

Date of Hearing: June 6, 2012

ASSEMBLY SPECIAL COMMITTEE ON THE
GOVERNOR'S REORGANIZATION PLAN NO. 2

Joan Buchanan, Chair
GRP 2 - As Introduced: May 3, 2012

SUBJECT: GRP 2: Labor and Workforce Development Agency.

SUMMARY: Transfers the Public Employment Relations Board (PERB) into the Labor and Workforce Development Agency (Agency).

EXISTING LAW: Establishes PERB as an independent, quasi-judicial administrative agency charged with administering certain collective bargaining statutes.

FISCAL EFFECT: Unknown.

COMMENTS:

Purpose of this bill: GRP 2 is designed to improve organizational relationships, but the Governor offered no specific rationale for placing PERB under the Agency.

Background: PERB is a quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California's public schools, colleges, and universities, employees of the State of California, employees of California local public agencies (cities, counties and special districts), trial court employees and supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

The major functions performed by PERB staff involve the evaluation and adjudication of unfair practice charges filed with PERB, and the administration of the process through which employees select organizations to represent them in their labor relations with their employer.

PERB is composed of five members appointed by the Governor and subject to confirmation by the State Senate. Board members are appointed to five-year terms, with the term of one member expiring at the end of each calendar year. In addition to the overall responsibility for administering various labor relations acts, PERB itself acts as an appellate body to hear challenges to proposed decisions issued by PERB staff. Decisions of the Board itself may be appealed under certain circumstances to the state appellate courts.

Because PERB is involved in disputes between state government entities and its employees, it is vigilant about preserving its impartiality. This makes PERB's move to the Agency concerning; it may be placed in a position to adjudicate against its own parent agency, representing a clear conflict of interest.

Previous administrations have acknowledged this. The Agency was created in 2002 by a GRP. When questioned by the Little Hoover Commission why PERB was not included in the new Agency along with the Agricultural Labor Relations Board and the Department of Industrial Relations, the administration explained that PERB was left out because of potential conflict of interests. PERB, whose jurisdiction includes state government, could potentially hear a case involving the Agency or a department within the Agency.

It is unclear why the current Administration feels this would not be a problem. The Governor asserts that this GRP “does not change the degree of policy independence held by remaining independent or quasi-independent boards, commissions, and similar entities,” but then includes language that is clearly contradictory:

Section 12800 of the Government Code is amended to read:

(b) The secretary of an agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. **The secretary shall review and approve the proposed budget of each department, office, or other unit.** The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit. The secretary shall review the operations and evaluate the performance at appropriate intervals of each department, office, or other unit, and **shall seek continually to improve the organization structure, the operating policies, and the management information systems of each department, office, or other unit.** [emphasis added].

Giving budgetary and operational control for every entity within an agency to the head of that agency may be a good way to manage costs, but is arguably a poor means of ensuring independence.

Analysis Prepared by: Sarah Weaver