
SUBSTITUTE HOUSE BILL 3209

State of Washington 61st Legislature 2010 Regular Session

By House Transportation (originally sponsored by Representatives
Clibborn, Rolfes, Sequist, and Morris)

READ FIRST TIME 03/04/10.

1 AN ACT Relating to managing costs of the ferry system; amending RCW
2 47.64.170, 47.64.200, 47.64.320, and 47.28.030; creating new sections;
3 making an appropriation; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the Washington
6 state ferries system is a critical component of the state's highway
7 system. The legislature further finds that ferry system revenues are
8 inadequate to support the capital requirements of aging vessels and
9 terminals, and operating cost growth is fast outpacing the growth of
10 fare revenue and gas tax revenue dedicated to the ferry system. As
11 such, and drawing on more than four consecutive years of legislative
12 analysis and operating policy reforms, the legislature finds that a
13 realignment of the ferry compensation policy framework is an
14 appropriate next step toward the legislature's long-term goal of
15 assuring sustainable, cost-effective ferry service. The legislature
16 further intends to address increasing costs of operating the ferry
17 system in a manner that balances the interests of the ferry system,
18 ferry labor unions, and the fare payers.

1 **Sec. 2.** RCW 47.64.170 and 2007 c 160 s 1 are each amended to read
2 as follows:

3 (1) Any ferry employee organization certified as the bargaining
4 representative shall be the exclusive representative of all ferry
5 employees in the bargaining unit and shall represent all such employees
6 fairly.

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

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

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

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

23 (6)(a) Within ten working days after the first Monday in September
24 of every odd-numbered year, the parties shall attempt to agree on an
25 interest arbitrator to be used if the parties are not successful in
26 negotiating a comprehensive collective bargaining agreement. If the
27 parties cannot agree on an arbitrator within the ten-day period, either
28 party may request a list of seven arbitrators from the federal
29 mediation and conciliation service. The parties shall select an
30 interest arbitrator using the coin toss/alternate strike method within
31 thirty calendar days of receipt of the list. Immediately upon
32 selecting an interest arbitrator, the parties shall cooperate to
33 reserve dates with the arbitrator for potential arbitration between
34 August 1st and September 15th of the following even-numbered year. The
35 parties shall also prepare a schedule of at least five negotiation
36 dates for the following year, absent an agreement to the contrary. The
37 parties shall execute a written agreement before November 1st of each
38 odd-numbered year setting forth the name of the arbitrator and the

1 dates reserved for bargaining and arbitration. This subsection (6)(a)
2 imposes minimum obligations only and is not intended to define or limit
3 a party's full, good faith bargaining obligation under other sections
4 of this chapter.

5 (b) The negotiation of a proposed collective bargaining agreement
6 by representatives of the employer and a ferry employee organization
7 shall commence on or about February 1st of every even-numbered year.

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

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

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

37 (i) Have been submitted to the director of the office of financial

1 management by October 1st before the legislative session at which the
2 requests are to be considered; and

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

5 (b) The governor shall submit a request either for funds necessary
6 to implement the arbitration awards or for legislation necessary to
7 implement the arbitration awards, or both. Requests for funds
8 necessary to implement the arbitration awards shall not be submitted to
9 the legislature by the governor unless such requests:

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

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

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

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

32 **Sec. 3.** RCW 47.64.200 and 2006 c 164 s 7 are each amended to read
33 as follows:

34 As the first step in the performance of their duty to bargain, the
35 employer and the employee organization shall endeavor to agree upon
36 impasse procedures. Unless otherwise agreed to by the employee
37 organization and the employer in their impasse procedures, the

1 arbitrator or panel (~~is limited to selecting the most reasonable~~
2 ~~offer, in its judgment, of the final offers on each impasse item~~
3 ~~submitted by the parties. The employee organization and the employer~~
4 ~~may mutually agree to the impasse procedure under which the arbitrator~~
5 ~~or panel may~~) shall issue a decision it deems just and appropriate
6 with respect to each impasse item. If the parties fail to agree upon
7 impasse procedures under this section, the impasse procedures provided
8 in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply.
9 It is unlawful for either party to refuse to participate in the impasse
10 procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300
11 through 47.64.320.

12 **Sec. 4.** RCW 47.64.320 and 2006 c 164 s 14 are each amended to read
13 as follows:

14 (1) The mediator, arbitrator, or arbitration panel may consider
15 only matters that are subject to bargaining under this chapter.

16 (2) The decision of an arbitrator or arbitration panel is not
17 binding on the legislature and, if the legislature does not approve the
18 funds necessary to implement provisions pertaining to compensation and
19 fringe benefit provisions of an arbitrated collective bargaining
20 agreement, is not binding on the state, the department of
21 transportation, or the ferry employee organization.

22 (3) In making its determination, the arbitrator or arbitration
23 panel shall be mindful of the legislative purpose under RCW 47.64.005
24 and 47.64.006 and, as additional standards or guidelines to aid it in
25 reaching a decision, shall take into consideration the following
26 factors:

27 (a) The financial ability of the department to pay for the
28 compensation and fringe benefit provisions of a collective bargaining
29 agreement;

30 (b) Past collective bargaining contracts between the parties
31 including the bargaining that led up to the contracts;

32 ~~((b))~~ (c) The constitutional and statutory authority of the
33 employer;

34 ~~((c))~~ (d) Stipulations of the parties;

35 ~~((d))~~ (e) The results of the salary survey as required in RCW
36 47.64.220;

1 (~~(e)~~) (f) Comparison of wages, hours, employee benefits, and
2 conditions of employment of the involved ferry employees with those of
3 public and private sector employees in states along the west coast of
4 the United States, including Alaska, and in British Columbia doing
5 directly comparable but not necessarily identical work, giving
6 consideration to factors peculiar to the area and the classifications
7 involved or with other state employees;

8 (~~(f)~~) (g) Changes in any of the foregoing circumstances during
9 the pendency of the proceedings;

10 (~~(g)~~) (h) The limitations on ferry toll increases and operating
11 subsidies as may be imposed by the legislature; and

12 (~~(h)~~) (i) Other factors that are normally or traditionally taken
13 into consideration in the determination of matters that are subject to
14 bargaining under this chapter.

15 **Sec. 5.** RCW 47.28.030 and 2007 c 218 s 90 are each amended to read
16 as follows:

17 A state highway shall be constructed, altered, repaired, or
18 improved, and improvements located on property acquired for
19 right-of-way purposes may be repaired or renovated pending the use of
20 such right-of-way for highway purposes, by contract or state forces.
21 The work or portions thereof may be done by state forces when the
22 estimated costs thereof are less than fifty thousand dollars and
23 effective July 1, 2005, sixty thousand dollars, or less than one
24 hundred twenty thousand dollars for work performed on ferry vessels or
25 terminals: PROVIDED, That when delay of performance of such work would
26 jeopardize a state highway or constitute a danger to the traveling
27 public, the work may be done by state forces when the estimated cost
28 thereof is less than eighty thousand dollars and effective July 1,
29 2005, one hundred thousand dollars. When the department of
30 transportation determines to do the work by state forces, it shall
31 enter a statement upon its records to that effect, stating the reasons
32 therefor. To enable a larger number of small businesses, and minority,
33 and women contractors to effectively compete for department of
34 transportation contracts, the department may adopt rules providing for
35 bids and award of contracts for the performance of work, or furnishing
36 equipment, materials, supplies, or operating services whenever any work
37 is to be performed and the engineer's estimate indicates the cost of

1 the work would not exceed eighty thousand dollars and effective July 1,
2 2005, one hundred thousand dollars. The rules adopted under this
3 section:

4 (1) Shall provide for competitive bids to the extent that
5 competitive sources are available except when delay of performance
6 would jeopardize life or property or inconvenience the traveling
7 public; and

8 (2) Need not require the furnishing of a bid deposit nor a
9 performance bond, but if a performance bond is not required then
10 progress payments to the contractor may be required to be made based on
11 submittal of paid invoices to substantiate proof that disbursements
12 have been made to laborers, material suppliers, mechanics, and
13 subcontractors from the previous partial payment; and

14 (3) May establish prequalification standards and procedures as an
15 alternative to those set forth in RCW 47.28.070, but the
16 prequalification standards and procedures under RCW 47.28.070 shall
17 always be sufficient.

18 The department of transportation shall comply with such goals and
19 rules as may be adopted by the office of minority and women's business
20 enterprises to implement chapter 39.19 RCW with respect to contracts
21 entered into under this chapter. The department may adopt such rules
22 as may be necessary to comply with the rules adopted by the office of
23 minority and women's business enterprises under chapter 39.19 RCW.

24 NEW SECTION. **Sec. 6.** The department shall develop a methodology
25 for giving public visibility to the cost service tradeoffs among
26 sailing schedules, crew schedules, crew costs, and operating costs with
27 a goal of enabling crew and passenger cost lowering suggestions to be
28 considered during each schedule development cycle. The methodology is
29 to be reported to the transportation committees of the legislature by
30 September 1, 2010.

31 NEW SECTION. **Sec. 7.** The governor shall consult with the affected
32 unions to conduct a comprehensive review of the current array of
33 bargaining units and contracts associated with the Washington ferry
34 service with a view to proposing any appropriate improvements which may
35 assure the long-term viability of a career workforce within a cost-
36 effective service.

1 NEW SECTION. **Sec. 8.** The sum of seven million three hundred
2 thousand dollars, or as much thereof as may be necessary, is
3 appropriated from the Puget Sound ferry operations account to the
4 department of transportation solely for the purposes of travel time
5 associated with Washington state ferries employees. The amounts
6 provided in this section are contingent upon the provision of data to
7 the legislature for a transparent analysis of travel pay policies.

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

12 NEW SECTION. **Sec. 10.** 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.

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