

ESSB 5460 - H COMM AMD
By Committee on Ways & Means

ADOPTED 02/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 41.06.070 and 2002 c 354 s 209 are each amended to
4 read as follows:

5 (1) The provisions of this chapter do not apply to:

6 (a) The members of the legislature or to any employee of, or
7 position in, the legislative branch of the state government including
8 members, officers, and employees of the legislative council, joint
9 legislative audit and review committee, statute law committee, and any
10 interim committee of the legislature;

11 (b) The justices of the supreme court, judges of the court of
12 appeals, judges of the superior courts or of the inferior courts, or to
13 any employee of, or position in the judicial branch of state
14 government;

15 (c) Officers, academic personnel, and employees of technical
16 colleges;

17 (d) The officers of the Washington state patrol;

18 (e) Elective officers of the state;

19 (f) The chief executive officer of each agency;

20 (g) In the departments of employment security and social and health
21 services, the director and the director's confidential secretary; in
22 all other departments, the executive head of which is an individual
23 appointed by the governor, the director, his or her confidential
24 secretary, and his or her statutory assistant directors;

25 (h) In the case of a multimember board, commission, or committee,
26 whether the members thereof are elected, appointed by the governor or
27 other authority, serve ex officio, or are otherwise chosen:

28 (i) All members of such boards, commissions, or committees;

29 (ii) If the members of the board, commission, or committee serve on
30 a part-time basis and there is a statutory executive officer: The

1 secretary of the board, commission, or committee; the chief executive
2 officer of the board, commission, or committee; and the confidential
3 secretary of the chief executive officer of the board, commission, or
4 committee;

5 (iii) If the members of the board, commission, or committee serve
6 on a full-time basis: The chief executive officer or administrative
7 officer as designated by the board, commission, or committee; and a
8 confidential secretary to the chair of the board, commission, or
9 committee;

10 (iv) If all members of the board, commission, or committee serve ex
11 officio: The chief executive officer; and the confidential secretary
12 of such chief executive officer;

13 (i) The confidential secretaries and administrative assistants in
14 the immediate offices of the elective officers of the state;

15 (j) Assistant attorneys general;

16 (k) Commissioned and enlisted personnel in the military service of
17 the state;

18 (l) Inmate, student, part-time, or temporary employees, and part-
19 time professional consultants, as defined by the Washington personnel
20 resources board;

21 (m) The public printer or to any employees of or positions in the
22 state printing plant;

23 (n) Officers and employees of the Washington state fruit
24 commission;

25 (o) Officers and employees of the Washington ((state)) apple
26 ((advertising)) commission;

27 (p) Officers and employees of the Washington state dairy products
28 commission;

29 (q) Officers and employees of the Washington tree fruit research
30 commission;

31 (r) Officers and employees of the Washington state beef commission;

32 (s) Officers and employees of any commission formed under chapter
33 15.66 RCW;

34 (t) Officers and employees of agricultural commissions formed under
35 chapter 15.65 RCW;

36 (u) Officers and employees of the nonprofit corporation formed
37 under chapter 67.40 RCW;

1 (v) Executive assistants for personnel administration and labor
2 relations in all state agencies employing such executive assistants
3 including but not limited to all departments, offices, commissions,
4 committees, boards, or other bodies subject to the provisions of this
5 chapter and this subsection shall prevail over any provision of law
6 inconsistent herewith unless specific exception is made in such law;

7 (w) In each agency with fifty or more employees: Deputy agency
8 heads, assistant directors or division directors, and not more than
9 three principal policy assistants who report directly to the agency
10 head or deputy agency heads;

11 (x) All employees of the marine employees' commission;

12 (y) Staff employed by the department of community, trade, and
13 economic development to administer energy policy functions and manage
14 energy site evaluation council activities under RCW 43.21F.045(2)(m);

15 (z) Staff employed by Washington State University to administer
16 energy education, applied research, and technology transfer programs
17 under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

18 (2) The following classifications, positions, and employees of
19 institutions of higher education and related boards are hereby exempted
20 from coverage of this chapter:

21 (a) Members of the governing board of each institution of higher
22 education and related boards, all presidents, vice presidents, and
23 their confidential secretaries, administrative, and personal
24 assistants; deans, directors, and chairs; academic personnel; and
25 executive heads of major administrative or academic divisions employed
26 by institutions of higher education; principal assistants to executive
27 heads of major administrative or academic divisions; other managerial
28 or professional employees in an institution or related board having
29 substantial responsibility for directing or controlling program
30 operations and accountable for allocation of resources and program
31 results, or for the formulation of institutional policy, or for
32 carrying out personnel administration or labor relations functions,
33 legislative relations, public information, development, senior computer
34 systems and network programming, or internal audits and investigations;
35 and any employee of a community college district whose place of work is
36 one which is physically located outside the state of Washington and who
37 is employed pursuant to RCW 28B.50.092 and assigned to an educational
38 program operating outside of the state of Washington;

1 (b) The governing board of each institution, and related boards,
2 may also exempt from this chapter classifications involving research
3 activities, counseling of students, extension or continuing education
4 activities, graphic arts or publications activities requiring
5 prescribed academic preparation or special training as determined by
6 the board: PROVIDED, That no nonacademic employee engaged in office,
7 clerical, maintenance, or food and trade services may be exempted by
8 the board under this provision;

9 (c) Printing craft employees in the department of printing at the
10 University of Washington.

11 (3) In addition to the exemptions specifically provided by this
12 chapter, the director of personnel may provide for further exemptions
13 pursuant to the following procedures. The governor or other
14 appropriate elected official may submit requests for exemption to the
15 director of personnel stating the reasons for requesting such
16 exemptions. The director of personnel shall hold a public hearing,
17 after proper notice, on requests submitted pursuant to this subsection.
18 If the director determines that the position for which exemption is
19 requested is one involving substantial responsibility for the
20 formulation of basic agency or executive policy or one involving
21 directing and controlling program operations of an agency or a major
22 administrative division thereof, the director of personnel shall grant
23 the request and such determination shall be final as to any decision
24 made before July 1, 1993. The total number of additional exemptions
25 permitted under this subsection shall not exceed one percent of the
26 number of employees in the classified service not including employees
27 of institutions of higher education and related boards for those
28 agencies not directly under the authority of any elected public
29 official other than the governor, and shall not exceed a total of
30 twenty-five for all agencies under the authority of elected public
31 officials other than the governor.

32 The salary and fringe benefits of all positions presently or
33 hereafter exempted except for the chief executive officer of each
34 agency, full-time members of boards and commissions, administrative
35 assistants and confidential secretaries in the immediate office of an
36 elected state official, and the personnel listed in subsections (1)(j)
37 through (u) and (x) and (2) of this section, shall be determined by the
38 director of personnel. Changes to the classification plan affecting

1 exempt salaries must meet the same provisions for classified salary
2 increases resulting from adjustments to the classification plan as
3 outlined in RCW 41.06.152.

4 For the twelve months following the effective date of this section,
5 a salary or wage increase shall not be granted to any position exempt
6 from classification under this chapter.

7 Any person holding a classified position subject to the provisions
8 of this chapter shall, when and if such position is subsequently
9 exempted from the application of this chapter, be afforded the
10 following rights: If such person previously held permanent status in
11 another classified position, such person shall have a right of
12 reversion to the highest class of position previously held, or to a
13 position of similar nature and salary.

14 Any classified employee having civil service status in a classified
15 position who accepts an appointment in an exempt position shall have
16 the right of reversion to the highest class of position previously
17 held, or to a position of similar nature and salary.

18 A person occupying an exempt position who is terminated from the
19 position for gross misconduct or malfeasance does not have the right of
20 reversion to a classified position as provided for in this section.

21 **Sec. 2.** RCW 41.06.133 and 2002 c 354 s 204 are each amended to
22 read as follows:

23 The director shall adopt rules, consistent with the purposes and
24 provisions of this chapter and with the best standards of personnel
25 administration, regarding the basis and procedures to be followed for:

- 26 (1) The reduction, dismissal, suspension, or demotion of an
27 employee;
- 28 (2) Training and career development;
- 29 (3) Probationary periods of six to twelve months and rejections of
30 probationary employees, depending on the job requirements of the class,
31 except that entry level state park rangers shall serve a probationary
32 period of twelve months;
- 33 (4) Transfers;
- 34 (5) Promotional preferences;
- 35 (6) Sick leaves and vacations;
- 36 (7) Hours of work;

1 (8) Layoffs when necessary and subsequent reemployment, except for
2 the financial basis for layoffs;

3 (9) The number of names to be certified for vacancies;

4 (10) Adoption and revision of a state salary schedule to reflect
5 the prevailing rates in Washington state private industries and other
6 governmental units. The rates in the salary schedules or plans shall
7 be increased if necessary to attain comparable worth under an
8 implementation plan under RCW 41.06.155 and, for institutions of higher
9 education and related boards, shall be competitive for positions of a
10 similar nature in the state or the locality in which an institution of
11 higher education or related board is located. Such adoption and
12 revision is subject to approval by the director of financial management
13 in accordance with chapter 43.88 RCW;

14 (11) Increment increases within the series of steps for each pay
15 grade based on length of service for all employees whose standards of
16 performance are such as to permit them to retain job status in the
17 classified service. For the twelve months following the effective date
18 of this section, a salary or wage increase shall not be granted to any
19 exempt position under this chapter;

20 (12) Optional lump sum relocation compensation approved by the
21 agency director, whenever it is reasonably necessary that a person make
22 a domiciliary move in accepting a transfer or other employment with the
23 state. An agency must provide lump sum compensation within existing
24 resources. If the person receiving the relocation payment terminates
25 or causes termination with the state, for reasons other than layoff,
26 disability separation, or other good cause as determined by an agency
27 director, within one year of the date of the employment, the state is
28 entitled to reimbursement of the lump sum compensation from the person;

29 (13) Providing for veteran's preference as required by existing
30 statutes, with recognition of preference in regard to layoffs and
31 subsequent reemployment for veterans and their surviving spouses by
32 giving such eligible veterans and their surviving spouses additional
33 credit in computing their seniority by adding to their unbroken state
34 service, as defined by the director, the veteran's service in the
35 military not to exceed five years. For the purposes of this section,
36 "veteran" means any person who has one or more years of active military
37 service in any branch of the armed forces of the United States or who
38 has less than one year's service and is discharged with a disability

1 incurred in the line of duty or is discharged at the convenience of the
2 government and who, upon termination of such service, has received an
3 honorable discharge, a discharge for physical reasons with an honorable
4 record, or a release from active military service with evidence of
5 service other than that for which an undesirable, bad conduct, or
6 dishonorable discharge shall be given. However, the surviving spouse
7 of a veteran is entitled to the benefits of this section regardless of
8 the veteran's length of active military service. For the purposes of
9 this section, "veteran" does not include any person who has voluntarily
10 retired with twenty or more years of active military service and whose
11 military retirement pay is in excess of five hundred dollars per month.

12 Rules adopted under this section by the director shall provide for
13 local administration and management by the institutions of higher
14 education and related boards, subject to periodic audit and review by
15 the director.

16 Rules adopted by the director under this section may be superseded
17 by the provisions of a collective bargaining agreement negotiated under
18 RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of
19 such rules shall only affect employees in the respective collective
20 bargaining units.

21 **Sec. 3.** RCW 41.06.500 and 2002 c 354 s 243 are each amended to
22 read as follows:

23 (1) Except as provided in RCW 41.06.070, notwithstanding any other
24 provisions of this chapter, the director is authorized to adopt, after
25 consultation with state agencies and employee organizations, rules for
26 managers as defined in RCW 41.06.022. These rules shall not apply to
27 managers employed by institutions of higher education or related boards
28 or whose positions are exempt. The rules shall govern recruitment,
29 appointment, classification and allocation of positions, examination,
30 training and career development, hours of work, probation,
31 certification, compensation, transfer, affirmative action, promotion,
32 layoff, reemployment, performance appraisals, discipline, and any and
33 all other personnel practices for managers. These rules shall be
34 separate from rules adopted for other employees, and to the extent that
35 the rules adopted under this section apply only to managers shall take
36 precedence over rules adopted for other employees, and are not subject
37 to review by the board.

1 (2) In establishing rules for managers, the director shall adhere
2 to the following goals:

3 (a) Development of a simplified classification system that
4 facilitates movement of managers between agencies and promotes upward
5 mobility;

6 (b) Creation of a compensation system that provides flexibility in
7 setting and changing salaries, and shall require review and approval by
8 the director in the case of any salary changes greater than five
9 percent proposed for any group of employees;

10 (c) Establishment of a performance appraisal system that emphasizes
11 individual accountability for program results and efficient management
12 of resources; effective planning, organization, and communication
13 skills; valuing and managing workplace diversity; development of
14 leadership and interpersonal abilities; and employee development;

15 (d) Strengthening management training and career development
16 programs that build critical management knowledge, skills, and
17 abilities; focusing on managing and valuing workplace diversity;
18 empowering employees by enabling them to share in workplace decision
19 making and to be innovative, willing to take risks, and able to accept
20 and deal with change; promoting a workplace where the overall focus is
21 on the recipient of the government services and how these services can
22 be improved; and enhancing mobility and career advancement
23 opportunities;

24 (e) Permitting flexible recruitment and hiring procedures that
25 enable agencies to compete effectively with other employers, both
26 public and private, for managers with appropriate skills and training;
27 allowing consideration of all qualified candidates for positions as
28 managers; and achieving affirmative action goals and diversity in the
29 workplace;

30 (f) Providing that managers may only be reduced, dismissed,
31 suspended, or demoted for cause; and

32 (g) Facilitating decentralized and regional administration.

33 (3) For the twelve months following the effective date of this
34 section, a salary or wage increase shall not be granted to any position
35 under this section.

36 **Sec. 4.** RCW 43.03.030 and 1965 c 8 s 43.03.030 are each amended to
37 read as follows:

1 (1) Wherever the compensation of any appointive state officer or
2 employee is fixed by statute, it may be hereafter increased or
3 decreased in the manner provided by law for the fixing of compensation
4 of other appointive state officers or employees; but this subsection
5 shall not apply to the heads of state departments.

6 (2) Wherever the compensation of any state officer appointed by the
7 governor, or of any employee in any office or department under the
8 control of any such officer, is fixed by statute, such compensation may
9 hereafter, from time to time, be changed by the governor, and he shall
10 have power to fix such compensation at any amount not to exceed the
11 amount fixed by statute.

12 (3) For the twelve months following the effective date of this
13 section, a salary or wage increase shall not be granted to any position
14 under this section.

15 **Sec. 5.** RCW 43.03.040 and 1993 sp.s. c 24 s 914 are each amended
16 to read as follows:

17 The directors of the several departments and members of the several
18 boards and commissions, whose salaries are fixed by the governor and
19 the chief executive officers of the agencies named in RCW 43.03.028(2)
20 as now or hereafter amended shall each severally receive such salaries,
21 payable in monthly installments, as shall be fixed by the governor or
22 the appropriate salary fixing authority, in an amount not to exceed the
23 recommendations of the committee on agency officials' salaries.
24 ~~((Beginning July 1, 1993, through June 30, 1995, the salary paid to~~
25 ~~such directors and members of boards and commissions shall not exceed~~
26 ~~the amount paid as of April 1, 1993.)) For the twelve months following
27 the effective date of this section, a salary or wage increase shall not
28 be granted to any position under this section.~~

29 NEW SECTION. **Sec. 6.** STATE EMPLOYMENT. (1) From the effective
30 date of this section until July 1, 2009, and consistent with the
31 governor's directive dated August 4, 2008, state agencies of the
32 legislative, executive, and judicial branches shall not establish new
33 staff positions or fill vacant existing staff positions except as
34 specifically authorized by this section.

35 (2) The following activities of state agencies are exempt from
36 subsection (1) of this section:

- 1 (a) Direct custody, supervision, and patient care in corrections,
2 juvenile rehabilitation, institutional care of veterans, the mentally
3 ill, developmentally disabled, state hospitals, the special commitment
4 center, and the schools for the blind and the deaf;
- 5 (b) Direct protective services to children and other vulnerable
6 populations in the department of social and health services;
- 7 (c) Washington state patrol investigative services and field
8 enforcement;
- 9 (d) Hazardous materials response and emergency cleanup;
- 10 (e) Emergency public health and patient safety response and the
11 public health laboratory;
- 12 (f) Military operations and emergency management within the
13 military department;
- 14 (g) Firefighting;
- 15 (h) Enforcement officers in the department of fish and wildlife,
16 the liquor control board, the gambling commission, and the department
17 of natural resources;
- 18 (i) Park rangers at the parks and recreation commission;
- 19 (j) Seasonal employment by natural resources agencies to the extent
20 that employment levels do not exceed the prior fiscal year;
- 21 (k) Seasonal employment in the department of transportation
22 maintenance programs to the extent that employment levels do not exceed
23 the prior fiscal year;
- 24 (l) Employees hired on a seasonal basis by the department of
25 agriculture for inspection and certification of agricultural products
26 and for insect detection;
- 27 (m) Activities directly related to tax and fee collection, revenue
28 generation, auditing, and recovery;
- 29 (n) In institutions of higher education, any positions directly
30 related to academic programs, as well as positions not funded from
31 state funds or tuition;
- 32 (o) Operations of the state lottery and liquor control board
33 business enterprises;
- 34 (p) The unemployment insurance program of the employment security
35 department; and
- 36 (q) Activities that are necessary to receive or maintain federal
37 funds by the state.

1 (3) The exemptions specified in subsection (2) of this section do
2 not require the establishment of new staff positions or the filling of
3 vacant existing staff positions in the activities specified.

4 (4) Exceptions to this section may be granted under section 10 of
5 this act.

6 NEW SECTION. **Sec. 7.** PERSONAL SERVICES CONTRACTS. From the
7 effective date of this section until July 1, 2009, and consistent with
8 the governor's directive dated August 4, 2008, state agencies of the
9 legislative, executive, and judicial branches shall not enter into any
10 contracts or other agreements for the acquisition of personal services
11 not related to an emergency or other catastrophic event that requires
12 government action to protect life or public safety. This section does
13 not apply to personal services contracts or other agreements for the
14 acquisition of personal services where the costs are funded exclusively
15 from private or federal grants, where the costs are for tax and fee
16 collection, where the costs are for revenue generation and auditing
17 activities, where the costs are necessary to receive or maintain
18 federal funds by the state, or, in institutions of higher education,
19 where the costs are not funded from state funds or tuition. Exceptions
20 to this section may be granted under section 10 of this act. This
21 section does not apply to the unemployment insurance program of the
22 employment security department.

23 NEW SECTION. **Sec. 8.** EQUIPMENT PURCHASES. From the effective
24 date of this section until July 1, 2009, and consistent with the
25 governor's directive dated August 4, 2008, state agencies of the
26 legislative, executive, and judicial branches shall not enter into any
27 contracts or other agreements for the acquisition of any item of
28 equipment the cost of which exceeds five thousand dollars and is not
29 related to an emergency or other catastrophic event that requires
30 government action to protect life or public safety. Exceptions to this
31 section may be granted under section 10 of this act. This section does
32 not apply to the unemployment insurance program of the employment
33 security department, to costs that are for tax and fee collection, for
34 revenue generation and audit activities, or for receiving or
35 maintaining federal funds by the state, or, in institutions of higher
36 education, to costs not funded from state funds or tuition.

1 NEW SECTION. **Sec. 9.** STATE EMPLOYEE TRAVEL AND TRAINING.

2 Consistent with the governor's directive dated August 4, 2008, state
3 agencies of the legislative, executive, and judicial branches shall not
4 make expenditures for the cost or reimbursement of out-of-state travel
5 or out-of-state training by state employees where the travel or
6 training is not related to (1) an emergency or other catastrophic event
7 that requires government action to protect life or public safety, or
8 (2) direct service delivery, and the travel or training occurs after
9 the effective date of this section and before July 1, 2009. This
10 section does not apply to travel expenditures when the costs are funded
11 exclusively from private or federal grants. Exceptions to this section
12 may be granted under section 10 of this act. This section does not
13 apply to the unemployment insurance program of the employment security
14 department, to costs that are for tax and fee collection, for revenue
15 generation and audit activities, or for receiving or maintaining
16 federal funds by the state, or, in institutions of higher education, to
17 costs not funded from state funds or tuition.

18 NEW SECTION. **Sec. 10.** EXCEPTIONS. (1) Exceptions to sections 6
19 through 9 of this act may be granted for the critically necessary work
20 of an agency as provided in this section.

21 (2) For agencies of the executive branch, the exceptions shall be
22 subject to approval by the director of financial management. For
23 agencies of the judicial branch, the exceptions shall be subject to
24 approval of the chief justice of the supreme court. For the house of
25 representatives and the senate, the exceptions shall be subject to
26 approval of the chief clerk of the house of representatives and the
27 secretary of the senate, respectively, under the direction of the
28 senate committee on facilities and operations and the executive rules
29 committee of the house of representatives. For other legislative
30 agencies, the exceptions shall be subject to approval of both the chief
31 clerk of the house of representatives and the secretary of the senate
32 under the direction of the senate committee on facilities and
33 operations and the executive rules committee of the house of
34 representatives.

35 (3) Exceptions approved under subsection (2) of this section shall
36 take effect no sooner than five business days following notification of
37 the chair and ranking minority member of the ways and means committees

1 in the house of representatives and the senate. The person approving
2 exceptions under subsection (2) of this section shall send the
3 exceptions to the legislature for consideration every thirty days from
4 the effective date of this section, or earlier should volume or
5 circumstances so necessitate.

6 NEW SECTION. **Sec. 11.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 12.** Captions used in this act are not any part
11 of the law.

12 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately."

16 Correct the title.

EFFECT: (1) Strikes LEAP list of reductions going into unallotted status.

(2) Adds exemption from hiring freeze for higher education academic programs.

(3) Changes the equipment purchase threshold from above \$1,000 to above \$5,000.

(4) Adds the Gambling Commission to the list of law enforcement officers exempt from the hiring freeze.

(5) Exempts tax and fee collection, revenue generation, and receiving funds from the federal government from prohibitions on personal service contracts, equipment purchases, and the travel freeze.

(6) Changes the exception process. Instead of every exception being sent to the legislature and sitting for 2 days to allow legislative input, OFM (and the Chief Justice, Chief Clerk, and the Secretary of the Senate) will bundle the exceptions up every 30 days, or earlier if volume or circumstances so dictate, and these would sit in the legislature for 5 days (before taking effect).

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