to disciplinary actions, depending on the terms of the collective bargaining agreement. It is common for such provisions to have limits on access to arbitration for terminations or restrictions on reinstatement, as is the case for the Assistant Attorneys General.

Recommendations for a Disciplinary Framework Specific to the Legislature

As explained in additional detail in Issue #2, above, OSLLR recommends that at-will employment status be retained in statute for unionized legislative employees. All current employees of the Washington State Legislature are at-will and may terminate employment, or be terminated from employment, at any time for any reason (except an illegal reason such as discrimination) without notice. Under the at-will standard, there are two kinds of terminations: for cause and not for cause. In either case, because the underlying employment relationship is at-will, the legislative employee does not have property rights to their job and, therefore, does not have *Loudermill* rights.[47] A name clearing hearing may still be required if stigmatizing information regarding the reasons for the public employee's termination (or discipline) is publicly disclosed. The outcome of such a hearing does not result in reinstatement.[48]

At-will employment is not common in public sector unionized workplaces. Unions and union-covered employees have a strong preference for the employment protections afforded by the just cause standard. However, there are relevant examples of at-will employment in public sector collective bargaining agreements, especially those covering the employees of elected officials where political/philosophical conformity may be an appropriate employment consideration.[49] To resolve the conflict between at-will employment and unionization, the unionized Assistant Attorneys General's collective bargaining agreement, Article 4.3.D.1.c and d, contains language that prohibits an arbitrator from reinstating a terminated AAG and

[45] A common caveat is that the employee must not have been disciplined for the same or similar behavior during the relevant timeframe. Another common caveat is that removal from the record must be requested by the employee.

[46] See further discussion under Issue #2.

[47] *Loudermill* rights apply to public employees who are not at-will. Under *Loudermill*, a public employee must be provided due process before any implementing any disciplinary action that impacts the employee's pay (termination, demotion, suspension, temporary pay decrease). At-will employment is a critical distinction as it eliminates the public employee's property interests to their job. The constitutional right to not be deprived of liberty or property by the government without first receiving due process is the basis for the due process requirement explained by the *Loudermill* decision. This is also why the decision only applies to public employees as their employer is also the government.

[48] For more information, see *Cox v. Roskelley*, 359 F. 3d 1105 - Court of Appeals, 9th Circuit 2004.

[49] See further discussion under Issue #2

ordering back wages after the date of the arbitration decision. This provision is consistent with the at-will employment of AAG's described in RCW 43.10.060.[50]

OSLLR recommends that specific disciplinary frameworks be the product of policy and negotiation, rather than statute. However, OSLLR also recommends that any disciplinary framework for legislative employees that results in binding arbitration limit the authority of the arbitrator from reinstating an at-will employee.

A negotiated process for disciplinary action may be contemplated for unionized legislative employees, but a limit on an arbitrator's authority should be in place.

Summary

Regarding grievance procedures and disciplinary processes, OSLLR recommends the legislative employee collective bargaining statute include the following:

- Allow, but not require, negotiation for grievance arbitration procedures that culminate in binding arbitration for unionized legislative employees.
- Provisions that, should the parties agree to include binding arbitration as part of their collective bargaining agreement, provide the arbitrator with appropriate authority but limit an arbitrator from reinstating an at-will legislative employee.
- Within these recommended limits, allow negotiated grievance and disciplinary frameworks, rather than specifying them by statute.

No additional statutory changes are recommended by OSLLR to address grievance or disciplinary processes. These recommendations are included in the draft model bill, Attachment B, New Sections 6 and 15.

[50] "The attorney general may appoint necessary assistants who shall have the power to perform any act which the attorney general is authorized by law to perform. Subject to any collective bargaining agreement, assistants shall hold office at the attorney general's pleasure."

Issue #6: What procedures related to the commission (PERC) certifying exclusive bargaining representatives, determining bargaining units, adjudicating unfair labor practices, determining representation questions, and coalition bargaining may be relevant to legislative employee collective bargaining?

Issue #6 covers some labor relations concepts that overlap and tie together:

- Certifying (and decertifying) exclusive bargaining representatives is a process to determine which union, if any, will represent (or continue to represent) a bargaining unit.

- Representation questions are part of the bargaining unit certification or decertification process and may also come up when a bargaining unit wants to change to a different union. The request to certify a bargaining unit is referred to a "representation petition."

- Determining bargaining units is the process that defines the group of employees who wish to be represented. This process determines if the employees in the proposed bargaining unit have a "community of interest" (or meet other statutory requirements) and which positions should be exempted from the proposed bargaining unit.

- Effective May 1, 2024, the definition of unfair labor practices (ULPs) for legislative employers and unions will go into effect.[51] Adjudication of alleged ULPs is the process by which determinations are made as to whether an unfair practice occurred and, if so, what remedy will be imposed.

- Coalition bargaining is discussed in more detail under Issue #7. It is not a subject that falls under the purview of the PERC, per se, though PERC may adjudicate disputes over coalition bargaining if a party believes an unfair labor practice has occurred.

Procedures for each of these topics is discussed below. Best practices and recommendations are listed at the end of each subsection.

Certification of Exclusive Bargaining Representatives and Related Representation Questions
PERC has established procedures and precedents for certifying bargaining representatives. When a bargaining unit already exists and is represented by a union, there are time limits (called "bars") for when a petition can be filed to certify a new representative and/or decertify an existing representative. These bars are based on how long it has been since the existing

[51] RCW 44.90.080: Unfair labor practices. (Effective May 1, 2024.). A complete citation is also included in the Glossary.

representative was certified and when an existing collective bargaining agreement expires.[52] To provide stability, only during these windows is the bar lifted so that a decertification petition may be filed.

》》》 *OSLLR recommends the Legislature adopt the same bars as those applicable to executive branch employees under RCW 41.80.080(4):*

> *"No question concerning representation may be raised if:*
> *(a) Fewer than twelve months have elapsed since the last certification or election; or*
> *(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract."*

When there is no existing bargaining unit, there is no time related bar and the process to certify an exclusive representative starts with the union. Under PERC's rules, the union initiates the process by submitting a representation petition. The petition must show at least 30% of the employees in the proposed bargaining unit wish to be represented by the union.[53] PERC confirms the union's evidence and, assuming all is in order, moves to an election to determine if a majority of the employees wish to be represented. Each employee in the proposed bargaining unit is eligible to vote. A majority (50% + 1) of the votes cast determine the election outcome. If the union is successful, PERC's official recognition ("certification") means the union can then request of the employer that collective bargaining be scheduled.

It can get more complicated. As part of PERC's certification process the employer must provide a list of employees in the proposed unit. There may be disputes over which positions are appropriate to be included. Sometimes more than one union is vying to represent the same group of employees or runoff elections need to be held. PERC has established processes and precedents to address complications.

Under PERC's existing rules, decertification of an exclusive representative is a similar process to certification. Decertification may dissolve the bargaining unit or switch it to a different exclusive bargaining representative. Taking the time bars to decertification into account, the employees seeking to decertify the existing union must provide evidence that at least 30% of the existing bargaining unit is interested in decertification. The evidence must be confirmed by the PERC, and, if so, an election to decertify the union is held.

》》》 *OSLLR recommends the Legislature take advantage of the benefits of PERC's established procedures regarding time bars, thresholds, and related processes for elections and*

[52] RCW 41.80.080(4) or RCW 41.56.070, for example.
[53] The term for this is "showing of interest." PERC has specific rules on how the interest must be worded, when such documentation becomes stale, etc. Details, not all of which will be applicable to legislative employees, can be found in the FAQ provided on the PERC's website.

certification and decertification of bargaining units and put such matters under PERC's authority.

These recommendations are reflected in the model bill, Attachment B, Section 5.

Bargaining Unit Determinations – Determining Community of Interest
Bargaining units may be configured in a variety of ways, but all the employees in a bargaining unit must have enough in common to be able to effectively bargain together. This commonality is called a "community of interest." When the union files a representation petition, they must include a description of the proposed bargaining unit so that PERC can determine if a community of interest exists.[54]

There are two ways that community of interest is defined. The first method is by statutory definition. In this method, the law says a certain grouping of employees is an appropriate bargaining unit. An example of this method is RCW 41.80.400(3) for Washington's Assistant Attorneys General, "The only unit appropriate for the purpose of collective bargaining under this chapter is a statewide unit of all assistant attorneys general not otherwise exempted from bargaining." This method reduces disputes over who is or is not appropriately included in a bargaining unit. OSLLR offers this method as an alternative, if preferred by the Legislature.

The second method of determining bargaining units applies a list of community of interest criteria against which PERC analyzes the proposed bargaining unit to determine if it is appropriate. As an example, most state employees are covered under the community of interest criteria found in RCW 41.80.070:

> "In determining the new units or modifications of existing units, the commission shall 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…"

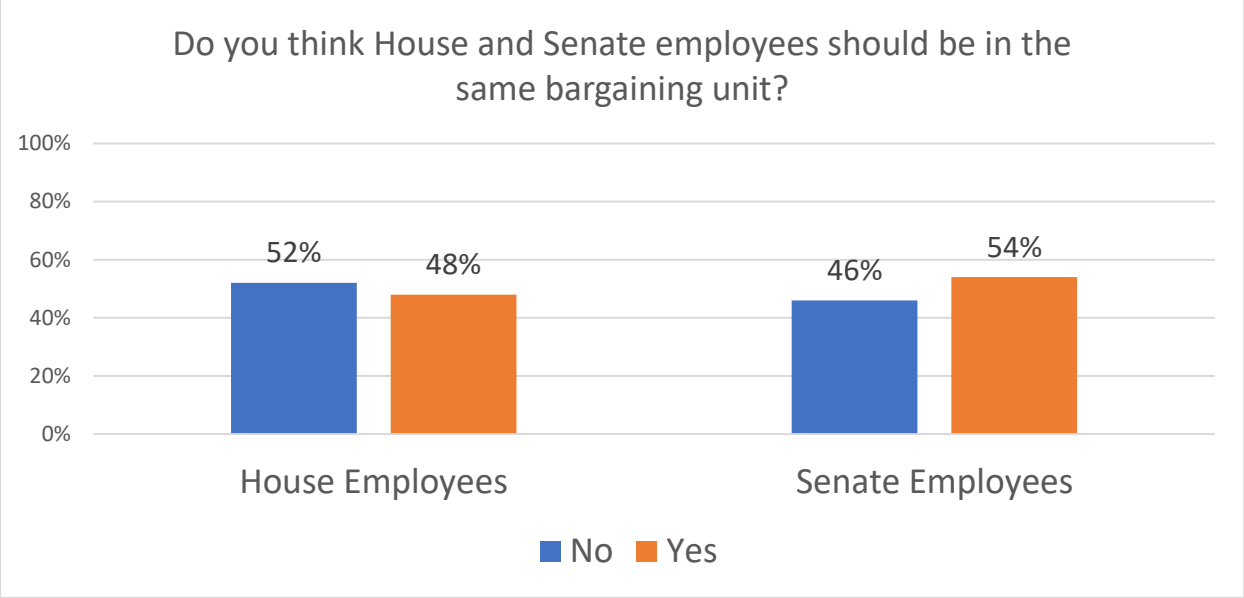
The state employee collective bargaining statute goes on to explain when a bargaining unit is not appropriate. For example, a proposed unit will not be appropriate if it includes both supervisors and non-supervisors or employees from more than one institution of higher education. This method of determining bargaining units is flexible and allows employees more choice as to who is included in the group of employees with whom they must collectively bargain.

OSLLR recommends adoption of the more flexible second method, i.e., community of interest criteria, with the addition of some unique Legislature specific rules for appropriate bargaining

[54] A copy of the on-line form to file a representation petition is on PERC's website.

units. This approach is recommended regardless of the scope of legislative employee collective bargaining contemplated under Issue #3.

One of the Legislature specific issues is the inclusion of House and Senate employees in the same bargaining unit. Per the 2022 legislative employee survey results, House and Senate employees are split on the issue of whether they should share bargaining units:



OSLLR recommends House and Senate employees not be in the same bargaining unit.

OSLLR recommends House and Senate employees be in separate bargaining units, consistent with how OSLLR recommends the employer be defined Issue #3. This will allow the Secretary of the Senate and the Chief Clerk of the House autonomy to negotiate for noneconomic terms that work best for their respective chambers.

In summary, OSLLR recommends the following community of interest criteria be considered for legislative employee bargaining unit determinations:

a. *An appropriate bargaining unit will be determined by PERC based on:*
    1. *The duties, skills, and working conditions of the employees;*
    2. *The history of collective bargaining;*
    3. *The extent of organization among the employees;*
    4. *The desires of the employees;*
    5. *And the avoidance of excessive fragmentation.*
b. *However, a bargaining unit is not appropriate if it includes:*
    1. *Both supervisors and nonsupervisory employees; and*
    2. *Both House and Senate employees.*

This recommendation is reflected in the model bill, Attachment B, New Section 6.

If the Legislature expands collective bargaining to include nonpartisan and legislative agency employees, OSLLR recommends appropriate bargaining units not include both partisan and nonpartisan employees nor employees from more than one legislative agency. This alternative is included in the summary tables in Attachment A.

Relevance of Current PERC Procedures Related to the Adjudication of Unfair Labor Practices
The adjudication of unfair labor practices (ULPs) is another area where PERC has well established procedures and precedents. Public sector collective bargaining laws have consistent definitions for what constitutes a ULP.[55] The legislative employee collective bargaining statute mirrors these definitions in RCW 44.90.080.[56]

PERC's procedures to address allegations of ULP's include the following:

- A complaint must be filed within 6 months from the date the complainant knew of or should have known of the alleged violation.

- Who may file a complaint:
    - A union may file a ULP complaint against the employer on behalf of employees it represents or seeks to represent.
    - An employer may file a complaint against a union that represents or seeks to represent the employer's employees.
    - Individual employees may file a complaint against the employer, the union, or both.

- PERC reviews the complaint. If the complaint is timely, meets PERC's criteria and states a cause of action,[57] the case may proceed. Settlement mediation and/or a hearing on the evidence of the alleged ULP may be scheduled.

- If the case goes to a hearing, PERC will issue a decision on whether the allegation was a ULP and, if so, order a remedy. PERC's remedies may include reinstatement of an employee found to be terminated due to protected union activity.

This is a very simplified overview of the ULP adjudication process. Additional details may be found on PERC's ULP webpage.

[55] For example, RCW 41.80.110 for state employees or RCW 41.56.140 and .150 for public employees.
[56] RCW 44.90.080: Unfair labor practices. (Effective May 1, 2024.). A complete citation is also included in the Glossary.
[57] Complaints must include a statement of facts which, *if* the asserted facts can be proven true, would constitute a ULP. otherwise, PERC will dismiss the complaint. See WAC 391-45-050 and WAC 391-45-110, for additional details.

The legislative employee collective bargaining law does not currently specify that PERC will have jurisdiction over legislative ULP filings or what process for adjudication will apply. Alternatives to PERC include using the court system or an independent arbitrator or hearings examiner to receive and hear cases. These alternatives would likely rely on the precedents established by PERC (as is currently the case for complaints that get filed directly to the superior court). Use of these alternatives may add costs and make the process more burdensome for all parties.

Washington's public sector collective bargaining statutes uniformly give complainants the option of filing a ULP with superior court. While most ULP's are filed directly to PERC, OSLLR recommends that the court filing option be provided under the legislative employee collective bargaining statute. To avoid added costs and logistical challenges, and due to proximity to both the employer's and employees' primary work locations, OSLLR recommends the option to file a ULP in court be limited to Thurston County Superior Court.

》》 *Generally, OSLLR recommends that legislative employee collective bargaining, including the adjudication of unfair labor practices, be subject to PERC's (or Thurston County Superior Court's) authority and implemented under PERC's existing procedures.*

However, some limits or restrictions may be appropriate.

Separation of Powers, At-Will Employment, and Maintaining the Legislature's Autonomy
In OSLLR's preliminary report, a potential constitutional issue over the separation of powers between the executive branch and the legislative branch was identified.[58] While it is unlikely that the creation of rules or the issuance of orders related to the certification or decertification of bargaining units, the adjudication of unfair labor practices, or other areas that fall under PERC's authority would create constitutional issues, a statutory limit may be helpful.

California's legislative employee collective bargaining bill, AB 1,[59] includes a general provision limiting the authority of the California Public Employment Board (their version of PERC) from actions that "intrude upon or interfere with" their Legislature's core function of "efficient and effective law making or the essential operation" of their Legislature. AB 1 also provides a list of some of those essential operations which include:

- Any matter relating to the qualifications and elections of members of the legislature, or the holding of office of members of the legislature;
- Any matter relating to the legislature or each house thereof choosing its officers, adopting rules for its proceedings, selecting committees necessary for the conduct of business, considering or enacting legislation, or otherwise exercising the legislative power of this state;

[58] See OSLLR's preliminary report, page 15
[59] Details and links to AB 1 can be found under Issue #10 of this report.

- Any matter relating to legislative calendars, schedules, and deadlines of the legislature; or
- Laws, rules, policies, or procedures regarding ethics or conflicts of interest.

California's new legislation does not limit the reinstatement of a legislative employee. However, consistent with the maintenance of Washington state legislative employees' at-will status, this should be considered an appropriate additional limit for PERC and the courts.[60]

》》》 *OSLLR recommends the adoption of limits on PERC's and courts' ability to issue rules or decisions that impede the Legislature's essential operations similar to those contained in California's AB 1, to include a prohibition on reinstatement of a legislative employee.*

These recommendations are reflected in the model bill, Attachment B, new section 4.

Summary
In summary, OSLLR makes the following recommendations related to PERC's procedures for certifying bargaining representatives, determining bargaining units, adjudicating unfair labor practices, and determining representation questions:

- Authorize PERC to oversee bargaining unit elections, certification, decertification, and questions of representation for legislative employees;
- Apply the same time bars for bargaining unit certification, decertification, and questions of representation as are applicable to state employees;
- Adopt a set of Legislature specific "community of interest" criteria;
- Authorize PERC to adjudicate unfair labor practices;
- Allow unfair labor practice complaints to be filed in Thurston County Superior Court; and
- Limit PERC's authority (and that of the Court, when applicable) such that PERC may not issue an order that intrudes upon or interferes with the Legislature's core function of efficient and effective law making or the essential operation of the Legislature, including a limit on the ability to reinstate a legislative employee.

These recommendations are reflected throughout the draft model bill, Attachment B.

Coalition Bargaining
Coalition bargaining is when multiple unions and/or employers bargain together at the same bargaining table. The law may impose coalition bargaining as is the case under the PSRA which requires coalition bargaining for smaller state employee unions and for all state employee unions over health care benefit premium amount negotiations.[61] More commonly, coalition bargaining comes about as the result of mutual agreement between the parties. In either case,

[60] And potential arbitrators. See Issue #5's discussion of grievance frameworks.
[61] Public Service Reform Act, specifically RCW 41.80.020(3).

PERC's role is limited to the adjudication of ULP's that may arise if the parties are unable to bargain in good faith.

OSLLR's recommendations for coalition bargaining are discussed in the next section, Issue #7.

Issue #7: The efficiency and feasibility of coalition bargaining?

Coalition bargaining is common. Occasionally, it is required by law as is the case under the PSRA which requires coalition bargaining for all state employee unions over health care benefit premium amount negotiations[62] and for all state employee unions representing fewer than 500 employees.[63] Coalition bargaining also may occur as the result of mutual agreement between the parties.[64]

How Coalition Bargaining Traditionally Works

Under a traditional coalition bargaining process, an employer (or group of employers) negotiates a single agreement with multiple bargaining units at the same table. In addition to combining bargaining power, the advantage to the union(s) is that each bargaining unit knows that it is getting at least as good a deal as the other bargaining units. For the employer(s), advantages include better ability to balance the needs and desires of all bargaining units as a whole. For both parties, efficiencies and time savings can be achieved. These advantages are most helpful when negotiating major economic terms such as cost-of-living adjustments, general wage increases, leave accruals, health care benefit amounts, and other terms of employment that apply to all bargaining units. These advantages make coalition bargaining a popular approach for both unions and employers.

When bargaining in coalition, the parties often agree to allow supplemental bargaining tables. These smaller tables focus on bargaining unit specific issues. Examples of items that may best be negotiated at a supplemental table may include bargaining unit specific workplace safety items, training and licensure requirements, and other items that are applicable to one bargaining unit or employer, but not all.

Coalition bargaining is not without challenges. To be effective, both sides of the coalition bargaining table need an internal decision-making process to reach agreement with other members of their coalition. For the employer, this may mean establishing a centralized coordinating entity. For executive branch employers, OFM serves this purpose.

Implementing Coalition Bargaining in the Legislature

[62] Ibid.

[63] RCW 41.80.010(2)(a)(ii).

[64] For an example of required coalition bargaining, see the state employee coalition agreement on OFM's web page, here. For an example of voluntary coalition bargaining, Snohomish County has several AFSCME bargaining units, each of which is covered under a coalition master agreement AND its own collective bargaining agreement.

Under Issue #3, OSLLR recommends that collective bargaining be limited to partisan employees of the House and Senate. Even this limited approach has the potential for the creation of multiple bargaining units in each chamber. This, in turn, creates a potential for multiple small bargaining tables at the Legislature.

Further, while the House and Senate have policies and practices in common, e.g., the legislative salary grid, each has its own personnel policies covering compensation practices and working conditions. Despite differences in compensation practices, both the House and Senate have a history of applying the same cost-of-living adjustments and health care benefit premium amounts to employees. While there has been equity amongst House and Senate employees on general economic terms, other terms and working conditions vary. Unionized legislative employees may bargain to create more equity and conformity between the chambers, but there may be value for both the employers and the unions to retain some of the unique cultures and practices of each chamber.

OSLLR believes the potential of bargaining at multiple small tables is not sufficiently advantageous for legislative unions or employers to offset the advantages of coalition bargaining. However, unless required by statute, coalition bargaining can only be implemented by voluntary, mutual agreement of the parties.[65] OSLLR recommends coalition bargaining be required of the parties over economic terms. Allowing supplemental bargaining tables is an option that will allow each chamber's unique culture and practices to be maintained.

》》》 *OSLLR recommends that that coalition bargaining be required for all legislative employee unions on economic terms and that supplemental bargaining tables be allowed to address bargaining unit specific issues.*

This recommendation is reflected in the model bill, Attachment B, Section 9.

Issue #8: What procedures for approving negotiated collective bargaining agreements are available?

For this section, the focus is on how the employer will work with OSLLR and other stakeholders to approve collective bargaining agreements during the negotiation process. Funding (or ratifying) agreements is covered under Issue #9.

Answers to this question are reliant on how the Legislature chooses to answer the key question under Issue #3, which entity or entities would be considered the employer for the purposes of legislative employee bargaining. Under Issue #3, OSLLR recommends the Legislature limit

[65] Absent a statutory requirement, coalition bargaining is a permissive subject of bargaining and cannot be unilaterally implemented by either party. See *Spokane County*, Decision 13510-B (PECB, 2022), for a comprehensive example of PERC's analysis of an impasse over a permissive ground rules subject.

collective bargaining to partisan House and Senate employees, in which case the employer would continue to be the Chief Clerk of the House and the Secretary of the Senate.

Good faith bargaining requires the bargaining teams of both the union and the employer to have the authority to reach agreements. However, this authority is not without discretion. It is appropriate for both the union and the employer to expect that the opposite negotiating team will occasionally need to consult with other entities as bargaining progresses. This is especially true for the employer on items that have a budgetary impact.

As a high-level example of how this could work, approval of collective bargaining proposals and agreements – especially items with budgetary impacts - could be as simple as on-going collaboration and consultation between the Director of OSLLR and the employer during negotiations. The Director should expect to receive at least verbal approval from the employer that the agreement and related proposals may move forward.

Once the employer is defined, procedures and expectations for negotiations and approval of proposals and tentative agreements should be established. This does not require statutory language beyond the need to define the employer in the collective bargaining context. Recommendations on how to do this are covered under Issue #3 and reflected the draft model bill in Attachment B. The Legislature will have the ultimate say in whether an agreement is approved (see Issue #9), but the parties will know that any tentative agreement reached will be supported by the employer and union when it comes to a final vote.

Issue #9: What procedures for submitting requests for funding to the appropriate legislative committees if appropriations are necessary to implement provisions of the collective bargaining agreements?

OSLLR considered several existing models in response to this question. These are the Oregon model (prefunded), the Maine model (pre-negotiated/pre-funded), the Washington state public sector model (open ended/flexible), and the Washington state executive branch model (strict deadline).

Of these, OSLLR recommends the Legislature consider the Washington state executive branch model with some modifications.

Some Traditional Approaches to Request Funding of Collective Bargaining Agreements
Once the union and employer bargaining teams reach a tentative agreement on all negotiated items, the tentative agreement must be approved by each parties' constituency. For the union, this usually means a vote by the union's dues paying membership. For the public sector employer, this often means a vote of the entity that passes the employer's budget, i.e., a city council, board of county commissioners, the Legislature, etc.

For an employer to approve an agreement, it needs to know what the budget impacts will be and incorporate those impacts into the employer's budget process. The employer's negotiator will have kept the employer informed of the progress at the bargaining table, the estimated costs of proposals, and the evidence upon which proposals and counterproposals are based. In turn, the employer will have provided guidance to the negotiator on how to proceed. There will be no surprises for the employer when it comes time to approve and fund the tentative agreement.

Washington State Employees Agreement Funding Process

Before looking at issues specific to the Legislature, OSLLR reviewed the process that applies to Washington's executive branch employees. State employee bargaining is informative because Legislative employees will bargain under similar constraints. These constraints include contract terms of no more than one fiscal biennium and limits on when budget resources needed to fund tentative agreements can be approved, namely, only when the Legislature is in session.

Under RCW 41.80.010, state employee tentative agreements are subject to the following:

- The parties' tentative agreement must be submitted to OFM by October 1 prior to the legislative session at which the request(s) are to be considered.
- OFM must certify that the tentative agreement as financially feasible.[66]
- The Governor must then submit a request for funds or legislation necessary to implement the provisions of the tentative agreement.
- The Legislature may then approve or reject the submission of the request for funds as a whole.
- If the Legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or seek impasse procedures.

Due to the lead time needed to fund a state employee contract, failure to receive approval for a tentative agreement from the Legislature would be a significant problem for state employees. While the statute makes clear the parties may return to the bargaining table should this occur, it is entirely possible that state employees' negotiated wage increases would be delayed for at least one full fiscal year.

Other Models Considered – Oregon, Maine, and Washington's Public Sector

OSLLR reviewed the details of three other models. These include the Oregon Legislature, the Maine Legislature, and Washington's public sector employers covered under Chapter 41.56 RCW.

Starting with Oregon, Oregon's Legislative Assistants are unionized as of 2021 and are covered by Oregon's public sector collective bargaining law. Oregon's process for funding of agreements is defined by minimum timeframes for each potential step of the bargaining process.[67] There is no specified deadline for reaching agreement. In theory, if bargaining starts early enough, the

[66] See OFM's A Guide to the Washington State Budget Process and RCW 41.80.010 (3) for details.
[67] See OSLLR's preliminary report, page 9

entire process will be concluded in time for inclusion in the Governor's budget proposal without the necessity of a bargaining deadline. In application, state employee unions lobby the Oregon Legislature to prefund a budget allocation ahead of complete negotiation of the agreement. This model has been described as "win[ning] a 'salary pot' through the Legislature's budget process."[68]

Oregon's model poses some challenges. It may require funding of agreements to be publicly pre-determined. This may come close to pre-determining an outcome before coming to the bargaining table which can create a risk of bad faith bargaining allegations. This model may also require the Legislature to consider additional, unanticipated funding in case of an impasse or after a tentative agreement is reached. In this case, depending on timing, there is also a risk of a Legislature being unable to act based on concerns of binding a subsequent Legislature.[69] Due to these risks, Oregon's model may not be a good fit for Washington's legislative employee collective bargaining statute.

Maine's legislative employee bargaining process is unique. Maine relies on the fact that the same union (MSEA/SEIU Local 1989) represents both executive branch and legislative branch employees. In Maine, executive branch employees traditionally bargain before legislative employees. Once the state employee settlement is reached, the legislative employee agreement's economic terms are modeled on the state employee agreement.[70] This allows the Legislature to determine funding needs before legislative employee bargaining is concluded. Because the Maine model is reliant on facts that are unlikely to exist in Washington, it is also not a good fit.

The last model under consideration is that established by Chapter 41.56 RCW. Under this statute, Washington's local public sector jurisdictions such as cities and counties can bargain as long as needed to reach agreement or impasse. If agreement is reached after expiration of the prior agreement, the parties may (and often do) agree to retroactive application of economic terms. The local jurisdiction's governing body, e.g., city council, then funds the contract via their local budget approval process. While the local jurisdiction may have an anticipated budget for collective bargaining outcomes, they can adjust things as the bargaining process ripens. Due to the constricts of the state-level budget cycle that will apply to legislative employees, this open-ended, flexible negotiation process would be difficult to implement. As such, it is not recommended.

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[68] This quote is from SEIU Local 503's, web page. Local 503 is one of the larger state employee unions in Oregon.
[69] In 2017, to manage these risks, Oregon's Legislature considered changing to a model like that used in Washington for state employees. SB 1067, dubbed a "cost containment plan," faced significant opposition from Oregon's state employee unions. The final legislation did not include provisions from the initial bill such limiting state employee contracts to a single biennium nor a provision that would have required agreements be reached in time for inclusion in the Oregon Governor's budget proposal. See this AFSCME Local 75 website for details.
[70] More details on how Maine bargains with legislative employees can be found in OSLLR's preliminary report.

Addressing Issues Unique to Funding a Legislative Employee Agreement
OSLLR recommends legislative employee collective bargaining be subject to a similar process as that which applies to Washington's state employees with some modifications.

Legislative employee collective bargaining will be subject to constraints on the timing of reaching an agreement. The agreement must be available to the Legislature before the budget is passed, and ideally in time for inclusion in the Governor's December budget proposal. State employee bargaining is subject to an October 1 deadline. After considering alternatives, this deadline is the best option to ensure legislative employee agreements are timely.

- *OSLLR recommends an October 1 deadline for legislative employee collective bargaining.*

- *OSLLR recommends the economic details of the tentative agreement be costed out in collaboration between OSLLR and House and Senate accounting staff and submitted to OFM with the Legislature's budget for inclusion in the Governor's December budget proposal.*

These recommendations will require cost analysis to occur between October 1 and the due date to the Governor's Office. This is a short turn around but the relatively small size of the Legislature's workforce and the Legislature's prior experience determining personnel costs should be able to accommodate this time frame.

Following the state employee model may also require the Legislature to determine if the economic terms of the union agreement will apply to unrepresented legislative employees before the final costing can be determined. Note that this may represent a change to the current legislative budget process timeline for determining personnel costs.

- *OSLLR does not recommend a formal determination of economic feasibility for legislative employee tentative agreements.* [71]

OSLLR believes that the Legislature will be able to provide accurate cost estimates during the bargaining process making a feasibility determination redundant. However, as noted above, some mechanism for dealing with unanticipated and significant negative change in the state's financial circumstances should be considered in case such an event occurs after an agreement has been approved and funded.

- *OSLLR recommends the Legislature require renegotiation of an approved legislative employee agreement in case of a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the Governor or by resolution of the Legislature.*

[71] OSSLR is not recommending access to interest arbitration for legislative employees. However, should the Legislature determine that interest arbitration will be available in case of a legislative employee collective bargaining impasse, OSLLR would then recommend a determination of economic feasibility be added to statute.

There may be other rare circumstances where the Legislature will fail to fund the tentative agreement.[72] In this event:

》》》 *OSLLR recommends the statute allow the parties to return to the bargaining table and submit the modified agreement for Legislative funding.*

The Legislature will have been engaged in the bargaining process and limiting the vote to the request for funds as a whole is appropriate.

》》》 *OSLLR recommends that legislative action on a legislative employee tentative agreement be limited to a vote to approve or reject the submission of the request for funds as a whole.*

Summary

In summary, OSLLR recommends the Legislature adopt the following statutory framework for funding legislative employee collective bargaining agreements:

- The legislative employee tentative agreements must be available to the employer by October 1.
- The employer will include a request for funds or legislation necessary to implement the provisions of the tentative agreement to the Governor for inclusion in the Legislature's budget proposal.
- If a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the Governor or by resolution of the Legislature, the parties will return to negotiations and submit a modified agreement for funding.
- If the Legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or seek impasse procedures.
- The Legislature may approve or reject a submission of the request for funds as a whole.

OSLLR does not recommend a determination of economic feasibility for legislative employee tentative agreements.

These recommendations are reflected in the draft model bill, Attachment B, Section 9.

[72] Legislative employee unions should be able to rely upon, absent an unanticipated and significant negative change in the state's financial circumstances, majority legislative support of the agreement the Legislature negotiated. Failure to do so could result in allegations of bad faith bargaining. The outcome of such cases are fact specific, but as an example see *Mason County,* Decision 10798-A (PECB, 2011), "[W]hen a union or employer representative says to the other party: 'We will reach agreement with you at this table, but we must ratify it with our [membership/board of directors] before we have a contract', each party must anticipate a period of only limited risk while the tentative agreement is converted into a binding contract. . . . The exclusive bargaining representative and the principal representative of the employer possess a mutual duty to bargain in good faith, and each party has apparent authority as well as actual authority to reach agreement which will become a collective bargaining agreement. Each party has a right to rely upon the other's authority to reach such an agreement." (Emphasis added)

Issue #10: What approaches have been taken by other state legislatures that have authorized collective bargaining for legislative employees?

As of this report, Maine and Oregon, and Washington are the only states who have authorized and/or have active collective bargaining for legislative employees. California's Legislature passed a legislative employee collective bargaining law, AB 1, and, as of September 20, 2023, it has been presented to Governor Newsom for signature. Neither Maine nor Oregon's approaches to collective bargaining for legislative employees provide a comprehensive model for Washington. California's approach has some interesting provisions, some of which may be applicable to the Washington State Legislature.

Oregon

In Oregon, legislative employees are covered under a collective bargaining statute that, except for who authorizes and negotiates their collective bargaining agreements, follows the same rules and precedents as those applicable to all other Oregon public employment collective bargaining. There are no Legislature-specific parameters on mandatory subjects of bargaining, strikes, or other workplace issues unique to the Oregon Legislature. As a result, items like hours of work during session and at-will employment will be determined at the bargaining table.[73]

Shortly before finalizing this report, negotiations between the Oregon Legislature and IBEW Local 89, on behalf of all of Oregon's legislative aides, reached tentative agreement after two years of bargaining. For the most part, the tentative agreement codifies existing policies and practices. It also:

- Includes wage increases consistent with those received by other Oregon state employees.
- Codifies at-will status but allows the use of up to 10 days of accrued paid leave following separation.
- Provides a grievance procedure that culminates with an internal grievance panel made up of an equal number of appointees from the Senate and House majority and minority leaders.

The complete tentative agreement has not been published on-line but has been publicly shared. A copy is available from OSLLR upon request.

In the meantime, the lawsuit over separation of powers filed by Oregon Representative Kim Wallen and her aide, Sarah Daley, was rejected by the Oregon Court of Appeals on July, 6, 2023, due to lack of standing (here's a news article with more details. A copy of the Court's decision is available here.). An appeal to the decision has been filed.

[73] Unlike Washington, Oregon's legislative staff are overtime eligible under Oregon's existing overtime and minimum wage laws. This means Oregon's Legislative Assistant I and II's are overtime eligible. LA III and IV's are overtime exempt.

Maine

Nothing of note has changed related to Maine's legislative employee collective bargaining since OSLLR's December 2022 preliminary report. Their statute has been in place since 1998 and only allows nonpartisan legislative employees to collectively bargain. As the result of bargaining, many, but not all,[74] of Maine's nonpartisan unionized employees are covered by the just cause standard and are eligible to receive overtime pay or compensatory time.[75]

Oregon and Maine are instructional and some of OSLLR's recommendations are informed by the experiences of both states, but neither provides a comprehensive model of best practices upon which to base Washington's legislative employee collective bargaining law.

California

Since OSLLR's preliminary report of December 2022 and the 2022 NCSL report,[76] some states have continued to pursue legislative employee collective bargaining. Notably, California's Legislature has passed AB 1, allowing California's legislative employees to unionize starting in July 2026. The bill was presented to Governor Newsom on September 20, 2023. The structure of California's legislative staff is different from structure used in Washington,[77] but the final version of bill includes some interesting provisions that may have relevance to the Washington State Legislature. These include:

- Preservation of the at-will employment status of legislative employees but provides that a transition period be negotiated to allow a separated employee to apply for vacant positions under some scenarios.
- Designates separate employers for each legislative chamber, namely, the Assembly Committee on Rules for the Assembly (California's equivalent to Washington's House) and the Senate Committee on Rules for the Senate.
- Requires separate bargaining units for each chamber of the California legislature (no

[74] The exception being legislative employees in the "Committee Clerk" classification. Under Article 21 of the MSEA Agreement, continued employment for Committee Clerks is subject to reappointment each legislative biennium. Failure to be reappointed is not subject to the grievance procedure. All other job classifications are covered by the "just cause" standard for all disciplinary actions, including termination.

[75] Highly compensated unionized employees, e.g., those whose annual earnings are higher than $122,600, receive overtime or compensatory time at a 1:1 ratio. Lower paid personnel receive overtime benefits at the more traditional 1:1.5 ratio. See the complete details at this link to Maine and MSEA's collective bargaining agreement.

[76] The NCSL report is included as an attachment to OSLLR's 2022 preliminary report.

[77] Many of the nonpartisan staff who draft legislation and provide support to the California Legislature work for a separate executive branch agency, the Office of Legislative Counsel (OLC). OLC staff are exempt from collective bargaining under Section 3513 of the Dills Act, California's state employee collective bargaining statute. OLC provides services that are similar to those provided by Washington State Legislature's Code Reviser's Office, LEAP, Legislative Service Center (LEG-TECH), the Office of the Attorney General's staff who represent the Legislature. OLC's services also appear to overlap with our Office of Program Research and Senate Committee Services. However, in addition to OLC, the California Legislature has in-house nonpartisan policy analysis staff who work for the California Chief Clerk of the House's Assembly Floor Analysis unit and the California Senate's Office of Research and Senate Floor Analyses. Unlike OLC, these legislative employees are covered by AB 1.

mixing of Assembly and Senate employee bargaining units).

- Requires that political affiliation not be a community of interest factor in the determination of appropriate bargaining units.
- Grants the Public Employment Relations Board (similar to Washington's PERC) authority to develop rules for legislative employee/union labor disputes and allows reinstatement of a terminated employee, but limits PERB from issuing an order that would, "intrude upon or interfere with the Legislature's core function of efficient and effective law making or the essential operation of the Legislature…" (Section 3599.55 (c)). – *OSLLR recommends a version of this concept. See Issue #6.*
- Includes an emergency clause allowing changes to working conditions without negotiation under emergency conditions. – *OSLLR recommends a version of this concept. See Additional Considerations.*
- Has a delayed implementation date of July 1, 2026 (the original bill had an implementation date of July 1, 2024).
- Gives the Legislature exclusive authority to unilaterally designate which employees will be exempt from collective bargaining, up to 1/3 of the total number of legislative employees overall;[78]
- Allows the expression of views and opinions by legislative members and exempt employees without it being construed as an unfair labor practice if the "employer" did not authorize or request the expression on behalf of the employer. – *OSLLR recommends a version of this concept. See Additional Considerations.*

Update on Other States

In other states, progress towards legislative employee collective bargaining appears stalled. New York's legislative employees continue to seek the right to unionize. The employees argue they are covered by existing public employment collective bargaining laws. As explained in this media piece, https://www.empirecenter.org/publications/why-legislative-employees-cant-unionize-under-taylor-law/, the employees' stance is disputed by New York's Legislature. It is possible legislation may be considered but had not been proposed as of this update. The alternative, that legislative employees bargain with their respective legislative chamber on a less formalized basis via "voluntary recognition," but not covered by a bargaining statute, may be pursued, too, but this approach is problematic.[79]

Massachusetts legislative employees continue to pursue legislation to authorize collective bargaining. Current bills under consideration are H.3069 and HD.2435. These companion bills would add legislative employees to the existing law that allows executive branch employees to unionize. Last action on the bill was on February 16, 2023, a referral to the Massachusetts Joint

[78] This is an interesting alternative solution to the question of which employees are appropriate for collective bargaining. OSLLR does not recommend this concept wholesale but has borrowed from it by incorporating the phrase "designated by the employer" in the definitions for confidential, managerial authority, and supervisory employees. See Issue #4.

[79] For example, a change in individual office holder or change in majority party could potentially cause any agreements to be unilaterally changed, or eliminated altogether, without recourse.

Committee on State Administration and Regulatory Oversight. Neither bill has been scheduled for committee hearings. In the meantime, legislative employees of the Massachusetts House of Representatives have begun organizing with IBEW Local 2222 under the name, "State House Employee Union." They are seeking voluntary recognition, similar to that sought by New York's legislative employees. There is a union-developed FAQ that provides some interesting information but, again, nothing OSLLR found helpful for the Washington State Legislature's consideration.

Additional Considerations: What additional statutory changes may be considered to fully implement legislative employee collective bargaining?

In addition to the issues the Legislature requires be addressed in the Director's final report, OSLLR's research has identified additional issues that may warrant consideration. This research was based, in part, on a comparison of existing Washington State collective bargaining statutes including RCW 41.80, covering executive branch employees, and RCW 41.56, covering other public sector employees. Some ideas were found in California's legislative bargaining bill, AB 1. Many of these questions and ideas can be resolved at the bargaining table, but the Legislature may prefer the certainty of establishing answers in statute.

A. How should the concepts of "duty of fair representation" and "exclusive bargaining representative" be applied or defined?

〉〉〉 *Recommendation: Adopt standard definitions for "exclusive bargaining representative" and "duty of fair representation."*

Discussion can be found under Issue #4, Definitions.

B. Should an emergency clause be included in statute, allowing legal implementation of changes to mandatory subject of bargaining without first meeting a bargaining obligation?

〉〉〉 *Recommendation: Adopt an emergency clause under management rights like that in RCW 41.80.040(4), "The right to take whatever actions are deemed necessary to carry out the mission of the state and its agencies during emergencies…"*

With modification to reference the Legislature and legislative agencies, this provision will allow the Legislature to implement emergency changes to a mandatory subject of bargaining without first fulfilling a bargaining obligation.[80] This recommendation is incorporated into the draft model bill, Attachment B, Section 13.

[80] Note, the bargaining obligation may still exist and, if so, may be fulfilled after emergency action is taken.

C. What bargaining impasse procedures should apply, both for collective bargaining agreements and mid-term bargaining?

During negotiations, the parties have a shared goal of coming to mutual agreement. Sometimes, mutual agreement is elusive and a bargaining impasse occurs. Impasse can apply to negotiations over a collective bargaining agreement or a change to a mandatory subject of bargaining that occurs mid-term after the agreement has been implemented.

For Washington's public sector employee unions and employers, declaration of an impasse during contract negotiations may result in mediation. The mediation is most often conducted by a PERC mediator who assists the parties in finding a resolution. Mediation is non-binding and does not obligate either party to agree to anything, but PERC's mediators work hard to get the parties to an agreement and are usually successful.[81] For the renegotiation of existing collective bargaining agreements, in the event that such procedures are not successful and an existing agreement expires, the employer may ultimately implement the employer's last, best offer after one year.[82]

》》 *OSLLR recommends the Legislature adopt the impasse procedures available to most other public sector employees, i.e., mediation, with unilateral implementation by the employer one year after expiration of the existing agreement.*[83]

This recommendation is incorporated into the draft model bill, Attachment B, New Section 10.

For mid-term mandatory subjects bargaining, existing precedents allow the employer to implement the proposed change when the parties have bargained in good faith to impasse.[84] No statutory change is required.

D. Given the cyclical nature of the Legislature, should rules for mid-term bargaining ("demands to bargain" or "mandatory subjects bargaining") be specified by law such as notification periods and other negotiation timeframes?

》》 *Recommendation: Allow all notification rules and timelines to be bargained between the parties as part of the collective bargaining agreement.*

[81] Page 12 of PERC's 2022 Annual Report states that contract mediation results in agreement 86% of the time.
[82] See RCW 41.80.010(6) for state employees and RCW 41.56.123(1) for other public sector employees. Unilateral implementation does not eliminate the obligation to continue bargaining toward an agreement.
[83] State employees covered under Chapter 41.80 RCW may also have "fact finding" available if mediation is unsuccessful. Fact finding is another non-binding process and, in the rare cases it has been used, does not appear to be an effective means of breaking an impasse. OSLLR does not recommend fact finding as a part of legislative employee collective bargaining impasse procedures.
[84] *Western Washington University*, Decision 13369 (PSRA, 2021), provides a recent example.

This approach will allow discussion and agreement on what is needed and workable, with access to the grievance procedure (rather than the court system) in case of violations. No statutory changes are recommended.

E. Should access to newly hired legislative employees by the exclusive representative be established by law (see RCW 41.56.037 and RCW 41.80.083)?

Legislative employee unions will need access to newly hired union-covered employees. While such access can be specified by statute as is the case for state and other public sector employees, OSLLR recommends the Legislature consider allowing this process to be negotiated for legislative employees. This will allow development of solutions that best meet the needs of the parties. The language should include a provision ensuring legislative employees cannot be required to attend union orientation, consistent with other public sector collective bargaining statutes.

》》 *Recommendation: Require legislative employee collective bargaining agreements to include provisions that allow a union access to new bargaining unit employees but allow the parties to negotiate how best to address a union's access to new bargaining unit covered employees. Include a provision that a legislative employee cannot be required to attend union orientation.*

This recommendation is incorporated into the draft model bill, Attachment B, New Section 7.

F. What dues deduction, authorization and revocation rules should apply?

》》 *Recommendation: Adopt into the legislative employee collective bargaining statute the processes described in RCW 41.80.100.*

The statute OSLLR recommends the Legislature copy requires the employer to deduct union dues only when an employee enters into an agreement with the union authorizing dues deductions. Revocations must be made by the employee in accordance with the terms of the authorization and may only be processed by the employer after receipt of confirmation of the revocation from the union. The process allows the employer to rely on the information provided by the union, avoiding involving the employer in disputes between employees their unions over dues deduction revocation issues.

This recommendation is incorporated into the draft model bill, Attachment B, New Section 14.

G. ESHB 2124 did not include a provision prohibiting negotiation over health insurance benefits. This raises several questions. Please refer to Issue #2 for a discussion of health care benefit negotiations along with OSLLR's recommendation.

H. Do legislative employees have the right to strike when the legislature is *not* in session?

》》 *Recommendation: Adopt general language to effect that no right to strike is granted by the statute, eliminating the session and assembly days specific language.*

OSLLR recommends this change to ensure that the statute does not inadvertently imply that a strike or work stoppage is allowed when the Legislature is not in session or assembly. Like other public employers in Washington covered under similar statutory language as is recommended here, it would be incumbent on the employer to seek an injunction in case of a strike. Successful pursuit of an injunction is often based on the employer's ability to show harm. In the case of the Legislature, a strike during a legislative session, legislative assembly days, and other key times of the legislative cycle could result in demonstrable harm and should be protected from the prospect of a strike.

This recommendation is reflected in the draft model bill, Attachment B, Section 8.

I. Should the legislative ethics rules be modified to allow legislative employees to engage in union activity such as rallies, lobbying in support of collective bargaining agreement funding and legislative ratification, serve as officers in their union if the union engages in legislative lobbying, and other typical union activities?

This is a critical issue for legislative employees and their unions. OSLLR has requested an advisory opinion from the Legislative Ethics Board for additional guidance on what is currently allowed. At the time of this report's publication, the Legislative Ethics Board was working on a comprehensive and thoughtful response. OSLLR may have considerations for the Legislature, once the advisory opinion is available.

J. California's legislative employee collective bargaining bill, AB 1, is discussed in more detail under Issue #10. There are two ideas OSLLR identified in AB 1 that may warrant consideration by the Washington State Legislature.

The first is a limit on the authority of PERC to issue an order that would, "intrude upon or interfere with the Legislature's core function of efficient and effective law making or the essential operation of the Legislature…" PERC is not likely to issue an order or rule that could cause such an intrusion. However, to ensure that is not the case it may be helpful to have such a provision stated explicitly.

》》 *OSLLR recommends similar language be adopted for the Washington Legislature, limiting PERC's authority to issue such a rule or order and that the restriction apply to orders issued via the court system for unfair labor practice cases filed directly to court.*

This recommendation is also discussed under Issue #6 and included in the draft model bill, Attachment B, New Section 4.

California's bill also includes a provision that allows the expression of views and opinions related to collective bargaining by legislative members and exempt employees without it being construed as an unfair labor practice if the "employer" did not authorize or request the expression on behalf of the employer.[85] The Legislature, as an employer, has a unique challenge when it comes to speech and collective bargaining rights. The existing statutory language in RCW 44.90.080(3), is vague and broadly applicable. To ensure members of the Legislature continue to be able to publicly speak their minds on behalf of their constituents:

》》 *OSLLR recommends the definition of unfair labor practice in RCW 44.90.080 be amended to allow members of the Washington State Legislature the specific right to express views and opinions related to collective bargaining.*

This recommendation is included in the draft model bill, Attachment B, Section 11.

Next Steps and Closing Thoughts

OSLLR's recommendations have been incorporated into a draft model bill for the Legislature's consideration during the 2024 legislative session, Attachment B. In addition, a summary of all OSLLR's recommendations and alternatives is provided in the tables in Attachment A.

This final report is a beginning. OSLLR will be available to help answer questions and will continue to research activity on legislative employee collective bargaining in other states, in addition to any additional inquiries from the Legislature.

OSLLR would like to conclude this report by thanking the employees of the Washington State Legislature for their kindness, inquisitiveness, and willingness to discuss challenging and sometimes confusing changes that collective bargaining may bring.

[85] "Notwithstanding any other law, the expression of any views, arguments, or opinions, or the dissemination thereof in any form, by a Member of the Legislature or an employee, including any employee specified in subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 3599.52, related to this chapter or to matters within the scope of representation, shall not constitute, or be evidence of, an unfair labor practice, unless the employer authorized the individual to express that view, argument, or opinion on behalf of, or authorized the individual to represent, the employer as an employer." (Section 3599.81, California's 2023 AB 1, Amended).

Glossary of Labor Relations Definitions and Abbreviations

For the purposes of this report, the following terms and abbreviations may be used. Note that some definitions are simplified, covering the details most pertinent to the legislative environment:

Bargaining Obligation	Both the union and the employer have an obligation to bargain over proposals that cover mandatory subjects of bargaining. The obligation includes a requirement to meet at mutually acceptable times and places and to bargain in good faith.
Bargaining unit	An organized, defined group of employees having sufficient "community of interest" to bargain effectively. Bargaining units are often officially recognized by order of the Public Employment Relations Commission (PERC), but some units arise from a statutory requirement or via voluntary recognition by the employer.
Coalition Bargaining	Coalition bargaining is when multiple unions and/or bargaining units negotiate together at one table with their employer or employers. Coalition bargaining is common and sometimes required by law.[86] More often, it is not required but done by mutual agreement of the parties for efficiency and fairness' sake. For example, an employer may negotiate a "master agreement" with all or some of its bargaining units for major economic terms.[87] Under this structure, the employer only needs to manage one bargaining table and each participating bargaining unit knows that it is getting at least as good a deal as the other bargaining units. Supplemental bargaining tables can then focus on bargaining unit specific issues. These advantages make coalition bargaining a popular approach for both unions and employers.
Collective Bargaining	In its most basic form, collective bargaining is the process by which employers and unions negotiate to establish wages, hours, and terms and conditions of employment. Under public sector

[86] RCW 41.80.020(3) requires coalition bargaining for state employee unions over the "dollar amount expended on behalf of each employee for health care benefits…"; RCW 41.80.010(2)(a)(ii) requires coalition bargaining for state employee unions "who represent fewer than a total of five hundred employees each…"

[87] For example, Snohomish County has several AFSCME bargaining units, each of which is covered under a master agreement AND its own collective bargaining agreement.

	collective bargaining laws,[88] the definition describes an obligation to bargain in good faith and to meet at reasonable times. The definition will also describe the scope of bargainable topics. This is where definitions for mandatory subjects of bargaining may be listed. The term collective bargaining also plays a critical role in adjudicating unfair labor practice charges as the employer and union must not "refuse to bargain collectively…"[89]
Community of Interest	To form a viable bargaining unit, the employees seeking union representation must have things in common. This is termed a community of interest. PERC recognizes bargaining units based on statutory definitions of community of interest. For example, for state employees covered by the Public Service Reform Act (PSRA), RCW 41.80.070(1), it is defined as consideration of 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.
Confidential Employee	In a traditional collective bargaining structure, some employees are not appropriate for bargaining because they are directly involved in or assist with development of an employer's labor relations policy and strategy (termed "confidential" employees, in this context). Examples include the Legislative counsels that provide the OSLLR guidance and the staff of the OSLLR, itself. Confidential employees have access to information that, if shared with a union, could significantly undermine the employer's strategic approach to collective bargaining. Due to this conflict of interest, such employees are prohibited from inclusion in a bargaining unit.
Director	The Director of the OSLLR.

[88] For example, RCW 41.56.030(4), "'Collective bargaining' means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures, subject to RCW 41.58.070, and collective negotiations on personnel matters, including wages, hours, and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter."

[89] RCW 44.90.080 Unfair Labor Practices (effective May 1, 2024), "(1) It is an unfair labor practice for an employer in the legislative branch of state government:…(e) To refuse to bargain collectively with the exclusive bargaining representative of its employees." The union is subject to the same obligation under subsection (2)(d).

Duty of Fair Representation	This is the duty of the union, as the exclusive representative, to represent all employees in the bargaining unit fairly, in good faith, and without discrimination. When a union chooses to not take an employee's grievance to arbitration, for example, it must apply these principles to the decision or face a potential unfair labor practice charge for failing to meet its duty of fair representation.
Employee	For the purpose of union representation in other Washington State public sector jurisdictions, an employee is a fulltime or parttime permanent employee who may appropriately be represented by a union. Generally, this means any employee who is not a confidential or management employee or otherwise specifically exempt from collective bargaining. Employees may also include those in temporary positions. In most cases, Washington's public sector collective bargaining rules do not prohibit unionization of temporary employees, especially if more than minimal hours are worked. If temporary employees want to be in a union and the union agrees, PERC's existing rules will give consideration based on community of interest criteria. Legislative employees fill positions in the above categories and are further categorized as either partisan or nonpartisan. There are no existing PERC precedents that address unionization based on partisanship.
Employee organization	Any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers.
Exclusive representative	Any employee organization that has been recognized as the representative of the employees in an appropriate bargaining unit. While not defined under RCW 44.90 for legislative employees, most collective bargaining frameworks specify that the union is the only entity with the authority (and obligation) to bargain on behalf of all employees in the union's bargaining unit(s).
Good Faith	Bargaining is usually premised on requirement that it be conducted in good faith. Good faith can be hard to pinpoint, but at its best, it means the party is willing to negotiate, willing to meet at reasonable times and locations, willing to take into account the needs of the other party when developing bargaining

	positions, willing avoid regressive bargaining (putting forward a less advantageous proposal than the prior proposal, especially in a retaliatory fashion), has the authority to reach agreement, and will to bargain in an open, honest, and productive manner that seeks to reach mutual agreement.
Impact Bargaining	Impact bargaining may be required even when the underlying decision was management's right to make. For example, staffing levels are often the sole prerogative of management. When a decision to reduce staffing levels creates tangible impacts to represented employees, the impacts may be subject to negotiation even though the underlying decision is not subject to negotiation. Common impacts in this example can include increased hours and/or safety impacts, both of which may be mandatory subjects of bargaining.
Interest Arbitration	When a union and an employer are unable to reach an agreement, the case may be referred to an arbitrator to decide the outcome. In Washington State, public safety employees such as police officers, firefighters, and some critical transportation employees are eligible for interest arbitration. For most public sector employees, interest arbitration is only available by mutual agreement with the employer or in very rare and extraordinary circumstances by order of PERC.
Just Cause	Just cause is an employment protection standard that requires disciplinary action be fair. The existence of evidence, even-handed enforcement of the rules, a fair and objective investigation, and an appropriate level of disciplinary action in response to a violation are all commonly applied criteria to an analysis of whether just cause exists.
Legislative Agencies	Under the legislative collective bargaining statute, legislative agencies include the Joint Legislative Audit and Review Committee (JLARC), the Statute Law Committee (SLC, a.k.a. Code Reviser's Office), the Legislative Ethics Board (LEB), the Legislative Evaluation and Accountability Program (LEAP), the Office of the State Actuary (OSA), the Legislative Service Center (LSC, a.k.a. LEG-TECH), the Office of Legislative Support Services (LSS), the Joint Transportation Committee (JTC), and the Redistricting Commission.[90]

[90] RCW 44.90.020(5)

Legislative Employee	Any employee of the legislative branch of Washington State government including employees of the House, Senate, and legislative agencies.
Legislative Employee with Managerial Authority	The Legislature has employees who have managerial authority (sometimes referred to as "managers" in other jurisdictions). Examples include, at a minimum, the Chief Clerk of the House, the Secretary of the Senate, and the directors of the legislative agencies. Such employees must make decisions that can have material impacts on employees in a bargaining unit. These decisions often must prioritize the needs of the employer. Affiliation with the bargaining unit would undermine the objectivity of the employee's decision-making process. As a result, employees with managerial authority are exempted from inclusion in bargaining units.
Mandatory Subject of Bargaining	Mandatory subjects of bargaining are those over which the employer and the union have an obligation to collectively bargain. Should the Legislature decide to adopt traditional definitions, mandatory subjects of bargaining will generally include any substantive change related to wages, hours, or terms and conditions of employment, plus any question arising under a collective bargaining agreement. This is not an exhaustive list but here are some examples: • "Wages" includes salary rates, cost of living adjustments, overtime rates, and economic benefits such as leave accruals; • "Hours" includes work schedules, number of hours worked per week, days worked per week, on-call requirements, and leave scheduling; [91] • "Terms and conditions of employment" includes workplace safety, disciplinary standards, definition and application of seniority, job security, layoffs, and use of contractors.
Mid-Term Bargaining	During the term of an existing collective bargaining agreement, the employer may need to propose a change to a mandatory subject of bargaining for which an agreement does not already exist (for example, a change to work schedules). This may create a bargaining obligation and, if so, the union may file a "demand to

[91] These are general examples. For legislative employees, there are restrictions on what is bargainable when it comes to hours of work during the legislative session.

	bargain" over the decision or the impacts of the decision. The parties then meet and try to work out an agreement over how to implement the proposed change.
OFM	Washington State Office of Financial Management.
OSLLR	The Office of State Legislative Labor Relations, created in March 2022 by the passage of ESHB 2124. Less formally, LLR.
Partisan/Nonpartisan	Legislative employees may hold either partisan or nonpartisan positions. Partisan employees may be required to support a legislative caucus or elected official's agenda as condition of employment. Nonpartisan employees are required, as a condition of employment, to be unbiased relative to legislative agendas.
PERC	Public Employment Relations Commission. PERC is a Washington State agency with authority over public employee collective bargaining. PERC's responsibilities that include unfair labor practice (ULP) adjudication, bargaining unit certification, mediation, etc. The decisions issued by the PERC have precedent over the general scheme of public sector collective bargaining in Washington State.
Permissive Subjects of Bargaining	Permissive subjects of bargaining are those items over which neither party has an obligation to bargain. While permissive subjects do not require bargaining, the impacts of decisions made under this category are sometimes mandatory subjects of bargaining (see impact bargaining). Here are some examples of permissive subjects of bargaining: • Contract negotiation ground rules such as bargaining in public, release time for union team members, and related items;[92] • Management prerogatives such as staffing levels; and • Issues and decisions that involve non-bargaining unit personnel.
Prohibited Subjects of	Prohibited (or illegal) subjects of bargaining are those items over

[92] Ground rules are permissive because neither party may unilaterally require a condition of the other party in order to meet their obligation under law to collectively bargain. The Legislature's new collective bargaining law, RCW 44.90.080(1)(e) states, "It is an unfair labor practice for an employer… to refuse to bargaining collectively with the exclusive bargaining representatives of its employees."

Bargaining	which the parties are not allowed to bargain. In addition to the subjects listed in the legislative collective bargaining law's management rights section, RCW 44.90.090(1),[93] the parties are also prohibited from bargaining over items established by law. Examples include workers compensation coverage and premiums, access to and accrual of protected leave such as Washington Paid Sick Leave, and similar programs intended to cover all Washington employees.
PSRA	Public Service Reform Act, Chapter 41.80 RCW, passed in 2002 to provide Washington State employees full scope collective bargaining rights.
Representation Petition	A petition filed by a union asking PERC to initiate an investigation into whether the union will be certified to represent a bargaining unit. Valid petitions must meet criteria including evidence that a minimum number of employees are in support of the change. The outcome of a valid petition is an election and certification of a new bargaining unit (or not), based on the election results.
Supervisor	It may be important for the Legislature to define who holds supervisory authority and determine if PERC's existing definitions[94] are workable in the legislative environment. Washington's public sector collective bargaining rules allow supervisory employees to unionize, however, it is not appropriate for supervisors to be in the same bargaining unit as those they supervise. This is due to inherent conflicts of interest between a supervisor and the interests of the nonsupervisory bargaining unit employees, particularly in promotional and disciplinary decisions.

[93] RCW 44.90.090(1): "(1) The employer shall not bargain over rights of management which, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include, but not be limited to, the following:
(a) 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;
(b) The employer's budget and the size of the employer's workforce, including determining the financial basis for layoffs;
(c) The right to direct and supervise employees;
(d) The hours of work during legislative session and the cutoff calendar for a legislative session; and
(e) Retirement plans and retirement benefits."

[94] As an example, under state employee rules, RCW 41.80.005(13), "'Supervisor' means an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances, or effectively to recommend such action, if the exercise of the authority is not of a merely routine nature but requires the consistent exercise of individual judgment." In practice, this can be a high bar in the public sector where appointing authority is often limited to the top of the organization.

Tentative Agreement	Tentative agreements (sometimes, "TAs") are agreements reached between the bargaining teams of both the union and the employer. Tentative agreements must be ratified (usually, ratification occurs by majority vote) by both parties' respective decision-making body to become final.
Unfair Labor Practice	(ULP) A violation of the law that defines unfair practices by the employer or a union. Effective May 1, 2024, ULPs for legislative employee unions and employers are defined by RCW 44.90.080, as follows: "(1) It is an unfair labor practice for an employer in the legislative branch of state government: (a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter; (b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay; (c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment; (d) To discharge or discriminate otherwise against an employee because that employee has filed charges or given testimony under this chapter; (e) To refuse to bargain collectively with the exclusive bargaining representatives of its employees. (2) It is an unfair labor practice for an employee organization: (a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in

	the selection of its representatives for the purpose of bargaining or the adjustment of grievances; (b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section; (c) To discriminate against an employee because that employee has filed charges or given testimony under this chapter; (d) To refuse to bargain collectively with an employer.”
Union	An organization that represents bargaining units for the purpose of collective bargaining. See also, exclusive bargaining representative.

Attachment A – Summary Table of Recommendations and Alternatives

Area of Concern	Recommendations & Alternatives
Issue #1: Which employees of the House of Representatives, the Senate, and Legislative agencies are appropriate for collective bargaining?	In addition to general definitions that exempt employees with managerial authority or confidential duties, OSLLR recommends a new section of statute be incorporated into RCW 44.90 that identifies the following positions as specifically exempted from collective bargaining: • Employees with managerial authority; • Confidential employees; • Elected and appointed members of the Legislature; • Members of legislative boards, commissions, and committees; • Employees who do not meet the definition of employee for the purposes of bargaining (see Issue #4); • Caucus chiefs of staff and caucus deputy chiefs of staff; • The Speaker's attorney and leadership counsel of the minority caucus of the House of Representatives; • Staff for the Joint Legislative Audit and Review Committee; • Staff for the Legislative Ethics Board; and • Legislative Assistants assigned to members of the Senate Facilities and Operations and House Executive Rules committees who are confidential employees.
	Legislative employees OSLLR recommends as not appropriate for collective bargaining (in addition to those exempted by definition, above): • Temporary employees who do not perform substantially similar work to that performed by regular employees, including casual temporary employees; • Interns and pages; • House's Office of Program Research (OPR) staff; • Senate Committee Services (SCS) staff; • Code Reviser's Office RCW Section staff; • Legislative Evaluation and Accountability Program (LEAP) staff; • Office of the State Actuary (OSA) staff; • Joint Transportation Committee (JTC) staff; and • Redistricting Commission staff.

	Legislative employees OSLLR recommends as appropriate for collective bargaining: Unless otherwise excluded, partisan House and Senate employees, including partisan session employees who perform similar work.
	ALTERNATIVE In addition to partisan House and Senate staff, nonpartisan staff in the following legislative agencies may be appropriate to be covered by collective bargaining: Legislative Support Services (LSS), Legislative Service Center (LEG-TECH), House and Senate administration (e.g., Security), and Code Reviser's Office staff who do not work fulltime in the "RCW Section"

Area of Concern	Recommendations & Alternatives
Issue #2: How should be mandatory, permissive, and prohibited subjects of bargaining be defined for legislative employees?	Define mandatory subjects of bargaining as "wages, hours, other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement" with Legislature specific exceptions.
	Add the following items as prohibited subjects of legislative employee collective bargaining:
	Overtime exempt status (by prohibiting bargaining over the exemption from the Fair Labor Standards Act and Washington Minimum Wage Act);
	At-will employment status (by prohibiting bargaining over Civil Service exempt status and by defining legislative employment as "serving at the pleasure of the employer"); and
	Health care benefits (employee premiums would instead default to the state employee coalition agreement).
	ALTERNATIVE Amount paid for health care premiums may be negotiated in a legislative employee union(s) only coalition.

Area of Concern	Recommendations & Alternatives
Issue #3: Who would negotiate on behalf of the House of Representatives, the Senate, and legislative agencies, and which entity or entities would be considered the employer for the purposes of legislative employee bargaining?	Which entity would be considered the employer: Limit legislative employee collective bargaining to partisan House and Senate employees only. The "employer" for bargaining purposes would be the Chief Clerk of the House for House employees and the Secretary of the Senate for Senate employees.
	ALTERNATIVE: In addition to partisan House and Senate employees, expand collective bargaining to appropriate nonpartisan legislative employees.[95] For nonpartisan employees of the House and the Senate, the "employer" for all subjects of bargaining will be as described above. For nonpartisan employees of the legislative agencies, the employer for negotiation of economic terms would be the Chief Clerk of the House and the Secretary of the Senate; the employer for negotiation of noneconomic terms would be the relevant agency director.
	Who would negotiate: A team established by OSLLR on behalf of the employer, led by the Director of OSLLR who would serve as the chief spokesperson.
	The Director of OSLLR's duties be expanded to include establishing bargaining teams on behalf of the employer.

[95] As described under Issue #1, these would be the nonpartisan employees who work for House and Senate administration, Legislative Support Services, Legislative Service Center (a.k.a. LEG-TECH), and the Code Revisor's Office WAC section who are not exempt under the definition of managerial authority, confidential status, etc.

Area of Concern	Recommendations & Alternatives
Issue #4: What terms and definitions are needed for legislative employee collective bargaining?	Add the following terms and definitions:
	"**Collective bargaining**" means the performance of the mutual obligations of the employer and the exclusive bargaining representative to meet at reasonable times, except that neither party may be compelled to negotiate during a legislative session or on committee assembly days, to confer and negotiate in good faith, and to reach a written agreement with respect to the subjects of bargaining specified under RCW 44.90.090. The obligation to bargain does not compel either party to agree to a proposal or to make a concession unless otherwise provided in this chapter.
	"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, or who assists or aids an employee with managerial authority.
	"**Employee**" means any regular partisan employee of the House of Representatives or the Senate who is covered by this chapter. The term employee also includes temporary staff hired by the House or the Senate to perform substantially similar work to that performed by regular partisan House and/or Senate employees. All other regular employees and temporary employees including casual employees, interns, and pages are excluded from the definition of "employee" for the purposes of [collective bargaining].
	"Employee with managerial authority" means any employee designated by the employer who, regardless of job title, (a) directs the staff who work for a legislative chamber, caucus, agency, or subdivision thereof; (b) has substantial responsibility in personnel administration, or the preparation and administration of budgets; and (c) exercises authority that is not merely routine or clerical in nature and requires the use of independent judgment.

	"**Employer**" means the House of Representatives and the Senate. The Chief Clerk of the House, or designee, shall represent the House and the Secretary of the Senate, or designee, shall represent the Senate in collective bargaining negotiations with the certified exclusive representatives of all appropriate bargaining units of employees of the Legislature.
	"**Labor dispute**" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.
	"**Supervisor**" means an employee designated by the employer to provide supervision to legislative employees on an on-going basis. Supervision includes the authority to direct employees, approve and deny leave, and participate in 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.
	Clarify the existing term "exclusive bargaining representative" by adding a "duty of fair representation" definition in a new subsection to RCW 44.90.050: (New subsection) (4) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.
	ALTERNATIVE: If collective bargaining is expanded to include appropriate nonpartisan legislative employees, two alternative definitions are required:
	"**Employee**" means any regular partisan or nonpartisan employee of the House of Representatives, the Senate, or the

	legislative agencies, who is covered by this chapter.[96] The term employee also includes temporary employees hired to perform substantially similar work to that performed by regular legislative employees. All other temporary employees including interns, casual employees, and pages are excluded from the definition of "employee" for the purposes of this chapter.
	"**Employer**" means the House of Representatives, the Senate, and the legislative agencies covered by this chapter.[97] The Chief Clerk of the House, or designee, shall represent the House and the Secretary of the Senate, or designee, shall represent the Senate in collective bargaining negotiations with the certified exclusive representatives of all appropriate bargaining units of employees of the House of Representatives and the Senate. The Chief Clerk of the House and the Secretary of the Senate, or their designee, shall represent the Legislature on collective bargaining on economic terms, and the directors of the legislative agencies, or their designees, for collective bargaining negotiations for non-economic working conditions with the certified exclusive representatives of all appropriate bargaining units of employees of the legislative agencies.

[96] This alternative will also require the statute be clarified to define who is covered by the chapter to include the nonpartisan employees who work for House and Senate administration, Legislative Support Services, Legislative Service Center (a.k.a. LEG-TECH), and the Code Revisor's Office WAC section (and/or others, as determined by the Legislature) who are not exempt under the definition of managerial authority, confidential status, etc.

[97] The alternative will also require the statute be clarified as to which legislative agencies are covered.

Area of Concern	Recommendations & Alternatives
Issue #5: What are common public employee collective bargaining agreement frameworks related to grievance procedures and processes for disciplinary actions?	Allow for (do not require) a grievance procedure that terminates in binding arbitration: "A collective bargaining agreement *may* provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement…"
	ALTERNATIVE Require a grievance procedure that terminates in binding arbitration: "Provide for a grievance procedure that culminates with final and binding arbitration of all disputes arising over the interpretation or application of the collective bargaining agreement and that is valid and enforceable under its terms when entered into in accordance with this chapter…"
	Impose the limitations such that an arbitrator may not: • Issue an order reinstating a legislative employee. • Issue an order that intrudes upon or interferes with the Legislature's core function of efficient and effective law making or the essential operation of the Legislature. • Compel a member's attendance to an arbitration proceeding during session, assembly days, or the 15 days before the start of a session. (These are the same limits proposed for PERC and the court under Issue #6).
	Further details related to grievance and disciplinary frameworks are the product of collective bargaining (no additional statutory modifications).

Area of Concern	Recommendations & Alternatives
Issue #6: What procedures related to the commission (PERC) certifying exclusive bargaining representatives, determining bargaining units, adjudicating unfair labor practices, determining representation questions, and coalition bargaining may be relevant to legislative employee collective bargaining?	Apply the same time bars for bargaining unit certification, decertification, and questions of representation as are applicable to state employees.
	Authorize PERC to oversee bargaining unit elections, certification, decertification, and questions of representation for legislative employees.
	Adopt "community of interest" criteria for legislative employee bargaining units: • 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. However, a bargaining unit is not appropriate if it includes: • Both supervisors and nonsupervisory employees; or • Both House and Senate employees.
	ALTERNATIVE If collective bargaining is expanded to nonpartisan employees, add these criteria to "a bargaining unit is not appropriate if it includes:" ○ Both partisan and nonpartisan employees; or ○ Employees from more than a single legislative agency.
	ALTERNATIVE Define by statute specific legislative employee bargaining unit configurations.
	Authorize PERC to adjudicate unfair labor practices under PERC's existing precedents and procedures.
	Allow option to file ULP's with Thurston County Superior Court.
	Limit PERC's authority (and that of the court, when applicable) such that: • PERC may not reinstate a legislative employee; • PERC may not issue an order that intrudes upon or interferes with the Legislature's core function of efficient and effective law making or the essential operation of the Legislature; and • PERC may not compel a member's attendance to an arbitration proceeding during session, assembly days, or the 15 days before the start of a session.

Area of Concern	Recommendations & Alternatives
Issue #7: The efficiency and feasibility of coalition bargaining?	For economic terms, require coalition bargaining for all legislative employee unions.
	For bargaining unit specific noneconomic terms, allow supplemental bargaining tables.

Area of Concern	Recommendations & Alternatives
Issue #8: What procedures for approving negotiated collective bargaining agreements are available?	No statutory modifications are recommended.

Area of Concern	Recommendations & Alternatives
Issue #9: What procedures for submitting requests for funding to the appropriate legislative committees if appropriations are necessary to implement provisions of the collective bargaining agreements?	Replicate the state employee bargaining model in RCW 41.80, with some modifications:
	Adopt an October 1 deadline for tentative agreements to be made available to the employer (for costing and budget submission);
	The economic details of the tentative agreement will be costed out in collaboration between OSLLR and House and Senate fiscal staff and submitted to OFM with the Legislature's budget for inclusion in the Governor's December budget proposal;
	No economic feasibility determination is recommended;
	Require renegotiation of the agreement in case of a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature;
	Legislative action on the agreement is limited to a vote to approve or reject the submission of funds as a whole;
	If the Legislature does not fund the agreement, allow the parties to reopen negotiations and resubmit a modified agreement for funding.

Area of Concern	Recommendations & Alternatives
Issue #10: What approaches have been taken by other state legislatures that have authorized collective bargaining for legislative employees?	Recommendations from approaches taken by other state legislatures may be found under “Additional Considerations.”

Area of Concern	Recommendations & Alternatives
Additional Considerations: What additional statutory changes may be considered to fully implement legislative employee collective bargaining?	Adopt a standard definition for a union's "duty of fair representation" (see summary for Issue #4).
	Adopt an emergency clause to the management rights section, giving the employer: "The right to take whatever actions are deemed necessary to carry out the mission of the Legislature and legislative agencies during emergencies…"
	Adopt the impasse procedures available to most other public sector employees, i.e., PERC mediation, with unilateral implementation by the employer one year after expiration of the existing agreement.
	For mid-term mandatory subjects bargaining, allow notification rules and timelines to be bargained between the parties as part of the collective bargaining agreement (no statutory language required).
	For union access to newly hired union-covered employees, require provisions to accommodate this be included in a collective bargaining agreement and allow the details to be negotiated except that no employee may be required to attend union orientations.
	For union dues deductions and revocations, adopt processes like those established for Washington's state employees.
	To clarify legislative employees' ability to strike, adopt language to the effect that no right to strike is granted by the statute, eliminating the session and assembly days specific language.
	Recommendations, if any, on considerations related to the Legislative Ethics Rules and collective bargaining are TBD.
	Limit PERC's authority to issue a rule or order that would interfere with the Legislature's essential function (see summary for Issue #6)
	Add to the definition of an unfair labor practice a provision that specifies members of the Washington State Legislature are allowed to express views and opinions related to collective bargaining.

Attachment B – OSLLR Model Bill

AN ACT Relating to state legislative agency employee collective bargaining; amending RCW 44.90.020, 44.90.030, 44.90.050, 44.90.060, 44.90.070, 44.90.080, and 44.90.090; adding new sections to chapter 44.90 RCW; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 44.90.020 and 2022 c 283 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the public employment relations commission.

(2) "Director" means the director of the office of state legislative labor relations.

(3) "Employee organization" means any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers.

(4) "Exclusive bargaining representative" means any employee organization that has been certified under this chapter as the representative of the employees in an appropriate bargaining unit.

(5) "Legislative agencies" means the joint legislative audit and review committee, the statute law committee, the legislative ethics board, the legislative evaluation and accountability program committee, the office of the state actuary, the legislative service center, the office of legislative support

services, the joint transportation committee, and the redistricting commission.

(6) "Office" means the office of state legislative labor relations.

(7) "Collective bargaining" means the performance of the mutual obligations of the employer and the exclusive bargaining representative to meet at reasonable times except that neither party may be compelled to negotiate during a legislative session or on committee assembly days, to confer and negotiate in good faith, and to reach a written agreement with respect to the subjects of bargaining specified under RCW 44.90.090. The obligation to bargain does not compel either party to agree to a proposal or to make a concession unless otherwise provided in this chapter.

(8) "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, or who assists or aids an employee with managerial authority.

(9) "Employee" means any regular partisan employee of the house of representatives or the senate who is covered by this chapter. Employee also includes temporary staff hired by the house of representatives or the senate to perform substantially similar work to that performed by regular partisan house of representatives and/or senate employees. All other regular employees and temporary employees, including casual employees, interns, and pages, are excluded from the definition of "employee" for the purposes of this chapter.

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

(11) "Employer" means the house of representatives and the senate. The chief clerk of the house of representatives, or their designee, shall represent the house of representatives and the secretary of the senate, or their designee, shall represent the senate in collective bargaining negotiations with the certified exclusive representatives of all appropriate bargaining units of employees of the legislature.

(12) "Labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) "Supervisor" means an employee designated by the employer to provide supervision to legislative employees on an ongoing basis. Supervision includes the authority to direct employees, approve and deny leave, and participate in 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.

NEW SECTION. **Sec. 2.** A new section is added to chapter 44.90 RCW to read as follows:

(1) This chapter does not apply to any legislative employee who has managerial authority, is confidential, or who does not meet the definition of employee for the purpose of collective bargaining as defined in RCW 44.90.020.

(2) This chapter also does not apply to:

(a) Elected or appointed members of the legislature;

(b) Any person appointed to office pursuant to statute, ordinance, or resolution for a specific term of office as a member of a multimember board, commission, or committee;

(c) Caucus chiefs of staff and caucus deputy chiefs of staff;

(d) The speaker's attorney and leadership counsel to the minority caucus of the house of representatives;

(e) Staff of the joint legislative audit and review committee;

(f) Staff of the legislative ethics board; and

(g) Legislative assistants assigned to members on the senate facilities and operations committee and the senate executive rules committee who are confidential employees.

Sec. 3. RCW 44.90.030 and 2022 c 283 s 2 are each amended to read as follows:

(1) The office of state legislative labor relations is created to assist the house of representatives, the senate, and legislative agencies in implementing and managing the process of collective bargaining for employees of the legislative branch of state government.

(2)(a) Subject to (b) of this subsection, the secretary of the senate and the chief clerk of the house of representatives shall employ a director of the office. The director serves at the pleasure of the secretary of the senate and the chief clerk of the house of representatives, who shall fix the director's salary.

(b) The secretary of the senate and the chief clerk of the house of representatives shall, before employing a director, consult with legislative employees, the senate facilities and operations committee, the house executive rules committee, and the human resources officers of the house of representatives, the senate, and legislative agencies.

(c) The director serves as the executive and administrative head of the office and may employ additional employees to assist in carrying out the duties of the office. The duties of the office include, but are not limited to, establishing bargaining teams and conducting negotiations on behalf of the employer.

((~~(d) The director shall contract with an external consultant for the purposes of gathering input from legislative employees, taking into consideration RCW 42.52.020 and rules of the house of representatives and the senate. The gathering of input must be in the form of, at a minimum, surveys.~~

~~(3) The director, in consultation with the secretary of the senate, the chief clerk of the house of representatives, and the administrative heads of legislative agencies shall:~~

~~(a) Examine issues related to collective bargaining for employees of the house of representatives, the senate, and legislative agencies; and~~

~~(b) After consultation with the external consultant, develop best practices and options for the legislature to consider in implementing and administering collective bargaining for~~

~~employees of the house of representatives, the senate, and legislative agencies.~~

~~(4)(a) By December 1, 2022, the director shall submit a preliminary report to the appropriate committees of the legislature that provides a progress report on the director's considerations.~~

~~(b) By October 1, 2023, the director shall submit a final report to the appropriate committees of the legislature. At a minimum, the final report must address considerations on the following issues:~~

~~(i) Which employees of the house of representatives, the senate, and legislative agencies for whom collective bargaining may be appropriate;~~

~~(ii) Mandatory, permissive, and prohibited subjects of bargaining;~~

~~(iii) Who would negotiate on behalf of the house of representatives, the senate, and legislative agencies, and which entity or entities would be considered the employer for purposes of bargaining;~~

~~(iv) Definitions for relevant terms;~~

~~(v) Common public employee collective bargaining agreement frameworks related to grievance procedures and processes for disciplinary actions;~~

~~(vi) Procedures related to the commission certifying exclusive bargaining representatives, determining bargaining units, adjudicating unfair labor practices, determining representation questions, and coalition bargaining;~~

~~(vii) The efficiency and feasibility of coalition bargaining;~~

~~(viii) Procedures for approving negotiated collective bargaining agreements;~~

~~(ix) Procedures for submitting requests for funding to the appropriate legislative committees if appropriations are necessary to implement provisions of the collective bargaining agreements; and~~

~~(x) Approaches taken by other state legislatures that have authorized collective bargaining for legislative employees.~~

~~(5) The report must include a summary of any statutory changes needed to address the considerations listed in subsection (4) of this section related to the collective bargaining process for legislative employees.~~))

NEW SECTION. **Sec. 4.** A new section is added to chapter 44.90 RCW to read as follows:

(1) As provided by this chapter, the commission or the court shall determine all questions described by this chapter as under the commission's authority. However, 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, including that an order or rule may not:

(a) require the legislature to reinstate an employee;

(b) modify any matter relating to the qualifications and elections of members of the legislature, or the holding of office of members of the legislature;

(c) modify any matter relating to the legislature or each house thereof choosing its officers, adopting rules for its proceedings, selecting committees necessary for the conduct of business, considering or enacting legislation, or otherwise exercising the legislative power of this state;

(d) modify any matter relating to legislative calendars, schedules, and deadlines of the legislature; or

(e) modify laws, rules, policies, or procedures regarding ethics or conflicts of interest.

(2) No member of the legislature may be compelled by subpoena or other means to attend a proceeding related to matters covered by this chapter during a legislative session, committee assembly days, nor for fifteen days next before commencement of each session.

Sec. 5. RCW 44.90.050 and 2022 c 283 s 5 are each amended to read as follows:

(1) Except as may be specifically limited by this chapter, legislative employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Legislative employees shall also have the right to refrain from any or all such activities.

(2) Except as may be specifically limited by this chapter, the commission shall determine all questions pertaining to ascertaining exclusive bargaining representatives for legislative employees and collectively bargaining under this chapter. However, no employee organization shall be recognized or certified as the exclusive bargaining representative of a bargaining unit of employees of the legislative branch unless it receives the votes of a majority of employees in the petitioned for bargaining unit voting in a secret election by mail ballot administered by the commission. The commission's process must allow for an employee, group of employees, employee organizations, employer, or their agents to have the right to petition on any question concerning representation.

(3) ((~~The employer and the exclusive bargaining representative of a bargaining unit of legislative employees may not enter into a collective bargaining agreement 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.~~)) The commission must adopt rules that provide for at least the following:

(a) Secret balloting;

(b) Consulting with employee organizations;

(c) Access to lists of employees, job titles, work locations, and home mailing addresses;

(d) Absentee voting;

(e) Procedures for the greatest possible participation in voting;

(f) Campaigning on the employer's property during working hours; and

(g) Election observers.

(4) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that includes within the coverage of the agreement all employees in the bargaining unit. However, if a master collective bargaining agreement is in effect for the exclusive bargaining representative, it applies to the bargaining unit for which the certification has been issued. Nothing in this section requires the parties to engage in new negotiations during the term of that agreement.

(5) The certified exclusive bargaining representative is responsible for representing the interests of all the employees

in the bargaining unit. This section may not be construed to limit an exclusive bargaining representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(6) No question concerning representation may be raised if:

(a) Fewer than 12 months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than 120 calendar days nor less than 90 calendar days before the expiration of the contract.

NEW SECTION. **Sec. 6.** A new section is added to chapter 44.90 RCW to read as follows:

(1) The commission, after hearing upon reasonable notice to all interested parties, shall 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, the commission 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. However, a unit is not appropriate if it includes:

(a) 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

(b) Both house of representatives and senate employees.

(2) 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 the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit.

NEW SECTION. **Sec. 7.** A new section is added to chapter 44.90 RCW to read as follows:

(1) The parties to a collective bargaining agreement must reduce the agreement to writing and both execute it.

(2) Except as provided in this chapter, a collective bargaining agreement must contain provisions that:

(a) Provide for a grievance procedure of all disputes arising over the interpretation or application of the collective bargaining agreement and that is valid and enforceable under its terms when entered into in accordance with this chapter; and

(b) Provide the exclusive bargaining representative reasonable access to new employees of the bargaining unit for the purposes of presenting information about their exclusive bargaining representative to the new employee. No employee may be mandated to attend the meetings or presentations by the exclusive bargaining representative.

(3)(a) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same bargaining units, the effective date of the collective bargaining agreement may be the day after the termination of the previous collective bargaining agreement, and all benefits included in the new collective bargaining

agreement, including wage or salary increases, may accrue beginning with that effective date.

(b) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and the exclusive bargaining representative representing different bargaining units, the effective date of the collective bargaining agreement may be the day after the termination date of whichever previous collective bargaining agreement covering one or more of the units terminated first, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date.

(4) The employer and the exclusive bargaining representative of a bargaining unit of legislative employees may not enter into a collective bargaining agreement 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.

Sec. 8. RCW 44.90.060 and 2022 c 283 s 6 are each amended to read as follows:

((~~During a legislative session or committee assembly days, nothing~~)) Nothing contained in this chapter permits or grants to any legislative employee the right to strike, participate in a work stoppage, or refuse to perform their official duties.

Sec. 9. RCW 44.90.070 and 2022 c 283 s 7 are each amended to read as follows:

(1) Collective bargaining negotiations under this chapter must commence no later than July 1st of each even-numbered year after a bargaining unit has been certified.

(2) The duration of any collective bargaining agreement shall not exceed one fiscal biennium.

(3)(a) Requests for funds necessary to implement the provisions of collective bargaining agreements may not be submitted to the legislature unless such requests have been submitted to the employer by the October 1st prior to the legislative session at which the requests are to be considered.

(b) The legislature shall approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in section 9 of this act.

(4) Negotiation for economic terms will be by a coalition of all exclusive bargaining representatives. Any such provisions agreed to by the employer and the coalition must be included in all collective bargaining agreements negotiated by the parties. The director and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of bargaining unit specific issues for inclusion in the collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This subsection does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(5) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, 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. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

NEW SECTION. **Sec. 10.** A new section is added to chapter 44.90 RCW to read as follows:

(1) Should the parties fail to reach agreement in negotiating a collective bargaining agreement, either party may request of the commission the assistance of an impartial third party to mediate the negotiations. If a collective bargaining agreement previously negotiated under this chapter expires while negotiations are underway, the terms and conditions specified in the collective bargaining agreement remain in effect for a period not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) Nothing in this section may be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

(3) The commission shall bear costs for mediator services.

Sec. 11. RCW 44.90.080 and 2022 c 283 s 8 are each amended to read as follows:

(1) It is an unfair labor practice for an employer in the legislative branch of state government:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) To discharge or discriminate otherwise against an employee because that employee has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the exclusive bargaining representatives of its employees.

(2) Notwithstanding any other law, the expression of any views, arguments, or opinions, or the dissemination thereof in any form, by a member of the legislature related to this chapter or matters within the scope of representation, shall not constitute, or be evidence of, an unfair labor practice unless the employer has authorized the individual to express that view, argument, or opinion on behalf of the employer as an employer.

(3) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To discriminate against an employee because that employee has filed charges or given testimony under this chapter;

(d) To refuse to bargain collectively with an employer.

((~~(3)~~)) (4) The expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

NEW SECTION. **Sec. 12.** A new section is added to chapter 44.90 RCW to read as follows:

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint may not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission or in Thurston county superior 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 hereafter be established by law.

(2) Except as may be specifically limited by this chapter, if the commission or court determines that any person has engaged in or is engaging in an unfair labor practice, the commission or court shall issue and cause to be served upon the person 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 of this chapter, such as the payment of damages.

(3) The commission may petition the Thurston county superior court for the enforcement of its order and for appropriate temporary relief.

Sec. 13. RCW 44.90.090 and 2022 c 283 s 9 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, 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.

(2) The employer shall not bargain over rights of management which, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include, but not be limited to, the following:

(a) Any item listed in section 4(1) of this chapter;

(b) 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;

(b) The employer's budget and the size of the employer's workforce, including determining the financial basis for layoffs;

(c) The right to direct and supervise employees;

(d) The hours of work during legislative session;

(e) The employer's right to hire, terminate, and promote employees. Legislative employees hold their positions at the employer's pleasure;

(f) 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 a represented state employee covered by RCW 41.80.020(3);

(g) The right to take whatever actions are deemed necessary to carry out the mission of the legislature and its agencies during emergencies;

(h) Employees' status as exempt from chapter 41.06 RCW, chapter 49.46 RCW, and the federal fair labor standards act, (Title 29 U.S.C. Sec. 203); and

((~~(e)~~)) (i) Retirement plans and retirement benefits.

(3) 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 collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement 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.

NEW SECTION. **Sec. 14.** A new section is added to chapter 44.90 RCW to read as follows:

(1) Upon authorization of an employee within the bargaining unit and after the certification or recognition of the

bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(2)(a) 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. If the employer receives a request for authorization of deductions, the employer must, as soon as practicable, forward the request to the exclusive bargaining representative.

(b) Upon receiving notice of the employee's authorization, the employer must deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(c) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(d) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(e) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer must end the deduction no later than the second payroll after receipt of the confirmation.

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

NEW SECTION. **Sec. 15.** A new section is added to chapter 44.90 RCW to read as follows:

(1) If the parties to a collective bargaining agreement negotiated under this chapter agree to final and binding arbitration under grievance procedures allowed by section 7 of this act, the parties may agree on one or more permanent umpires to serve as arbitrator, or may agree on any impartial person to serve as arbitrator, or may agree to select arbitrators from any source available to them, including federal and private agencies, in addition to the staff and list of arbitrators maintained by the commission. If the parties cannot agree to the selection of an arbitrator, the commission must supply a list of names in accordance with the procedures established by the commission.

(2) The authority of an arbitrator shall be subject to the limits and restrictions specified under section 4 of this chapter.

(3) Except as limited by this chapter, an arbitrator may require any person to attend as a witness and to bring with them any book, record, document, or other evidence. The fees for such attendance must be paid by the party requesting issuance of the subpoena and must be the same as the fees of witnesses in the superior court. Arbitrators may administer oaths. Subpoenas must issue and be signed by the arbitrator and must be served in the same manner as subpoenas to testify before a court of record in this state. If any person so summoned to testify refuses or neglects to obey such subpoena, upon petition authorized by the arbitrator, the superior court may compel the attendance of the person before the arbitrator or punish the person for contempt in the same manner provided for the attendance of witnesses or the punishment of them in the courts of this state.

(3) Except as limited by this chapter, the arbitrator shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party and for good cause, may postpone the hearing to a time not extending beyond the date fixed by the collective bargaining agreement for making the award.

(4) The arbitration award must be in writing and signed by the arbitrator. The arbitrator must, promptly upon its rendition, serve a true copy of the award on each of the parties or their attorneys of record.

(4) If a party to a collective bargaining agreement negotiated under this chapter that includes final and binding arbitration refuses to submit a grievance for arbitration, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court of Thurston county and the court shall have jurisdiction to issue an order compelling arbitration. Disputes concerning compliance with grievance procedures shall be reserved for determination by the arbitrator. Arbitration shall be ordered if the grievance states a claim that on its face is covered by the collective bargaining agreement. Doubts as to the coverage of the arbitration clause shall be resolved in favor of arbitration.

(5) If a party to a collective bargaining agreement negotiated under this chapter that includes final and binding arbitration refuses to comply with the award of an arbitrator determining a grievance arising under the collective bargaining agreement, the other party to the collective bargaining agreement may invoke the jurisdiction of the superior court of Thurston county and the court shall have jurisdiction to issue an order enforcing the arbitration award.

NEW SECTION. **Sec. 16.** Sections 1, 2, and 4 through 15 of this act take effect May 1, 2024.

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