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**SUBSTITUTE HOUSE BILL 2267**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** House Ways & Means (originally sponsored by Representatives Conway, Haigh, Hunt, and Kenney)

READ FIRST TIME 03/03/09.

1       AN ACT Relating to protecting the collective bargaining rights of  
2 certain exempt employees; amending RCW 41.06.070 and 41.06.133; and  
3 declaring an emergency.

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

5       **Sec. 1.** RCW 41.06.070 and 2009 c 5 s 1 are each amended to read as  
6 follows:

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

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

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

17       (c) Officers, academic personnel, and employees of technical  
18 colleges;

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

- 1 (e) Elective officers of the state;
- 2 (f) The chief executive officer of each agency;
- 3 (g) In the departments of employment security and social and health  
4 services, the director and the director's confidential secretary; in  
5 all other departments, the executive head of which is an individual  
6 appointed by the governor, the director, his or her confidential  
7 secretary, and his or her statutory assistant directors;
- 8 (h) In the case of a multimember board, commission, or committee,  
9 whether the members thereof are elected, appointed by the governor or  
10 other authority, serve ex officio, or are otherwise chosen:
- 11 (i) All members of such boards, commissions, or committees;
- 12 (ii) If the members of the board, commission, or committee serve on  
13 a part-time basis and there is a statutory executive officer: The  
14 secretary of the board, commission, or committee; the chief executive  
15 officer of the board, commission, or committee; and the confidential  
16 secretary of the chief executive officer of the board, commission, or  
17 committee;
- 18 (iii) If the members of the board, commission, or committee serve  
19 on a full-time basis: The chief executive officer or administrative  
20 officer as designated by the board, commission, or committee; and a  
21 confidential secretary to the chair of the board, commission, or  
22 committee;
- 23 (iv) If all members of the board, commission, or committee serve ex  
24 officio: The chief executive officer; and the confidential secretary  
25 of such chief executive officer;
- 26 (i) The confidential secretaries and administrative assistants in  
27 the immediate offices of the elective officers of the state;
- 28 (j) Assistant attorneys general;
- 29 (k) Commissioned and enlisted personnel in the military service of  
30 the state;
- 31 (l) Inmate, student, part-time, or temporary employees, and part-  
32 time professional consultants, as defined by the Washington personnel  
33 resources board;
- 34 (m) The public printer or to any employees of or positions in the  
35 state printing plant;
- 36 (n) Officers and employees of the Washington state fruit  
37 commission;
- 38 (o) Officers and employees of the Washington apple commission;

1 (p) Officers and employees of the Washington state dairy products  
2 commission;

3 (q) Officers and employees of the Washington tree fruit research  
4 commission;

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

6 (s) Officers and employees of any commission formed under chapter  
7 15.66 RCW;

8 (t) Officers and employees of agricultural commissions formed under  
9 chapter 15.65 RCW;

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

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

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

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

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

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

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

32 (a) Members of the governing board of each institution of higher  
33 education and related boards, all presidents, vice presidents, and  
34 their confidential secretaries, administrative, and personal  
35 assistants; deans, directors, and chairs; academic personnel; and  
36 executive heads of major administrative or academic divisions employed  
37 by institutions of higher education; principal assistants to executive  
38 heads of major administrative or academic divisions; other managerial

1 or professional employees in an institution or related board having  
2 substantial responsibility for directing or controlling program  
3 operations and accountable for allocation of resources and program  
4 results, or for the formulation of institutional policy, or for  
5 carrying out personnel administration or labor relations functions,  
6 legislative relations, public information, development, senior computer  
7 systems and network programming, or internal audits and investigations;  
8 and any employee of a community college district whose place of work is  
9 one which is physically located outside the state of Washington and who  
10 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
11 program operating outside of the state of Washington;

12 (b) The governing board of each institution, and related boards,  
13 may also exempt from this chapter classifications involving research  
14 activities, counseling of students, extension or continuing education  
15 activities, graphic arts or publications activities requiring  
16 prescribed academic preparation or special training as determined by  
17 the board: PROVIDED, That no nonacademic employee engaged in office,  
18 clerical, maintenance, or food and trade services may be exempted by  
19 the board under this provision;

20 (c) Printing craft employees in the department of printing at the  
21 University of Washington.

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

1 agencies not directly under the authority of any elected public  
2 official other than the governor, and shall not exceed a total of  
3 twenty-five for all agencies under the authority of elected public  
4 officials other than the governor.

5 The salary and fringe benefits of all positions presently or  
6 hereafter exempted except for the chief executive officer of each  
7 agency, full-time members of boards and commissions, administrative  
8 assistants and confidential secretaries in the immediate office of an  
9 elected state official, and the personnel listed in subsections (1)(j)  
10 through (u) and (x) and (2) of this section, shall be determined by the  
11 director of personnel. Changes to the classification plan affecting  
12 exempt salaries must meet the same provisions for classified salary  
13 increases resulting from adjustments to the classification plan as  
14 outlined in RCW 41.06.152.

15 For the twelve months following February 18, 2009, a salary or wage  
16 increase shall not be granted to any position exempt from  
17 classification under this chapter, except that a salary or wage  
18 increase may be granted to employees pursuant to collective bargaining  
19 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW.

20 Any person holding a classified position subject to the provisions  
21 of this chapter shall, when and if such position is subsequently  
22 exempted from the application of this chapter, be afforded the  
23 following rights: If such person previously held permanent status in  
24 another classified position, such person shall have a right of  
25 reversion to the highest class of position previously held, or to a  
26 position of similar nature and salary.

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

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

34 **Sec. 2.** RCW 41.06.133 and 2009 c 5 s 2 are each amended to read as  
35 follows:

36 The director shall adopt rules, consistent with the purposes and

1 provisions of this chapter and with the best standards of personnel  
2 administration, regarding the basis and procedures to be followed for:

3 (1) The reduction, dismissal, suspension, or demotion of an  
4 employee;

5 (2) Training and career development;

6 (3) Probationary periods of six to twelve months and rejections of  
7 probationary employees, depending on the job requirements of the class,  
8 except that entry level state park rangers shall serve a probationary  
9 period of twelve months;

10 (4) Transfers;

11 (5) Promotional preferences;

12 (6) Sick leaves and vacations;

13 (7) Hours of work;

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

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

17 (10) Adoption and revision of a state salary schedule to reflect  
18 the prevailing rates in Washington state private industries and other  
19 governmental units. The rates in the salary schedules or plans shall  
20 be increased if necessary to attain comparable worth under an  
21 implementation plan under RCW 41.06.155 and, for institutions of higher  
22 education and related boards, shall be competitive for positions of a  
23 similar nature in the state or the locality in which an institution of  
24 higher education or related board is located. Such adoption and  
25 revision is subject to approval by the director of financial management  
26 in accordance with chapter 43.88 RCW;

27 (11) Increment increases within the series of steps for each pay  
28 grade based on length of service for all employees whose standards of  
29 performance are such as to permit them to retain job status in the  
30 classified service. For the twelve months following February 18, 2009,  
31 a salary or wage increase shall not be granted to any exempt position  
32 under this chapter, except that a salary or wage increase may be  
33 granted to employees pursuant to collective bargaining agreements  
34 negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW;

35 (12) Optional lump sum relocation compensation approved by the  
36 agency director, whenever it is reasonably necessary that a person make  
37 a domiciliary move in accepting a transfer or other employment with the  
38 state. An agency must provide lump sum compensation within existing

1 resources. If the person receiving the relocation payment terminates  
2 or causes termination with the state, for reasons other than layoff,  
3 disability separation, or other good cause as determined by an agency  
4 director, within one year of the date of the employment, the state is  
5 entitled to reimbursement of the lump sum compensation from the person;

6 (13) Providing for veteran's preference as required by existing  
7 statutes, with recognition of preference in regard to layoffs and  
8 subsequent reemployment for veterans and their surviving spouses by  
9 giving such eligible veterans and their surviving spouses additional  
10 credit in computing their seniority by adding to their unbroken state  
11 service, as defined by the director, the veteran's service in the  
12 military not to exceed five years. For the purposes of this section,  
13 "veteran" means any person who has one or more years of active military  
14 service in any branch of the armed forces of the United States or who  
15 has less than one year's service and is discharged with a disability  
16 incurred in the line of duty or is discharged at the convenience of the  
17 government and who, upon termination of such service, has received an  
18 honorable discharge, a discharge for physical reasons with an honorable  
19 record, or a release from active military service with evidence of  
20 service other than that for which an undesirable, bad conduct, or  
21 dishonorable discharge shall be given. However, the surviving spouse  
22 of a veteran is entitled to the benefits of this section regardless of  
23 the veteran's length of active military service. For the purposes of  
24 this section, "veteran" does not include any person who has voluntarily  
25 retired with twenty or more years of active military service and whose  
26 military retirement pay is in excess of five hundred dollars per month.

27 Rules adopted under this section by the director shall provide for  
28 local administration and management by the institutions of higher  
29 education and related boards, subject to periodic audit and review by  
30 the director.

31 Rules adopted by the director under this section may be superseded  
32 by the provisions of a collective bargaining agreement negotiated under  
33 RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of  
34 such rules shall only affect employees in the respective collective  
35 bargaining units.

36 NEW SECTION. **Sec. 3.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 immediately.

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