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FISCAL IMPACT REPORT

SPONSOR:	SJC	DATE TYPED:	02/07/00	HB	
SHORT TITLE:	Public Safety Employer - Employee			SB	CS/49/aSJC
Cooperation Act				ANALYST:	Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
	\$ 300.0	See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB178

SOURCES OF INFORMATION

LFC Files

Administrative Office of the District Attorneys (AODA)

Corrections Department (CD)

Attorney General (AG)

State Personnel Office (SPO)

No Response:

Department of Public Safety

SUMMARY

Synopsis of SJC Amendment

The amendment inserts a new Section 26 which states any public employer other than the state that adopted an ordinance prior to October 1, 1991 which permitted public safety employees to bargain collectively through exclusive representatives may continue to operate under those provisions and procedures.

Synopsis of Bill

The Senate Judiciary Committee Substitute for SB 49 creates the Public Safety Employer - Employee Cooperation Act. The purpose of the act is to facilitate the development of labor-management relationships with shared accountability, and to offer fair dispute resolution procedures.

The bill defines a "public safety employee" as a nonprobationary employee who is a law enforcement officer, corrections officer, firefighter or public school security guard. The bill defines "collective bargaining" as the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment. Section 7 of the bill (page 8) defines the appropriate governing body for different public employers.

Section 8 (page 8) - Creates the Public Safety Employer-Employee Cooperation Board. The Board consists of three (3) members appointed by the Governor: one (1) recommended by organized labor, one (1) recommended by public employers, and one (1) member jointly recommended by the other two appointees. The bill grants the board the powers to promulgate rules, designate appropriate bargaining units, select, certify and decertify exclusive representatives, and to conduct hearings on complaints of prohibited practices.

The board shall decide all issues by majority vote and shall issue its decisions in the form of written orders and opinions. The bill specifies the board may not require any public safety employee to pay money to any labor organization as a condition of employment. This issue shall be left to voluntary bargaining by the parties (page 11).

Section 10 (page 11) includes provisions, requirements and powers for local boards similar to the Public Safety Employer-Employee Board. Local board members may not hold or seek any other political office or public safety employment or be an employee of a union during their term. Section 12 of the bill (page 14) specifies hearing procedures for local boards.

Section 13 (page 16) - Requires the Board to designate the appropriate bargaining units for collective bargaining upon receipt of a petition for representation election filed by a labor organization. Appropriate bargaining units are to be established on the basis of "occupational groups", a clear and identifiable community of interest in employment terms and conditions and related personnel matters among the public safety employees involved.

Section 14 (page 17) - Provides that when a petition is filed by a labor organization containing the signatures of at least thirty percent (30%) of the public safety employees in an appropriate bargaining unit, the Board shall conduct a secret ballot representation election to determine whether and by which labor organization the public safety employees in the appropriate bargaining unit shall be represented. No labor organization can be certified as an exclusive representative unless at least 50% of the members of the bargaining unit vote in the election.

Section 15 (page 19) - Provides that a labor organization that has been certified by the Board shall be the exclusive representative of all public safety employees and the appropriate bargaining unit. However, this provision does not prevent a public safety employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. Section 17 (page 20) of the bill also contains provisions for decertification of the exclusive representative.

Section 17 (page 21) - Provides for the scope of bargaining. It requires that public employers and exclusive representatives shall bargain in good faith on wages, hours and other terms and conditions of employment and other issues agreed to by the parties. It also provides for written collective bargaining agreements covering employment relations. The bill provides that payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue.

The bill provides that any agreement provision or any impasse resolution by the State and an exclusive

representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the Legislature and the availability of funds. Similar provisions are made for appropriations related to local jurisdictions (page 23).

The bill provides that every agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination. The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act. The costs of any arbitration proceeding conducted pursuant to the section are to be shared equally by the parties.

Section 18 (page 24) - Contains dates to govern the negotiation process each year, and a procedure for impasse resolution. If an impasse occurs, a mediator from the Federal Mediation and Conciliation Service is to be assigned by the Board to assist negotiations unless the parties agree to another mediator. If no agreement is reached, the unresolved issues are to be resolved pursuant to the Uniform Arbitration Act by an arbitration panel consisting of three (3) members. The bill also provides that a public employer other than the state may enter into a written agreement with the exclusive representative to set forth an alternative impasse resolution procedure (page 26).

Section 19 (page 26) - Contains a standard list of prohibited practices on the part of public employers. Section 20 (page 27) contains a standard list of prohibited practices on the part of the public safety employees and labor organizations. Section 21 (page 28) prohibits strikes and lockouts by public employees and labor organizations. Section 23 (page 29) provides for enforcement in the district court of an order issued by the Board. Sections 24 and 25 (page 30) recognize existing collective bargaining units and agreements.

Section 26 (page 31) = As amended by SJC states any public employer other than the state that adopted an ordinance prior to October 1, 1991 permitting public safety employees to bargain collectively through exclusive representatives may continue to operate through those provisions and procedures related to public employees except for the state.

Section 27 (page 32) - Includes an appropriation of \$300.0 from the General Fund to the Public Safety Employer-Employee Cooperation Board for expenditure in fiscal year 2001. The bill includes a reversion clause and a severability clause. The effective date of the Act is July 1, 2000 (page 33).

Significant Issues

The State Personnel Office reports the SJC amendment allows all jurisdictions, except the state, to operate under public safety collective bargaining procedures established prior to October 1, 1991. However, no jurisdictions had agreed to binding arbitration prior to this 1991 date. Therefore, all jurisdictions that had an agreement prior to October 1, 1991, except the state, are provided a loophole to avoid binding arbitration. As amended, the state would still be required to accept binding arbitration as part of any negotiated collective bargaining agreement.

The Corrections Department (CD) reports this bill raises several issues of significance to the agency. First, the bill will result in a substantial increase in the administrative burden upon the Department. Experience has demonstrated that each time there is a new collective bargaining act and a new collective bargaining agreement to be negotiated, representatives from Department management as well as other Department employees are required to devote a substantial amount of time to negotiations. Thereafter, a substantial amount of time and effort is required to implement the many changes to policy that result from new collective bargaining agreements.

Another significant issue to the CD is the substantial increase in costs that will result. CD reports the provisions of a new collective bargaining agreement will almost certainly require the expenditure of additional funds to comply with the terms of the agreement. The bill provides that any agreement provision that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the Legislature and the availability of funds. However, it is virtually impossible in most cases to determine whether there has been a specific appropriation of funds regarding any provision and whether such funds are "available".

CD reports this bill may not be germane.

FISCAL IMPLICATIONS

The Senate Judiciary Committee Substitute for SB49 contains an appropriation of \$300.0 in general fund to the Public Safety Employee Labor Relations Board for expenditure in fiscal year 2001. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the general fund.

The bill does not contain an appropriation to cover the increase in costs that may result from the higher wages and additional benefits which may be in a collective bargaining agreement. Binding arbitration, mediation, fact-finding and judicial enforcement of the Board's orders may mean that costs may increase even if there is no specific appropriation to cover the costs of complying with the collective bargaining agreement. There may also be an increase in costs that may result from granting administrative leave to employees for purposes of negotiating a collective bargaining agreement and perhaps for attending

mediation, arbitration or other hearings required by the Act.

ADMINISTRATIVE IMPLICATIONS

CD reports, in the short term, the bill will result in a significant increase in the administrative burden upon Department personnel who will be required to negotiate and implement a new collective bargaining agreement. In the long term, there will also be a significant increase in the administrative burden upon management personnel and supervisors who will be required to administer the provisions of a collective bargaining agreement as well as respond to grievances, prohibited practices complaints, demands for arbitration, and mediation.

OTHER SUBSTANTIVE ISSUES

The Attorney General (AG) reports, a federal statute, 29 USC Section 152(2), leaves the regulation of labor-management relations in the public sector to states. Therefore, there is no issue regarding inconsistency with federal laws. Section 21 prohibits strikes and lockouts which workers and management have historically used to assert their respective rights. To achieve the same results that strikes and lockouts are supposed to achieve, the bill allows for elected union representation, binding collective bargaining agreements and a voluntary mediation program. Section 12 further creates an administrative hearing process that is appealable to the courts. Section 10 also authorizes the option of creating local public safety employee labor management relations boards with powers similar to the state board. Many states have created similar systems, and none have been found to deprive the public safety workers or public sector employers of any constitutional rights.

According to the AG, an issue often discussed with respect to labor-management relations is compulsory union membership. Section 9(g) prohibits the payment of dues as a condition of employment, which is to say a public employer may not require a public safety employee to pay union dues if he or she does not wish to do so.

AG notes that Section 20(A) prohibits unions from discrimination based on "race, color, religion, creed, age, sex or national origin...." The Human Rights Act, NMSA 1978, Section 28-1-7 includes several discrimination prohibitions applicable to unions, and the protected classes of workers include all those found in the bill, but also includes protections for people with physical handicaps or serious medical conditions. This could create confusion whether workers with physical handicaps or serious medical conditions are protected.

The Administrative Office of the District Attorneys report the bill creates the possibility that some of the District attorney's investigative staff could collectively bargain without a right to strike.

ALTERNATIVES

The AG suggests the legislature may choose to amend Section 20(A) to include among the protected classes of employees those with a "physical or mental handicap or serious medical condition" in order to make Section 20(A) consistent with the Human Rights Act.

LAT/njw:gm