S-4400.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 6410**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Commerce & Labor (originally sponsored by Senators Hewitt and Warnick)

AN ACT Relating to requiring periodic certification elections for labor unions representing public employees; and amending RCW 41.56.060, 41.56.070, 41.80.070, 41.80.080, 28B.52.030, 41.76.020, 41.59.070, and 47.64.135.

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

**Sec.**  RCW 41.56.060 and 2005 c 232 s 1 are each amended to read as follows:

(1) The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission ((~~shall~~)) must determine the bargaining representative by((~~: (a) Examination of organization membership rolls; (b) comparison of signatures on organization bargaining authorization cards; or (c)~~)) conducting an election specifically therefor.

(2) For classified employees of school districts and educational service districts:

(a) Appropriate bargaining units existing on July 24, 2005, may not be divided into more than one unit without the agreement of the public employer and the certified bargaining representative of the unit; and

(b) In making bargaining unit determinations under this section, the commission must consider, in addition to the factors listed in subsection (1) of this section, the avoidance of excessive fragmentation.

**Sec.**  RCW 41.56.070 and 2012 c 117 s 83 are each amended to read as follows:

((~~In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and~~)) (1) Upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice ((~~for any public employee to designate that he or she does not desire to be represented by any bargaining agent~~)) of no union representation. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of ((~~a certification or~~)) an attempted certification or successful decertification. ((~~Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement.~~)) Any agreement ((~~which~~)) that contains a provision for automatic renewal or extension of the agreement ((~~shall not be~~)) is not a valid agreement; nor ((~~shall~~)) is any agreement ((~~be~~)) valid if it provides for a term of existence for more than three years, except that any agreement entered into between school districts, cities, counties, or municipal corporations, and their respective employees, may provide for a term of existence of up to six years.

(2) Once a bargaining representative has been certified by the commission to represent a bargaining unit, the commission must conduct periodic secret ballot elections for the members of the unit to determine the bargaining representative, subject to the following conditions:

(a) For the bargaining units of adult family home providers, family child care providers, individual providers, and language access providers, the commission must conduct an election to determine the bargaining representative during every other even-numbered year, beginning in 2018. For bargaining units of classified employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW, the commission must conduct an election to determine the bargaining representative during every other even-numbered year, beginning in 2018. For all other bargaining units covered by this chapter, the commission must conduct an election to determine the bargaining representative during every other odd-numbered year, beginning in 2017;

(b) The existing bargaining representative must be on the ballot automatically and a choice of no union representation must also be on the ballot automatically. Any other bargaining representative may appear on the ballot by providing the commission with proof of interest from at least ten percent of the bargaining unit;

(c) The commission must certify the bargaining representative that receives a majority of the votes cast by members of the bargaining unit. If a bargaining representative other than the incumbent exclusive bargaining representative is certified, the then existing collective bargaining agreement may be terminated by the new bargaining representative sixty days after its certification or, by agreement of the public employer, at any time. If a majority of votes cast by members of the bargaining unit are for no union representation, then the incumbent bargaining representative loses its certification and the agreement is deemed to be terminated at its expiration date or third anniversary date, whichever is sooner; and

(d) The commission has rule-making authority to provide for the regular timing and conduct of elections in accordance with this section.

**Sec.**  RCW 41.80.070 and 2002 c 354 s 308 are each amended to read as follows:

(1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, unless the unit does not meet the requirements of (a) and (b) of this subsection. The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. In determining the new units or modifications of existing units, the commission shall consider: The duties, skills, and working conditions of the employees; the history of collective bargaining; the extent of organization among the employees; the desires of the employees; and the avoidance of excessive fragmentation. However, a unit is not appropriate if it includes:

(a) Both supervisors and nonsupervisory employees. A unit that includes only supervisors may be considered appropriate if a majority of the supervisory employees indicates by vote that they desire to be included in such a unit; or

(b) More than one institution of higher education. For the purposes of this section, any branch or regional campus of an institution of higher education is part of that institution of higher education.

(2) ((~~The exclusive bargaining representatives certified to represent the bargaining units existing on June 13, 2002, shall continue as the exclusive bargaining representative without the necessity of an election.~~

~~(3)~~)) If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit.

**Sec.**  RCW 41.80.080 and 2002 c 354 s 309 are each amended to read as follows:

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

(a) Secret balloting;

(b) Consulting with employee organizations;

(c) Access to lists of employees, job classification, work locations, and home mailing addresses;

(d) Absentee voting;

(e) Procedures for the greatest possible participation in voting;

(f) Campaigning on the employer's property during working hours; and

(g) Election observers.

(2)(a) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit as provided in RCW 41.80.010(2)(a). However, if a master collective bargaining agreement is in effect for the exclusive bargaining representative, it shall apply to the bargaining unit for which the certification has been issued. Nothing in this section requires the parties to engage in new negotiations during the term of that agreement.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education.

(3) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if((~~:~~

~~(a)~~)) fewer than twelve months have elapsed since the last ((~~certification or election~~)) attempted certification or successful decertification((~~; or~~

~~(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract~~)).

(5) Once an employee organization has been certified by the commission as the exclusive bargaining representative of a bargaining unit, the commission must conduct periodic secret ballot elections for the members of the unit to determine the exclusive bargaining representative, subject to the following conditions:

(a) An election to determine the bargaining representative must be conducted during every other even-numbered year, beginning in 2018;

(b) The existing exclusive bargaining representative must be on the ballot automatically and a choice of no union representation must also be on the ballot automatically. Any other employee organization may appear on the ballot by providing the commission with proof of interest from at least ten percent of the bargaining unit; and

(c) The commission must certify as the exclusive bargaining representative the employee organization that receives a majority of the votes cast by members of the bargaining unit. If an employee organization other than the incumbent exclusive bargaining representative is certified, the then existing collective bargaining agreement may be terminated by the new exclusive bargaining representative sixty days after its certification or, by agreement of the employer, at any time. If a majority of votes cast by members of the bargaining unit are for no union representation, then the incumbent employee organization loses its certification as the exclusive bargaining representative and the agreement is deemed to be terminated at its expiration date or third anniversary date, whichever is sooner.

(d) The commission has rule-making authority to provide for the regular timing and conduct of elections in accordance with this section.

**Sec.**  RCW 28B.52.030 and 1991 c 238 s 147 are each amended to read as follows:

(1) Representatives of an employee organization, which organization ((~~shall~~)) has by secret ballot ((~~have~~)) won a majority in an election to represent the academic employees within its college district, ((~~shall have~~)) has the right to bargain as defined in RCW 28B.52.020(8).

(2) No question concerning representation may be raised within one year of an attempted certification or successful decertification.

(3) Once an employee organization has been certified by the commission as the exclusive bargaining representative of a bargaining unit, the commission must conduct periodic secret ballot elections for the members of the unit to determine the exclusive bargaining representative, subject to the following conditions:

(a) An election to determine the bargaining representative must be conducted during every other even-numbered year, beginning in 2018;

(b) The existing exclusive bargaining representative must be on the ballot automatically and a choice of no union representation must also be on the ballot automatically. Any other employee organization may appear on the ballot by providing the commission with proof of interest from at least ten percent of the bargaining unit;

(c) The commission must certify as the exclusive bargaining representative the employee organization that receives a majority of the votes cast by members of the bargaining unit. If an employee organization other than the incumbent exclusive bargaining representative is certified, the then existing collective bargaining agreement may be terminated by the new exclusive bargaining representative sixty days after its certification or, by agreement with the employer, at any time. If a majority of votes cast by members of the bargaining unit are for no union representation, then the incumbent employee organization loses its certification as the exclusive bargaining representative and the agreement is deemed to be terminated at its expiration date or third anniversary date, whichever is sooner; and

(d) The commission has rule-making authority to provide for the regular timing and conduct of elections in accordance with this section.

**Sec.**  RCW 41.76.020 and 2002 c 356 s 7 are each amended to read as follows:

The commission shall certify exclusive bargaining representatives in accordance with the procedures specified in this section.

(1) No question concerning representation may be raised ((~~within one year following issuance of a certification under this section.~~

~~(2) If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement: PROVIDED, That in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years,~~~~then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement; and if the exclusive bargaining representative is removed as the result of such procedure, the collective bargaining agreement shall be deemed to be terminated as of the date of the certification or the anniversary date following the filing of the petition, whichever is later.~~

~~(3)~~)) within one year following an attempted certification or successful decertification.

(2) An employee organization seeking certification as exclusive bargaining representative of a bargaining unit, or faculty members seeking decertification of their exclusive bargaining representative, must make a confidential showing to the commission of credible evidence demonstrating that at least thirty percent of the faculty in the bargaining unit are in support of the petition. The petition must indicate the name, address, and telephone number of any employee organization known to claim an interest in the bargaining unit.

((~~(4)~~)) (3) A petition filed by an employer must be supported by credible evidence demonstrating the good faith basis on which the employer claims the existence of a question concerning the representation of its faculty.

((~~(5)~~)) (4) Any employee organization ((~~which~~)) that makes a confidential showing to the commission of credible evidence demonstrating that it has the support of at least ten percent of the faculty in the bargaining unit involved is entitled to intervene in proceedings under this section and to have its name listed as a choice on the ballot in an election conducted by the commission.

((~~(6)~~)) (5) The commission shall determine any question concerning representation by conducting a secret ballot election among the faculty members in the bargaining unit((~~, except under the following circumstances:~~

~~(a) If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may, upon the concurrence of the employer and the employee organization, determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer; or~~

~~(b) If the commission determines that a serious unfair labor practice has been committed which interfered with the election process and precludes the holding of a fair election, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer~~)).

((~~(7)~~)) (6) The representation election ballot must contain a choice for each employee organization qualifying under subsection ((~~(3) or (5)~~)) (2) or (4) of this section, together with a choice for no union representation. The representation election shall be determined by the majority of the valid ballots cast. If there are three or more choices on the ballot and none of the three or more choices receives a majority of the valid ballots cast, a runoff election shall be conducted between the two choices receiving the highest and second highest numbers of votes.

((~~(8)~~)) (7) The commission shall certify as the exclusive bargaining representative the employee organization that has been determined to represent a majority of faculty members in a bargaining unit.

(8) Once an employee organization has been certified by the commission as the exclusive bargaining representative of a bargaining unit, the commission must conduct periodic secret ballot elections for the members of the unit to determine the exclusive bargaining representative, subject to the following conditions:

(a) An election to determine the bargaining representative must be conducted during every other even-numbered year, beginning in 2018;

(b) The existing exclusive bargaining representative must be on the ballot automatically and a choice of no union representation must also be on the ballot automatically. Any other employee organization may appear on the ballot by providing the commission with proof of interest from at least ten percent of the bargaining unit;

(c) The commission must certify as the exclusive bargaining representative the employee organization that receives a majority of the votes cast by members of the bargaining unit. If an employee organization other than the incumbent exclusive bargaining representative is certified, the then existing collective bargaining agreement may be terminated by the new exclusive bargaining representative sixty days after its certification or, by agreement with the employer, at any time. If a majority of votes cast by members of the bargaining unit are for no union representation, then the incumbent employee organization loses its certification as the exclusive bargaining representative and the agreement is deemed to be terminated at its expiration date or third anniversary date, whichever is sooner; and

(d) The commission has rule-making authority to provide for the regular timing and conduct of elections in accordance with this section.

**Sec.**  RCW 41.59.070 and 1975 1st ex.s. c 288 s 8 are each amended to read as follows:

(1) Any employee organization may file a request with the commission for recognition as the exclusive representative. Such request shall allege that a majority of the employees in an appropriate collective bargaining unit wish to be represented for the purpose of collective bargaining by such organization, shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate, shall be supported by credible evidence demonstrating that at least thirty percent of the employees in the appropriate unit desire the organization requesting recognition as their exclusive representative, and shall indicate the name, address, and telephone number of any other interested employee organization, if known to the requesting organization.

(2) The commission ((~~shall~~)) must determine the exclusive representative by conducting an election by secret ballot((~~, except under the following circumstances:~~

~~(a) In instances where a serious unfair labor practice has been committed which interfered with the election process and precluded the holding of a fair election, the commission shall determine the exclusive bargaining representative by an examination of organization membership rolls or a comparison of signatures on organization bargaining authorization cards.~~

~~(b) In instances where there is then in effect a lawful written collective bargaining agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained unless it shall be filed within the time limits prescribed in subsection (3) of this section for decertification or a new recognition election.~~

~~(c) In instances where within the previous twelve months another employee organization has been lawfully recognized or certified as the exclusive bargaining representative of any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained.~~

~~(d) In instances where the commission has within the previous twelve months conducted a secret ballot election involving any employees included in the unit described in the request for recognition in which a majority of the valid ballots cast chose not to be represented by any employee organization, the request for recognition shall not be entertained~~)).

(3) Whenever the commission conducts an election to ascertain the exclusive bargaining representative, the ballot shall contain the name of the proposed bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the educational employees within the unit, together with a choice ((~~for any educational employee to designate that he or she does not desire to be represented by any bargaining agent~~)) of no union representation. Where more than one organization is on the ballot and neither of the three or more choices receives a majority of the valid ballots cast by the educational employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which receive the largest and second largest number of votes. No question concerning representation may be raised within one year of ((~~a certification or~~)) an attempted certification or successful decertification. ((~~Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years; and if the exclusive bargaining representative is removed as a result of such procedure, the then existing collective bargaining agreement shall be terminable by the new exclusive bargaining representative so selected within sixty days after its certification or terminated on its expiration date, whichever is sooner, or if no exclusive bargaining representative is so selected, then the agreement shall be deemed to be terminated at its expiration date or as of such third anniversary date, whichever is sooner.~~

~~(4) Within the time limits prescribed in subsection (3) of this section, a petition may be filed signed by at least thirty percent of the employees of a collective bargaining unit, then represented by an exclusive bargaining representative, alleging that a majority of the employees in that unit do not wish to be represented by an employee organization, requesting that the exclusive bargaining representative be decertified, and indicating the name, address and telephone number of the exclusive bargaining representative and any other interested employee organization, if known. Upon the verification of the signatures on the petition, the commission shall conduct an election by secret ballot as prescribed by subsection (3) of this section.~~))

(4) Once an employee organization has been certified by the commission as the exclusive bargaining representative of a collective bargaining unit, the commission must conduct periodic secret ballot elections for the members of the unit to determine the exclusive bargaining representative, subject to the following conditions:

(a) An election to determine the bargaining representative must be conducted during every other even-numbered year, beginning in 2018;

(b) The existing exclusive bargaining representative must be on the ballot automatically and a choice of no union representation must also be on the ballot automatically. Any other employee organization may appear on the ballot by providing the commission with proof of interest from at least ten percent of the bargaining unit;

(c) The commission must certify as the exclusive bargaining representative the employee organization that receives a majority of the votes cast by members of the bargaining unit. If an employee organization other than the incumbent exclusive bargaining representative is certified, the then existing collective bargaining agreement may be terminated by the new exclusive bargaining representative sixty days after its certification or, by agreement with the employer, at any time. If a majority of votes cast by members of the bargaining unit are for no union representation, then the incumbent employee organization loses its certification as the exclusive bargaining representative and the agreement is deemed to be terminated at its expiration date or third anniversary date, whichever is sooner; and

(d) The commission has rule-making authority to provide for the regular timing and conduct of elections in accordance with this section.

**Sec.**  RCW 47.64.135 and 2011 1st sp.s. c 16 s 27 are each amended to read as follows:

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

(a) Secret balloting;

(b) Consulting with employee organizations;

(c) Access to lists of employees, job classification, work locations, and home mailing addresses;

(d) Absentee voting;

(e) Procedures for the greatest possible participation in voting;

(f) Campaigning on the employer's property during working hours; and

(g) Election observers.

(2) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit.

(3) The certified exclusive bargaining representative is responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised ((~~if:~~

~~(a) Fewer than twelve months have elapsed since the last certification or election; or~~

~~(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days and no less than ninety calendar days before the expiration of the contract~~)) within one year of an attempted certification or successful decertification.

(5) Once a ferry employee organization has been certified by the commission as the collective bargaining representative of a collective bargaining unit, the commission must conduct periodic secret ballot elections for the members of the unit to determine the collective bargaining representative, subject to the following conditions:

(a) An election to determine the collective bargaining representative must be conducted during every other even-numbered year, beginning in 2018;

(b) The existing collective bargaining representative must be on the ballot automatically and a choice of no union representation must also be on the ballot automatically. Any other ferry employee organization may appear on the ballot by providing the commission with proof of interest from at least ten percent of the bargaining unit;

(c) The commission must certify as the collective bargaining representative the ferry employee organization that receives a majority of the votes cast by members of the bargaining unit. If a ferry employee organization other than the incumbent collective bargaining representative is certified, the then existing collective bargaining agreement may be terminated by the new exclusive bargaining representative sixty days after its certification or, by agreement with the employer, at any time. If a majority of votes cast by members of the bargaining unit are for no union representation, then the incumbent employee organization loses its certification as the exclusive bargaining representative and the agreement is deemed to be terminated at its expiration date or third anniversary date, whichever is sooner; and

(d) The commission has rule-making authority to provide for the regular timing and conduct of elections in accordance with this section.

**--- END ---**