

To: The Honorable Chuck Riley
Chair, Senate Committee on Labor and Business
From: Ben Straka, Labor Policy Analyst
Date: March 9, 2021
Re: Senate Bill 759

Chair Riley and Members of the Committee,

Thank you for the opportunity to testify on SB 759.

As you may know, the legal status of collective bargaining within the legislative branch is currently in dispute. Following recent attempts to organize a union of legislative employees, the Oregon Department of Justice [DOJ] has filed multiple objections with the Employment Relations Board [ERB] on behalf of the Legislature arguing that such efforts would violate both the Oregon Constitution and the state's collective bargaining laws.

The ERB recently held a hearing on the DOJ's latest round of objections, and its final order is still pending.

Given the myriad of legal questions that remain unanswered, it does not seem appropriate for the Legislature to put a potentially unenforceable law on the books until these issues have been properly resolved.

However, that is precisely what SB 759 appears to do.

In what is clearly intended as a workaround, the bill seeks to solve one of these legal problems by directing the Legislative Administrator to represent the legislative branch in collective bargaining negotiations.

There are several reasons why this approach does not make for sound public policy.

First, it is unclear whether the bill's solution – partial though it may be – solves anything at all. The mere designation of the Legislative Administrator as a bargaining representative does not change the fact that elected officials oversee that position and are ultimately responsible for establishing the collective bargaining policies under which it serves. Specifically, the position is selected by and serves at the direction of the Legislative Administration Committee, which is co-chaired by the Speaker of the House and the President of the Senate. This arrangement runs counter to the state's collective bargaining laws in a number of ways, most notably the expectation that public officials bargain with truly administrative rather than political goals.

It is hard to imagine a more politically motivated collective bargaining model than one in which the employer's policies are, by definition, entirely dependent on which political party happens to be in power at the time.

Similarly, it is hard to envision a more politically divided union than one whose members are tasked explicitly with advancing the partisan objectives of the office they serve.

Although SB 759 promises a quick fix on paper, it does not take into account these or any other issues that might make it inoperable. Furthermore, there is no evidence that granting collective bargaining authority to the Legislative Administrator would do anything to answer the bigger question of whether unionization of legislative employees would violate the separation of powers clause in the Oregon Constitution.

Along with the various objections currently awaiting a final order from the ERB, the Freedom Foundation has urged the DOJ to take further legal action to settle the question of constitutionality in state court. If necessary, we plan to take such legal action of our own – namely, on behalf of aggrieved legislative employees who have contacted us and expressed their objections to being ordered into a union-represented bargaining unit.

Simply put, lawmakers should not proceed with SB 759 while so many of these issues remain unresolved.

If the Legislature desires to enact policies allowing its employees to unionize, it should do so only *after* the legal pathway has been fully defined and refrain from rushing to aid one particular organizing campaign by removing the first roadblock it sees. As written, SB 759 is an ill-advised piece of legislation that ignores all other roadblocks in its haste to help a union campaign succeed.

On behalf of the Freedom Foundation, I respectfully urge the committee to reject SB 759.

Thank you,

A handwritten signature in black ink, appearing to read "Ben Straka", with a long horizontal flourish extending to the right.

Ben Straka

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