
SENATE BILL 5408

State of Washington 62nd Legislature 2011 Regular Session

By Senators King, Haugen, Becker, and Prentice

Read first time 01/24/11. Referred to Committee on Transportation.

1 AN ACT Relating to Washington state ferry system personnel and
2 projects; amending RCW 47.64.011, 47.64.210, 47.64.150, 41.58.060,
3 39.04.320, 4.92.090, and 51.12.100; reenacting and amending RCW
4 47.64.090 and 41.06.070; creating a new section; and repealing RCW
5 47.64.280.

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

7 **Sec. 1.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read
8 as follows:

9 As used in this chapter, unless the context otherwise requires, the
10 definitions in this section shall apply.

11 (1) "Collective bargaining representative" means the persons
12 designated by the governor and employee organizations to be the
13 exclusive representatives during collective bargaining negotiations.

14 (2) "Commission" means the (~~marine employees~~) public employment
15 relations commission created in RCW (~~(47.64.280)~~) 41.58.010.

16 (3) "Department of transportation" means the department as defined
17 in RCW 47.01.021.

18 (4) "Employer" means the state of Washington.

1 (5) "Ferry employee" means any employee of the marine
2 transportation division of the department of transportation who is a
3 member of a collective bargaining unit represented by a ferry employee
4 organization and does not include an exempt employee pursuant to RCW
5 41.06.079.

6 (6) "Ferry employee organization" means any labor organization
7 recognized to represent a collective bargaining unit of ferry
8 employees.

9 (7) "Lockout" means the refusal of the employer to furnish work to
10 ferry employees in an effort to get ferry employee organizations to
11 make concessions during collective bargaining, grievance, or other
12 labor relation negotiations. Curtailment of employment of ferry
13 employees due to lack of work resulting from a strike or work stoppage
14 shall not be considered a lockout.

15 (8) "Office of financial management" means the office as created in
16 RCW 43.41.050.

17 (9) "Strike or work stoppage" means a ferry employee's refusal, in
18 concerted action with others, to report to duty, or his or her willful
19 absence from his or her position, or his or her stoppage or slowdown of
20 work, or his or her abstinence in whole or in part from the full,
21 faithful, and proper performance of the duties of employment, for the
22 purpose of inducing, influencing, or coercing a change in conditions,
23 compensation, rights, privileges, or obligations of his, her, or any
24 other ferry employee's employment. A refusal, in good faith, to work
25 under conditions which pose an endangerment to the health and safety of
26 ferry employees or the public, as determined by the master of the
27 vessel, shall not be considered a strike for the purposes of this
28 chapter.

29 **Sec. 2.** RCW 47.64.210 and 2007 c 160 s 2 are each amended to read
30 as follows:

31 In the (~~absence of an impasse~~) event there is no agreement
32 between the parties (~~or the failure of either party to utilize its~~
33 ~~procedures~~) by August 1st in the even-numbered year preceding the
34 biennium, either party may request the commission to appoint an
35 impartial and disinterested person to act as mediator. It is the
36 function of the mediator to bring the parties together to effectuate a

1 settlement of the dispute, but the mediator shall not compel the
2 parties to agree.

3 **Sec. 3.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are
4 each reenacted and amended to read as follows:

5 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)
6 of this section, or as provided in RCW 36.54.130 and subsection (3) of
7 this section, if any party assumes the operation and maintenance of any
8 ferry or ferry system by rent, lease, or charter from the department of
9 transportation, such party shall assume and be bound by all the
10 provisions herein and any agreement or contract for such operation of
11 any ferry or ferry system entered into by the department shall provide
12 that the wages to be paid, hours of employment, working conditions, and
13 seniority rights of employees will be established by the ((marine
14 employees)) commission in accordance with the terms and provisions of
15 this chapter and it shall further provide that all labor disputes shall
16 be adjudicated in accordance with chapter 47.64 RCW.

17 (2) If a public transportation benefit area meeting the
18 requirements of RCW 36.57A.200 has voter approval to operate passenger-
19 only ferry service, it may enter into an agreement with Washington
20 State Ferries to rent, lease, or purchase passenger-only vessels,
21 related equipment, or terminal space for purposes of loading and
22 unloading the passenger-only ferry. Charges for the vessels,
23 equipment, and space must be fair market value taking into account the
24 public benefit derived from the ferry service. A benefit area or
25 subcontractor of that benefit area that qualifies under this subsection
26 is not subject to the restrictions of subsection (1) of this section,
27 but is subject to:

28 (a) The terms of those collective bargaining agreements that it or
29 its subcontractors negotiate with the exclusive bargaining
30 representatives of its or its subcontractors' employees under chapter
31 41.56 RCW or the National Labor Relations Act, as applicable;

32 (b) Unless otherwise prohibited by federal or state law, a
33 requirement that the benefit area and any contract with its
34 subcontractors, give preferential hiring to former employees of the
35 department of transportation who separated from employment with the
36 department because of termination of the ferry service by the state of
37 Washington; and

1 (c) Unless otherwise prohibited by federal or state law, a
2 requirement that the benefit area and any contract with its
3 subcontractors, on any questions concerning representation of employees
4 for collective bargaining purposes, may be determined by conducting a
5 cross-check comparing an employee organization's membership records or
6 bargaining authorization cards against the employment records of the
7 employer.

8 (3) If a ferry district is formed under RCW 36.54.110 to operate
9 passenger-only ferry service, it may enter into an agreement with
10 Washington State Ferries to rent, lease, or purchase vessels, related
11 equipment, or terminal space for purposes of loading and unloading the
12 ferry. Charges for the vessels, equipment, and space must be fair
13 market value taking into account the public benefit derived from the
14 ferry service. A ferry district or subcontractor of that district that
15 qualifies under this subsection is not subject to the restrictions of
16 subsection (1) of this section, but is subject to:

17 (a) The terms of those collective bargaining agreements that it or
18 its subcontractors negotiate with the exclusive bargaining
19 representatives of its or its subcontractors' employees under chapter
20 41.56 RCW or the National Labor Relations Act, as applicable;

21 (b) Unless otherwise prohibited by federal or state law, a
22 requirement that the ferry district and any contract with its
23 subcontractors, give preferential hiring to former employees of the
24 department of transportation who separated from employment with the
25 department because of termination of the ferry service by the state of
26 Washington; and

27 (c) Unless otherwise prohibited by federal or state law, a
28 requirement that the ferry district and any contract with its
29 subcontractors, on any questions concerning representation of employees
30 for collective bargaining purposes, may be determined by conducting a
31 cross-check comparing an employee organization's membership records or
32 bargaining authorization cards against the employment records of the
33 employer.

34 (4) The department of transportation shall make its terminal, dock,
35 and pier space available to private operators of passenger-only ferries
36 if the space can be made available without limiting the operation of
37 car ferries operated by the department. These private operators are
38 not bound by the provisions of subsection (1) of this section. Charges

1 for the equipment and space must be fair market value taking into
2 account the public benefit derived from the passenger-only ferry
3 service.

4 **Sec. 4.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read
5 as follows:

6 An agreement with a ferry employee organization that is the
7 exclusive representative of ferry employees in an appropriate unit may
8 provide procedures for the consideration of ferry employee grievances
9 and of disputes over the interpretation and application of agreements.
10 Negotiated procedures may provide for binding arbitration of ferry
11 employee grievances and of disputes over the interpretation and
12 application of existing agreements. An arbitrator's decision on a
13 grievance shall not change or amend the terms, conditions, or
14 applications of the collective bargaining agreement. The procedures
15 shall provide for the invoking of arbitration only (~~with the~~
16 ~~approval~~) by mutual agreement of the employee organization and
17 management. The costs of arbitrators shall be shared equally by the
18 parties.

19 Ferry system employees shall follow (~~either~~) the grievance
20 procedures provided in a collective bargaining agreement (~~, or if no~~
21 ~~such procedures are so provided, shall submit the grievances to the~~
22 ~~marine employees' commission as provided in RCW 47.64.280~~)).

23 **Sec. 5.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read
24 as follows:

25 For any matter concerning the state ferry system and employee
26 relations, collective bargaining, or labor disputes or stoppages, the
27 provisions of chapter 47.64 RCW and this chapter shall govern.
28 However, if a conflict exists between the provisions of chapter 47.64
29 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

30 **Sec. 6.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and 2010
31 c 1 s 1 are each reenacted and amended to read as follows:

- 32 (1) The provisions of this chapter do not apply to:
33 (a) The members of the legislature or to any employee of, or
34 position in, the legislative branch of the state government including

1 members, officers, and employees of the legislative council, joint
2 legislative audit and review committee, statute law committee, and any
3 interim committee of the legislature;

4 (b) The justices of the supreme court, judges of the court of
5 appeals, judges of the superior courts or of the inferior courts, or to
6 any employee of, or position in the judicial branch of state
7 government;

8 (c) Officers, academic personnel, and employees of technical
9 colleges;

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

11 (e) Elective officers of the state;

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

13 (g) In the departments of employment security and social and health
14 services, the director and the director's confidential secretary; in
15 all other departments, the executive head of which is an individual
16 appointed by the governor, the director, his or her confidential
17 secretary, and his or her statutory assistant directors;

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

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

22 (ii) If the members of the board, commission, or committee serve on
23 a part-time basis and there is a statutory executive officer: The
24 secretary of the board, commission, or committee; the chief executive
25 officer of the board, commission, or committee; and the confidential
26 secretary of the chief executive officer of the board, commission, or
27 committee;

28 (iii) If the members of the board, commission, or committee serve
29 on a full-time basis: The chief executive officer or administrative
30 officer as designated by the board, commission, or committee; and a
31 confidential secretary to the chair of the board, commission, or
32 committee;

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

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

38 (j) Assistant attorneys general;

1 (k) Commissioned and enlisted personnel in the military service of
2 the state;

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

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

8 (n) Officers and employees of the Washington state fruit
9 commission;

10 (o) Officers and employees of the Washington apple commission;

11 (p) Officers and employees of the Washington state dairy products
12 commission;

13 (q) Officers and employees of the Washington tree fruit research
14 commission;

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

16 (s) Officers and employees of the Washington grain commission;

17 (t) Officers and employees of any commission formed under chapter
18 15.66 RCW;

19 (u) Officers and employees of agricultural commissions formed under
20 chapter 15.65 RCW;

21 (v) Officers and employees of the nonprofit corporation formed
22 under chapter 67.40 RCW;

23 (w) Executive assistants for personnel administration and labor
24 relations in all state agencies employing such executive assistants
25 including but not limited to all departments, offices, commissions,
26 committees, boards, or other bodies subject to the provisions of this
27 chapter and this subsection shall prevail over any provision of law
28 inconsistent herewith unless specific exception is made in such law;

29 (x) In each agency with fifty or more employees: Deputy agency
30 heads, assistant directors or division directors, and not more than
31 three principal policy assistants who report directly to the agency
32 head or deputy agency heads;

33 (y) ~~((All employees of the marine employees' commission;~~
34 ~~(z)))~~ Staff employed by the department of commerce to administer
35 energy policy functions;

36 ~~((aa)))~~ (z) The manager of the energy facility site evaluation
37 council;

1 (~~(bb)~~) (aa) A maximum of ten staff employed by the department of
2 commerce to administer innovation and policy functions, including the
3 three principal policy assistants exempted under (x) of this
4 subsection;

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

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

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

29 (b) The governing board of each institution, and related boards,
30 may also exempt from this chapter classifications involving research
31 activities, counseling of students, extension or continuing education
32 activities, graphic arts or publications activities requiring
33 prescribed academic preparation or special training as determined by
34 the board: PROVIDED, That no nonacademic employee engaged in office,
35 clerical, maintenance, or food and trade services may be exempted by
36 the board under this provision;

37 (c) Printing craft employees in the department of printing at the
38 University of Washington.

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

22 The salary and fringe benefits of all positions presently or
23 hereafter exempted except for the chief executive officer of each
24 agency, full-time members of boards and commissions, administrative
25 assistants and confidential secretaries in the immediate office of an
26 elected state official, and the personnel listed in subsections (1)(j)
27 through (v) (~~and (y)~~) and (2) of this section, shall be determined by
28 the director of personnel. Changes to the classification plan
29 affecting exempt salaries must meet the same provisions for classified
30 salary increases resulting from adjustments to the classification plan
31 as outlined in RCW 41.06.152.

32 From February 18, 2009, through June 30, 2011, a salary or wage
33 increase shall not be granted to any position exempt from
34 classification under this chapter, except that a salary or wage
35 increase may be granted to employees pursuant to collective bargaining
36 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,
37 or negotiated by the nonprofit corporation formed under chapter 67.40

1 RCW, and except that increases may be granted for positions for which
2 the employer has demonstrated difficulty retaining qualified employees
3 if the following conditions are met:

4 (a) The salary increase can be paid within existing resources; and

5 (b) The salary increase will not adversely impact the provision of
6 client services.

7 Any agency granting a salary increase from February 15, 2010,
8 through June 30, 2011, to a position exempt from classification under
9 this chapter shall submit a report to the fiscal committees of the
10 legislature no later than July 31, 2011, detailing the positions for
11 which salary increases were granted, the size of the increases, and the
12 reasons for giving the increases.

13 Any person holding a classified position subject to the provisions
14 of this chapter shall, when and if such position is subsequently
15 exempted from the application of this chapter, be afforded the
16 following rights: If such person previously held permanent status in
17 another classified position, such person shall have a right of
18 reversion to the highest class of position previously held, or to a
19 position of similar nature and salary.

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

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

27 From February 15, 2010, until June 30, 2011, no monetary
28 performance-based awards or incentives may be granted by the director
29 or employers to employees covered by rules adopted under this section.
30 This subsection does not prohibit the payment of awards provided for in
31 chapter 41.60 RCW.

32 NEW SECTION. **Sec. 7.** (1) The marine employees' commission is
33 hereby abolished and its powers, duties, and functions are hereby
34 transferred to the public employment relations commission.

35 (2)(a) All reports, documents, surveys, books, records, files,
36 papers, or written material in the possession of the marine employees'
37 commission shall be delivered to the custody of the public employment

1 relations commission. All cabinets, furniture, office equipment, motor
2 vehicles, and other tangible property employed by the marine employees'
3 commission shall be made available to the public employment relations
4 commission. All funds, credits, or other assets held by the marine
5 employees' commission shall be assigned to the public employment
6 relations commission.

7 (b) If any question arises as to the transfer of any funds, books,
8 documents, records, papers, files, equipment, or other tangible
9 property used or held in the exercise of the powers and the performance
10 of the duties and functions transferred, the director of financial
11 management shall make a determination as to the proper allocation and
12 certify the same to the state agencies concerned.

13 (3) All rules and all pending business before the marine employees'
14 commission shall be continued and acted upon by the public employment
15 relations commission. All existing contracts and obligations shall
16 remain in full force and shall be performed by the public employment
17 relations commission.

18 (4) The transfer of the powers, duties, and functions of the marine
19 employees' commission shall not affect the validity of any act
20 performed before the effective date of this section.

21 (5) If apportionments of budgeted funds are required because of the
22 transfers directed by this section, the director of financial
23 management shall certify the apportionments to the agencies affected,
24 the state auditor, and the state treasurer. Each of these shall make
25 the appropriate transfer and adjustments in funds and appropriation
26 accounts and equipment records in accordance with the certification.

27 NEW SECTION. **Sec. 8.** RCW 47.64.280 (Marine employees' commission)
28 and 2010 c 283 s 14, 2006 c 164 s 18, 1984 c 287 s 95, & 1983 c 15 s 19
29 are each repealed.

30 **Sec. 9.** RCW 39.04.320 and 2009 c 197 s 1 are each amended to read
31 as follows:

32 (1)(a) Except as provided in (b) through (d) of this subsection,
33 from January 1, 2005, and thereafter, for all public works estimated to
34 cost one million dollars or more, all specifications shall require that
35 no less than fifteen percent of the labor hours be performed by
36 apprentices.

1 (b)(i) This section does not apply to contracts advertised for bid
2 before July 1, 2007, for any public works by the department of
3 transportation.

4 (ii) For contracts advertised for bid on or after July 1, 2007, and
5 before July 1, 2008, for all public works by the department of
6 transportation estimated to cost five million dollars or more, all
7 specifications shall require that no less than ten percent of the labor
8 hours be performed by apprentices.

9 (iii) For contracts advertised for bid on or after July 1, 2008,
10 and before July 1, 2009, for all public works by the department of
11 transportation estimated to cost three million dollars or more, all
12 specifications shall require that no less than twelve percent of the
13 labor hours be performed by apprentices.

14 (iv) For contracts advertised for bid on or after July 1, 2009, for
15 all public works by the department of transportation estimated to cost
16 two million dollars or more and for all public works by the Washington
17 state ferries estimated to cost six million dollars or more, all
18 specifications shall require that no less than fifteen percent of the
19 labor hours be performed by apprentices.

20 (c)(i) This section does not apply to contracts advertised for bid
21 before January 1, 2008, for any public works by a school district, or
22 to any project funded in whole or in part by bond issues approved
23 before July 1, 2007.

24 (ii) For contracts advertised for bid on or after January 1, 2008,
25 for all public works by a school district estimated to cost three
26 million dollars or more, all specifications shall require that no less
27 than ten percent of the labor hours be performed by apprentices.

28 (iii) For contracts advertised for bid on or after January 1, 2009,
29 for all public works by a school district estimated to cost two million
30 dollars or more, all specifications shall require that no less than
31 twelve percent of the labor hours be performed by apprentices.

32 (iv) For contracts advertised for bid on or after January 1, 2010,
33 for all public works by a school district estimated to cost one million
34 dollars or more, all specifications shall require that no less than
35 fifteen percent of the labor hours be performed by apprentices.

36 (d)(i) For contracts advertised for bid on or after January 1,
37 2010, for all public works by a four-year institution of higher

1 education estimated to cost three million dollars or more, all
2 specifications must require that no less than ten percent of the labor
3 hours be performed by apprentices.

4 (ii) For contracts advertised for bid on or after January 1, 2011,
5 for all public works by a four-year institution of higher education
6 estimated to cost two million dollars or more, all specifications must
7 require that no less than twelve percent of the labor hours be
8 performed by apprentices.

9 (iii) For contracts advertised for bid on or after January 1, 2012,
10 for all public works by a four-year institution of higher education
11 estimated to cost one million dollars or more, all specifications must
12 require that no less than fifteen percent of the labor hours be
13 performed by apprentices.

14 (2) Awarding entities may adjust the requirements of this section
15 for a specific project for the following reasons:

16 (a) The demonstrated lack of availability of apprentices in
17 specific geographic areas;

18 (b) A disproportionately high ratio of material costs to labor
19 hours, which does not make feasible the required minimum levels of
20 apprentice participation;

21 (c) Participating contractors have demonstrated a good faith effort
22 to comply with the requirements of RCW 39.04.300 and 39.04.310 and this
23 section; or

24 (d) Other criteria the awarding entity deems appropriate, which are
25 subject to review by the office of the governor.

26 (3) The secretary of the department of transportation shall adjust
27 the requirements of this section for a specific project for the
28 following reasons:

29 (a) The demonstrated lack of availability of apprentices in
30 specific geographic areas; or

31 (b) A disproportionately high ratio of material costs to labor
32 hours, which does not make feasible the required minimum levels of
33 apprentice participation.

34 (4) This section applies to public works contracts awarded by the
35 state, to public works contracts awarded by school districts, and to
36 public works contracts awarded by state four-year institutions of
37 higher education. However, this section does not apply to contracts

1 awarded by state agencies headed by a separately elected public
2 official.

3 (5)(a) The department of general administration must provide
4 information and technical assistance to affected agencies and collect
5 the following data from affected agencies for each project covered by
6 this section:

7 (i) The name of each apprentice and apprentice registration number;

8 (ii) The name of each project;

9 (iii) The dollar value of each project;

10 (iv) The date of the contractor's notice to proceed;

11 (v) The number of apprentices and labor hours worked by them,
12 categorized by trade or craft;

13 (vi) The number of journey level workers and labor hours worked by
14 them, categorized by trade or craft; and

15 (vii) The number, type, and rationale for the exceptions granted
16 under subsection (2) of this section.

17 (b) The department of labor and industries shall assist the
18 department of general administration in providing information and
19 technical assistance.

20 (6) The secretary of transportation shall establish an
21 apprenticeship utilization advisory committee, which shall include
22 statewide geographic representation and consist of equal numbers of
23 representatives of contractors and labor. The committee must include
24 at least one member representing contractor businesses with less than
25 thirty-five employees. The advisory committee shall meet regularly
26 with the secretary of transportation to discuss implementation of this
27 section by the department of transportation, including development of
28 the process to be used to adjust the requirements of this section for
29 a specific project. The committee shall provide a report to the
30 legislature by January 1, 2008, on the effects of the apprentice labor
31 requirement on transportation projects and on the availability of
32 apprentice labor and programs statewide.

33 (7) At the request of the senate labor, commerce, research and
34 development committee, the house of representatives commerce and labor
35 committee, or their successor committees, and the governor, the
36 department of general administration and the department of labor and
37 industries shall compile and summarize the agency data and provide a
38 joint report to both committees. The report shall include

1 recommendations on modifications or improvements to the apprentice
2 utilization program and information on skill shortages in each trade or
3 craft.

4 **Sec. 10.** RCW 4.92.090 and 1963 c 159 s 2 are each amended to read
5 as follows:

6 The state of Washington, whether acting in its governmental or
7 proprietary capacity, shall be liable for damages arising out of its
8 tortious conduct to the same extent as if it were a private person or
9 corporation, except for its tortious conduct that results in an injury,
10 illness, or death of a seaman that occurs or manifests itself during or
11 in the course of, or arises out of, employment with the state of
12 Washington. The exclusive remedy for such a claim is provided under
13 Title 51 RCW, and an action for such a claim may not be brought against
14 the state of Washington, its vessels, or its employees under the Jones
15 Act (46 U.S.C. Sec. 688), in admiralty, or under the general maritime
16 law.

17 **Sec. 11.** RCW 51.12.100 and 2008 c 70 s 1 are each amended to read
18 as follows:

19 (1) Except as otherwise provided in this section and RCW 4.92.090,
20 the provisions of this title shall not apply to a master or member of
21 a crew of any vessel, or to employers and workers for whom a right or
22 obligation exists under the maritime laws or federal employees'
23 compensation act for personal injuries or death of such workers.

24 (2) If an accurate segregation of payrolls of workers for whom such
25 a right or obligation exists under the maritime laws cannot be made by
26 the employer, the director is hereby authorized and directed to fix
27 from time to time a basis for the approximate segregation of the
28 payrolls of employees to cover the part of their work for which no
29 right or obligation exists under the maritime laws for injuries or
30 death occurring in such work, and the employer, if not a self-insurer,
31 shall pay premiums on that basis for the time such workers are engaged
32 in their work.

33 (3) Where two or more employers are simultaneously engaged in a
34 common enterprise at one and the same site or place in maritime
35 occupations under circumstances in which no right or obligation exists

1 under the maritime laws for personal injuries or death of such workers,
2 such site or place shall be deemed for the purposes of this title to be
3 the common plant of such employers.

4 (4) In the event payments are made both under this title and under
5 the maritime laws or federal employees' compensation act, such benefits
6 paid under this title shall be repaid by the worker or beneficiary.
7 For any claims made under the Jones Act, the employer is deemed a third
8 party, and the injured worker's cause of action is subject to RCW
9 51.24.030 through 51.24.120.

10 (5) Commercial divers harvesting geoduck clams under an agreement
11 made pursuant to RCW 79.135.210 and the employers of such divers shall
12 be subject to the provisions of this title whether or not such work is
13 performed from a vessel.

--- END ---