

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 7, 2011
POSITION: Neutral
SPONSOR: American Federation of State, County and Municipal Employees

BILL NUMBER: SB 857
AUTHOR: T. Lieu

BILL SUMMARY: Public Employees: Unlawful Strike Damages

This bill would prohibit the Public Employment Relations Board (PERB) from awarding specified damages associated with losses incurred during strike preparation or an unlawful strike.

FISCAL SUMMARY

While this bill does not create any direct costs for the state, in the unlikely scenario that a state bargaining unit enters into an unlawful strike, the state would not be able to recover costs associated with the strike. Medical centers of the University of California (UC) currently have \$14.7 million in damages that they are seeking to recover associated with three recent actual and threatened unlawful strikes. This bill would essentially prohibit recovery of these types of damages. Opponents of this bill note that this measure would be most problematic for UC medical centers where modifying operations and hiring replacement staff to maintain patient safety during strikes is particularly costly.

COMMENTS

The Department of Finance is neutral on this bill. The intent of this bill, according to the author, is to clarify that existing law does not give PERB the authority to award damages associated with unlawful strikes. The author's office cites case law from a 1986 ruling (City and County of San Francisco v. United Assn. of Journeymen etc. of United States & Canada) that essentially found that awarding damages associated with an illegal strike is not valid. The author's office agreed that current statutes do not expressly prohibit damages related to strikes, but noted that the above case law does.

Existing law tasks PERB with administering the collective bargaining statutes covering employees of California's public schools, colleges and universities, employees of the State of California, employees of local public agencies, trial court employees, and supervisory employees of the Los Angeles County Metropolitan Transportation Authority. Further, PERB is the state agency that has the power and duty to investigate unfair practice charges, to determine whether charges are justified, and to determine appropriate remedies.

This bill states that the amendments made are declaratory of existing law and are not intended to modify existing law that allows a court to award costs, expenses, or lost revenue resulting from tortious activity, such as vandalism, property damage, mass picketing, or the unlawful blocking of entrances and exits. While employers can seek relief for these activities in court, because PERB has exclusive initial jurisdiction over the collective bargaining statutes of public employees, if a court determines the matter relates to those statutes, the matter would be sent back to PERB. Accordingly, this bill would essentially prohibit any jurisdiction from awarding damages for costs, expenses, or revenue losses incurred during, in preparation of, or as consequence of, an unlawful strike.

Analyst/Principal Date Program Budget Manager Date
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Department Deputy Director Date

Governor's Office: By: Date: Position Approved
Position Disapproved

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**

**AUTHOR**

**AMENDMENT DATE**

**BILL NUMBER**

T. Lieu

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SB 857

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2011-2012	FC	2012-2013	FC	2013-2014	
9901/Var Depts	SO	No		-----	See Fiscal Summary	-----			0001