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SENATE BILL 5885

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Conway, Keiser, Hasegawa, and Chase

Read first time 02/09/15. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to enhancing the safety of employees working for  
2 western state hospital and eastern state hospital through collective  
3 bargaining and binding interest arbitration; amending RCW 41.80.020;  
4 and adding new sections to chapter 41.56 RCW.

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

6            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 41.56  
7 RCW to read as follows:

8            (1) In addition to the entities listed in RCW 41.56.020, this  
9 chapter applies to the state with respect to employees working for  
10 western state hospital and eastern state hospital.

11            (2) This chapter governs the collective bargaining relationship  
12 between the state and employees working for western state hospital  
13 and eastern state hospital, except as follows:

14            (a) The state shall be represented by the governor or the  
15 governor's designee who is appointed under chapter 41.80 RCW, and  
16 costs of the negotiations under this section shall be reimbursed as  
17 provided in RCW 41.80.140.

18            (b)(i) The following bargaining units of employees working for  
19 western state hospital and eastern state hospital shall be considered  
20 appropriate units under this chapter as of the effective date of this

1 section, but there may be proceedings concerning certification and  
2 unit clarification under this chapter thereafter:

3 (A) All nonsupervisory classified employees of the state working  
4 for western state hospital in the psychiatric treatment and recovery  
5 center, the habilitative mental health unit, and at eastern state  
6 hospital in the adult psychiatric unit, forensic services unit, and  
7 geropsychiatric unit, excluding persons exempt from the coverage of  
8 chapter 41.06 RCW, employees in the Washington management service,  
9 confidential employees, supervisors, institutions employees in  
10 historically excluded groups that have not been modified by  
11 subsequent orders of the public employment relations commission, and  
12 all other employees of the state;

13 (B) All supervisory classified employees of the state working for  
14 western state hospital in the psychiatric treatment and recovery  
15 center, the habilitative mental health unit, and at eastern state  
16 hospital in the adult psychiatric unit, forensic services unit, and  
17 geropsychiatric unit, excluding persons exempt from the coverage of  
18 chapter 41.06 RCW, employees in the Washington management services,  
19 confidential employees, nonsupervisory employees, institutions  
20 employees in historically excluded groups that have not been modified  
21 by subsequent orders, and all other employees of the state.

22 (ii) This act does not preclude either party from seeking to  
23 clarify the scope of any bargaining unit pursuant to RCW 41.56.060.

24 (c) The exclusive bargaining representatives recognized under  
25 chapter 41.80 RCW as representing the bargaining units of employees  
26 working for western state hospital and eastern state hospital shall  
27 be the exclusive bargaining representatives recognized under this  
28 chapter as representing the bargaining units of employees working for  
29 western state hospital and eastern state hospital without the  
30 necessity of an election as of the effective date of this section,  
31 but there may be proceedings concerning representation under this  
32 chapter thereafter.

33 (d) If an exclusive bargaining representative represents more  
34 than one bargaining unit, the exclusive bargaining representative  
35 shall negotiate with the governor or the governor's designee one  
36 master collective bargaining agreement on behalf of all the employees  
37 in bargaining units that the exclusive bargaining representative  
38 represents.

39 (e) Notwithstanding the definition of "collective bargaining" in  
40 RCW 41.56.030(4), the scope of collective bargaining for employees

1 working for western state hospital and eastern state hospital: (i)  
2 Includes terms and conditions of employment relevant to employee  
3 safety, such as staffing levels with a direct relationship to  
4 employee workload and safety; (ii) excludes matters pertaining to  
5 management rights established in RCW 41.80.040, such as the  
6 employer's budget, the size of the agency workforce, and the right to  
7 direct and supervise employees; and (iii) is otherwise the same as  
8 the scope of collective bargaining described in RCW 41.80.020.

9 (f) The governor or the governor's designee and one coalition of  
10 all the exclusive bargaining representatives subject to this section  
11 and chapter 41.80 RCW shall conduct negotiations regarding the number  
12 of names to be certified for vacancies, promotional preferences, and  
13 the dollar amount expended on behalf of each employee for health care  
14 benefits as described in RCW 41.80.020.

15 (3) The governor or the governor's designee shall periodically  
16 consult with the joint committee on employment relations created in  
17 RCW 41.80.010(5) regarding appropriations necessary to implement the  
18 compensation and fringe benefit provisions in a collective bargaining  
19 agreement and, upon completion of negotiations, advise the committee  
20 on the elements of the agreement and on any legislation necessary to  
21 implement the agreement.

22 (4) The governor shall submit a request for funds necessary to  
23 implement the compensation and fringe benefit provisions in the  
24 collective bargaining agreement or for legislation necessary to  
25 implement the agreement. Requests for funds necessary to implement  
26 the compensation and fringe benefit provisions of bargaining  
27 agreements shall not be submitted to the legislature by the governor  
28 unless such requests:

29 (a) Have been submitted to the director of financial management  
30 by October 1st before the legislative session at which the requests  
31 are to be considered; and

32 (b) Have been certified by the director of financial management  
33 as being feasible financially for the state or reflects the decision  
34 of an arbitration panel reached under section 2 of this act.

35 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56  
36 RCW to read as follows:

37 In addition to the classes of employees listed in RCW  
38 41.56.030(13), the provisions of RCW 41.56.430 through 41.56.452 and  
39 41.56.470, 41.56.480, and 41.56.490 also apply to the employees of

1 the state working for western state hospital and eastern state  
2 hospital as provided in this section, subject to the following:

3 (1) Within ten working days after the first Monday in September  
4 of every odd-numbered year, the governor or the governor's designee  
5 and the bargaining representative for the appropriate bargaining unit  
6 shall attempt to agree on an interest arbitration panel consisting of  
7 three members to be used if the parties are not successful in  
8 negotiating a comprehensive collective bargaining agreement. Each  
9 party shall name one person to serve as its arbitrator on the  
10 arbitration panel. The two members so appointed shall meet within  
11 seven days following the appointment of the later appointed member to  
12 attempt to choose a third member to act as the neutral chair of the  
13 arbitration panel. Upon the failure of the arbitrators to select a  
14 neutral chair within seven days, the two appointed members shall use  
15 one of the two following options in the appointment of the third  
16 member, who shall act as chair of the panel: (a) By mutual consent,  
17 the two appointed members may jointly request the commission to, and  
18 the commission shall, appoint a third member within two days of such  
19 a request. Costs of each party's appointee shall be borne by each  
20 party respectively; other costs of the arbitration proceedings shall  
21 be borne by the commission; or (b) either party may apply to the  
22 commission, the federal mediation and conciliation service, or the  
23 American arbitration association to provide a list of five qualified  
24 arbitrators from which the neutral chair shall be chosen. Each party  
25 shall pay the fees and expenses of its arbitrator, and the fees and  
26 expenses of the neutral chair shall be shared equally between the  
27 parties. Immediately upon selecting an interest arbitration panel,  
28 the parties shall cooperate to reserve dates with the arbitration  
29 panel for potential arbitration between August 1st and September 15th  
30 of the following even-numbered year. The parties shall also prepare a  
31 schedule of at least five negotiation dates for the following year,  
32 absent an agreement to the contrary. The parties shall execute a  
33 written agreement before November 1st of each odd-numbered year  
34 setting forth the names of the members of the arbitration panel and  
35 the dates reserved for bargaining and arbitration. This subsection  
36 imposes minimum obligations only and is not intended to define or  
37 limit a party's full, good faith bargaining obligation under other  
38 sections of this chapter.

39 (2) The mediator or arbitration panel may consider only matters  
40 that are subject to bargaining under section 1(2)(e)(i) of this act,

1 and may not consider matters that are subject to bargaining under  
2 section 1(2)(e)(iii) of this act, the number of names to be certified  
3 for vacancies, promotional preferences, and the dollar amount  
4 expended on behalf of each employee for health care benefits.

5 (3) The decision of an arbitration panel is not binding on the  
6 legislature and, if the legislature does not approve the funds  
7 necessary to implement the compensation and fringe benefit provisions  
8 in an arbitrated collective bargaining agreement, is not binding on  
9 the state or western state hospital and eastern state hospital.

10 (4) In making its determination, the arbitration panel shall be  
11 mindful of the legislative purpose enumerated in RCW 41.56.430 and,  
12 as additional standards or guidelines to aid it in reaching a  
13 decision, shall take into consideration the following factors:

14 (a) The financial ability of the department to pay for the  
15 provisions of a collective bargaining agreement;

16 (b) The constitutional and statutory authority of the employer;

17 (c) Stipulations of the parties;

18 (d) Comparison of the terms and conditions of employment relevant  
19 to employee safety of personnel involved in the proceedings with the  
20 terms and conditions of employment relevant to employee safety of  
21 like personnel of like employers of similar size on the west coast of  
22 the United States;

23 (e) Changes in any of the factors listed in this subsection  
24 during the pendency of the proceedings; and

25 (f) Such other factors, not confined to those listed in this  
26 subsection, which are normally or traditionally taken into  
27 consideration in the determination of matters that are subject to  
28 bargaining under section 1(2)(e)(i) of this act and mediation or  
29 arbitration under this section.

30 **Sec. 3.** RCW 41.80.020 and 2013 2nd sp.s. c 4 s 972 are each  
31 amended to read as follows:

32 (1) Except as otherwise provided in this chapter, the matters  
33 subject to bargaining include wages, hours, and other terms and  
34 conditions of employment, and the negotiation of any question arising  
35 under a collective bargaining agreement.

36 (2) The employer is not required to bargain over matters  
37 pertaining to:

38 (a) Health care benefits or other employee insurance benefits,  
39 except as required in subsection (3) of this section;

1 (b) Any retirement system or retirement benefit; or

2 (c) Rules of the human resources director, the director of  
3 enterprise services, or the Washington personnel resources board  
4 adopted under RCW 41.06.157.

5 (3) Matters subject to bargaining include the number of names to  
6 be certified for vacancies, promotional preferences, and the dollar  
7 amount expended on behalf of each employee for health care benefits.  
8 However, except as provided otherwise in this subsection for  
9 institutions of higher education, negotiations regarding the number  
10 of names to be certified for vacancies, promotional preferences, and  
11 the dollar amount expended on behalf of each employee for health care  
12 benefits shall be conducted between the employer and one coalition of  
13 all the exclusive bargaining representatives subject to this chapter  
14 and all the exclusive bargaining representatives subject to section 1  
15 of this act. The exclusive bargaining representatives for employees  
16 that are subject to chapter 47.64 RCW shall bargain the dollar amount  
17 expended on behalf of each employee for health care benefits with the  
18 employer as part of the coalition under this subsection. Any such  
19 provision agreed to by the employer and the coalition shall be  
20 included in all master collective bargaining agreements negotiated by  
21 the parties. For institutions of higher education, promotional  
22 preferences and the number of names to be certified for vacancies  
23 shall be bargained under the provisions of RCW 41.80.010(4). For  
24 agreements covering the 2013-2015 fiscal biennium, any agreement  
25 between the employer and the coalition regarding the dollar amount  
26 expended on behalf of each employee for health care benefits is a  
27 separate agreement and shall not be included in the master collective  
28 bargaining agreements negotiated by the parties.

29 (4) The employer and the exclusive bargaining representative  
30 shall not agree to any proposal that would prevent the implementation  
31 of approved affirmative action plans or that would be inconsistent  
32 with the comparable worth agreement that provided the basis for the  
33 salary changes implemented beginning with the 1983-1985 biennium to  
34 achieve comparable worth.

35 (5) The employer and the exclusive bargaining representative  
36 shall not bargain over matters pertaining to management rights  
37 established in RCW 41.80.040.

38 (6) Except as otherwise provided in this chapter, if a conflict  
39 exists between an executive order, administrative rule, or agency  
40 policy relating to wages, hours, and terms and conditions of

1 employment and a collective bargaining agreement negotiated under  
2 this chapter, the collective bargaining agreement shall prevail. A  
3 provision of a collective bargaining agreement that conflicts with  
4 the terms of a statute is invalid and unenforceable.

5 (7) This section does not prohibit bargaining that affects  
6 contracts authorized by RCW 41.06.142.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.56  
8 RCW to read as follows:

9 (1) Collective bargaining negotiations between the state and  
10 bargaining units of employees working for western state hospital and  
11 eastern state hospital under this chapter shall commence no later  
12 than August 1, 2015. A collective bargaining agreement between the  
13 state and any bargaining unit of employees working for western state  
14 hospital and eastern state hospital entered into under this chapter  
15 shall not be effective prior to August 1, 2016.

16 (2) Any collective bargaining agreement between the state and any  
17 bargaining unit of employees working for western state hospital and  
18 eastern state hospital entered into under chapter 41.80 RCW before  
19 August 1, 2015, that expires after August 1, 2015, shall, unless a  
20 superseding agreement complying with this chapter is negotiated by  
21 the parties, remain in full force during its duration, but the  
22 agreement may not be renewed or extended beyond August 1, 2016, or  
23 until superseded by a collective bargaining agreement entered into  
24 under this chapter, whichever is later.

25 (3) The duration of any collective bargaining agreement between  
26 the state and bargaining units of employees working for western state  
27 hospital and eastern state hospital under this chapter shall not  
28 exceed one fiscal biennium.

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