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**SUBSTITUTE SENATE BILL 5082**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Spanel, Swecker, Murray and Kohl-  
Welles)

READ FIRST TIME 02/15/07.

1            AN ACT Relating to time periods for collective bargaining by state  
2 ferry employees; and amending RCW 47.64.170, 47.64.210, 47.64.230, and  
3 47.64.300.

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

5            **Sec. 1.** RCW 47.64.170 and 2006 c 164 s 6 are each amended to read  
6 as follows:

7            (1) Any ferry employee organization certified as the bargaining  
8 representative shall be the exclusive representative of all ferry  
9 employees in the bargaining unit and shall represent all such employees  
10 fairly.

11            (2) A ferry employee organization or organizations and the governor  
12 may each designate any individual as its representative to engage in  
13 collective bargaining negotiations.

14            (3) Negotiating sessions, including strategy meetings of the  
15 employer or employee organizations, mediation, and the deliberative  
16 process of arbitrators are exempt from the provisions of chapter 42.30  
17 RCW. Hearings conducted by arbitrators may be open to the public by  
18 mutual consent of the parties.

1 (4) Terms of any collective bargaining agreement may be enforced by  
2 civil action in Thurston county superior court upon the initiative of  
3 either party.

4 (5) Ferry system employees or any employee organization shall not  
5 negotiate or attempt to negotiate directly with anyone other than the  
6 person who has been appointed or authorized a bargaining representative  
7 for the purpose of bargaining with the ferry employees or their  
8 representative.

9 (6)(a) Within ten working days after the first Monday in September  
10 of every odd-numbered year, the parties shall attempt to agree on an  
11 interest arbitrator to be used if the parties are not successful in  
12 negotiating a comprehensive collective bargaining agreement. If the  
13 parties cannot agree on an arbitrator within the ten-day period, either  
14 party may request a list of seven arbitrators from the federal  
15 mediation and conciliation service. The parties shall select an  
16 interest arbitrator using the coin toss/alternate strike method within  
17 thirty calendar days of receipt of the list. Immediately upon  
18 selecting an interest arbitrator, the parties shall cooperate to  
19 reserve dates with the arbitrator for potential arbitration between  
20 August 1st and September 15th of the following even-numbered year. The  
21 parties shall also prepare a schedule of at least five negotiation  
22 dates for the following year, absent an agreement to the contrary. The  
23 parties shall execute a written agreement before November 1st of each  
24 odd-numbered year setting forth the name of the arbitrator and the  
25 dates reserved for bargaining and arbitration. This subsection (6)(a)  
26 imposes minimum obligations only and is not intended to define or limit  
27 a party's full, good faith bargaining obligation under other sections  
28 of this chapter.

29 (b) The negotiation of a proposed collective bargaining agreement  
30 by representatives of the employer and a ferry employee organization  
31 shall commence on or about ((September)) February 1st of every ((odd-  
32 numbered)) even-numbered year. ((However, negotiations for the 2007-  
33 2009 biennial agreements may commence at any time after March 21, 2006.  
34 Negotiations for agreements pertaining to the 2009-2011 biennium and  
35 all subsequent negotiations must conclude on or about April 1st of the  
36 year following the year in which the negotiations commence. If  
37 negotiations are not concluded by April 1st, the parties shall be

1 ~~deemed to be at impasse and shall proceed to mediation under RCW~~  
2 ~~47.64.230 and 47.64.300 through 47.64.320.~~

3 ~~(b))~~ (c) For negotiations covering the 2009-2011 biennium and  
4 subsequent biennia, the time periods specified in this section, and in  
5 RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion  
6 of all agreements on or before (~~September 1st~~) October 1st of the  
7 even-numbered year next preceding the biennial budget period during  
8 which the agreement should take effect. These time periods may only be  
9 altered by mutual agreement of the parties in writing. Any such  
10 agreement and any impasse procedures agreed to by the parties under RCW  
11 47.64.200 must include an agreement regarding the new time periods that  
12 will allow final resolution by negotiations or arbitration by  
13 (~~September~~) October 1st of each even-numbered year. (~~Negotiations~~  
14 ~~for the 2007-2009 biennium must be concluded on or before October 1,~~  
15 ~~2006.~~)

16 (7) Until a new collective bargaining agreement is in effect, the  
17 terms and conditions of the previous collective bargaining agreement  
18 shall remain in force. It is the intent of this section that the  
19 collective bargaining agreement or arbitrator's award shall commence on  
20 July 1st of each odd-numbered year and shall terminate on June 30th of  
21 the next odd-numbered year to coincide with the ensuing biennial budget  
22 year, as defined by RCW 43.88.020(7), to the extent practical. It is  
23 further the intent of this section that all collective bargaining  
24 agreements be concluded by (~~September~~) October 1st of the even-  
25 numbered year before the commencement of the biennial budget year  
26 during which the agreements are to be in effect.

27 (8)(a) The governor shall submit a request either for funds  
28 necessary to implement the collective bargaining agreements including,  
29 but not limited to, the compensation and fringe benefit provisions or  
30 for legislation necessary to implement the agreement, or both.  
31 Requests for funds necessary to implement the collective bargaining  
32 agreements shall not be submitted to the legislature by the governor  
33 unless such requests:

34 (i) Have been submitted to the director of the office of financial  
35 management by October 1st before the legislative session at which the  
36 requests are to be considered; and

37 (ii) Have been certified by the director of the office of financial  
38 management as being feasible financially for the state.

1 (b) The governor shall submit a request either for funds necessary  
2 to implement the arbitration awards or for legislation necessary to  
3 implement the arbitration awards, or both. Requests for funds  
4 necessary to implement the arbitration awards shall not be submitted to  
5 the legislature by the governor unless such requests have been  
6 submitted to the director of the office of financial management by  
7 October 1st before the legislative session at which the requests are to  
8 be considered.

9 (c) The legislature shall approve or reject the submission of the  
10 request for funds necessary to implement the collective bargaining  
11 agreements or arbitration awards as a whole for each agreement or  
12 award. The legislature shall not consider a request for funds to  
13 implement a collective bargaining agreement or arbitration award unless  
14 the request is transmitted to the legislature as part of the governor's  
15 budget document submitted under RCW 43.88.030 and 43.88.060. If the  
16 legislature rejects or fails to act on the submission, either party may  
17 reopen all or part of the agreement and award or the exclusive  
18 bargaining representative may seek to implement the procedures provided  
19 for in RCW 47.64.210 and 47.64.300.

20 (9) If, after the compensation and fringe benefit provisions of an  
21 agreement are approved by the legislature, a significant revenue  
22 shortfall occurs resulting in reduced appropriations, as declared by  
23 proclamation of the governor or by resolution of the legislature, both  
24 parties shall immediately enter into collective bargaining for a  
25 mutually agreed upon modification of the agreement.

26 **Sec. 2.** RCW 47.64.210 and 2006 c 164 s 8 are each amended to read  
27 as follows:

28 In the absence of an impasse agreement between the parties or the  
29 failure of either party to utilize its procedures by (~~April~~) August  
30 1st in the even-numbered year preceding the biennium, either party may  
31 request the commission to appoint an impartial and disinterested person  
32 to act as mediator. It is the function of the mediator to bring the  
33 parties together to effectuate a settlement of the dispute, but the  
34 mediator shall not compel the parties to agree.

35 **Sec. 3.** RCW 47.64.230 and 2006 c 164 s 11 are each amended to read  
36 as follows:

1 By mutual agreement, the parties may waive mediation and proceed  
2 with binding arbitration as provided for in the impasse procedures  
3 agreed to under RCW 47.64.200 or in 47.64.300 through 47.64.320, as  
4 applicable. The waiver shall be in writing and be signed by the  
5 representatives of the parties. Regardless of the status of mediation,  
6 the parties must comply with the interest arbitration agreement under  
7 RCW 47.64.170(6)(a), absent any subsequent agreement to the contrary.

8 **Sec. 4.** RCW 47.64.300 and 2006 c 164 s 12 are each amended to read  
9 as follows:

10 (1) If an agreement has not been reached following a reasonable  
11 period of negotiations and, when applicable, mediation, (~~but in either~~  
12 ~~event by April 15th,~~) upon the recommendation of the assigned mediator  
13 that the parties remain at impasse or, with respect to biennial  
14 bargaining, in compliance with the interest arbitration agreement under  
15 RCW 47.64.170(6)(a), all impasse items shall be submitted to  
16 arbitration under this section. The issues for arbitration shall be  
17 limited to the issues certified by the commission.

18 (2) The parties may agree to submit the dispute to a single  
19 arbitrator, whose authority and duties shall be the same as those of an  
20 arbitration panel. If the parties cannot agree on the arbitrator  
21 within five working days, the selection shall be made under subsection  
22 (3) of this section, except with respect to biennial bargaining  
23 described under RCW 47.64.170(6). The full costs of arbitration under  
24 this section shall be shared equally by the parties to the dispute.

25 (3) Within seven days following the issuance of the determination  
26 of the commission, each party shall, absent an agreement to the  
27 contrary, name one person to serve as its arbitrator on the arbitration  
28 panel. Except with respect to biennial bargaining described under RCW  
29 47.64.170(6), the two members so appointed shall meet within seven days  
30 following the appointment of the later appointed member to attempt to  
31 choose a third member to act as the neutral chair of the arbitration  
32 panel. Upon the failure of the arbitrators to select a neutral chair  
33 within seven days, either party may apply to the federal mediation and  
34 conciliation service, or, with the consent of the parties, the American  
35 arbitration association to provide a list of five qualified arbitrators  
36 from which the neutral chair shall be chosen. Each party shall pay the

1 fees and expenses of its arbitrator, and the fees and expenses of the  
2 neutral chair shall be shared equally between the parties.

3 (4) In consultation with the parties, the arbitrator or arbitration  
4 panel shall promptly establish a date, time, and place for a hearing  
5 and shall provide reasonable notice thereof to the parties to the  
6 dispute. The parties shall exchange final positions in writing, with  
7 copies to the arbitrator or arbitration panel, with respect to every  
8 issue to be arbitrated, on a date mutually agreed upon, but in no event  
9 later than ten working days before the date set for hearing. A  
10 hearing, which shall be informal, shall be held, and each party shall  
11 have the opportunity to present evidence and make argument. No member  
12 of the arbitration panel may present the case for a party to the  
13 proceedings. The rules of evidence prevailing in judicial proceedings  
14 may be considered, but are not binding, and any oral testimony or  
15 documentary evidence or other data deemed relevant by the chair of the  
16 arbitration panel may be received in evidence. A recording of the  
17 proceedings shall be taken. The arbitration panel has the power to  
18 administer oaths, require the attendance of witnesses, and require the  
19 production of such books, papers, contracts, agreements, and documents  
20 as may be deemed by the panel to be material to a just determination of  
21 the issues in dispute. If any person refuses to obey a subpoena issued  
22 by the arbitration panel, or refuses to be sworn or to make an  
23 affirmation to testify, or any witness, party, or attorney for a party  
24 is guilty of any contempt while in attendance at any hearing held  
25 hereunder, the arbitration panel may invoke the jurisdiction of the  
26 superior court in the county where the labor dispute exists, and the  
27 court has jurisdiction to issue an appropriate order. Any failure to  
28 obey the order may be punished by the court as a contempt thereof.

29 (5) The neutral chair shall consult with the other members of the  
30 arbitration panel, if a panel has been created. Within thirty days  
31 following the conclusion of the hearing, or sooner as the October 1st  
32 deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the  
33 neutral chair shall make written findings of fact and a written  
34 determination of the issues in dispute, based on the evidence  
35 presented. A copy thereof shall be served on each of the other members  
36 of the arbitration panel, and on each of the parties to the dispute.  
37 That determination is final and binding upon both parties, subject to

1 review by the superior court upon the application of either party  
2 solely upon the question of whether the decision of the panel was  
3 arbitrary or capricious.

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