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**SUBSTITUTE HOUSE BILL 1042**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Blake, Griffey, Sells, Eslick, Lovick, Irwin, Appleton, Pellicciotti, Riccelli, Kirby, Kilduff, Caldier, Ryu, Chapman, Tharinger, Stonier, Sullivan, Fitzgibbon, Wylie, Bergquist, Doglio, Pollet, Stanford, Frame, and Leavitt)

AN ACT Relating to granting interest arbitration to department of corrections employees; amending RCW 41.80.005 and 41.80.010; and adding new sections to chapter 41.80 RCW.

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

**Sec.**  RCW 41.80.005 and 2011 1st sp.s. c 43 s 444 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any agency as defined in RCW 41.06.020 and covered by chapter 41.06 RCW.

(2) "Collective bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to the subjects of bargaining specified under RCW 41.80.020. The obligation to bargain does not compel either party to agree to a proposal or to make a concession, except as otherwise provided in this chapter.

(3) "Commission" means the public employment relations commission.

(4) "Confidential employee" means an employee who, in the regular course of his or her duties, assists in a confidential capacity persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies, or who assists or aids a manager. "Confidential employee" also includes employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(5) "Director" means the director of the public employment relations commission.

(6) "Employee" means any employee, including employees whose work has ceased in connection with the pursuit of lawful activities protected by this chapter, covered by chapter 41.06 RCW, except:

(a) Employees covered for collective bargaining by chapter 41.56 RCW;

(b) Confidential employees;

(c) Members of the Washington management service;

(d) Internal auditors in any agency; or

(e) Any employee of the commission, the office of financial management, or the office of risk management within the department of enterprise services.

(7) "Employee organization" means any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers.

(8) "Employer" means the state of Washington.

(9) "Exclusive bargaining representative" means any employee organization that has been certified under this chapter as the representative of the employees in an appropriate bargaining unit.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.

(12) "Manager" means "manager" as defined in RCW 41.06.022.

(13) "Supervisor" means an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances, or effectively to recommend such action, if the exercise of the authority is not of a merely routine nature but requires the consistent exercise of individual judgment. However, no employee who is a member of the Washington management service may be included in a collective bargaining unit established under this section.

(14) "Unfair labor practice" means any unfair labor practice listed in RCW 41.80.110.

(15) "Department of corrections employees" means employees covered by chapter 41.06 RCW working for the department of corrections, except confidential employees, members of the Washington management service, and internal auditors.

**Sec.**  RCW 41.80.010 and 2017 3rd sp.s. c 23 s 3 are each amended to read as follows:

(1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state or reflects the decision of an arbitration panel reached under section 5 of this act.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) In the case of bargaining agreements reached between institutions of higher education other than the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(iii) of this subsection.

(ii) In the case of bargaining agreements reached between the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of a bargaining agreement, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in this subsection (4)(c)(ii) and as provided in (c)(iii) of this subsection.

(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(iii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

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

(6) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(7) For the 2013‑2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee shall be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013‑2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating appropriations act by the sitting legislature.

(8)(a) For the 2015-2017 fiscal biennium, the governor may request funds to implement:

(i) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the service employees international union healthcare 1199nw, an exclusive bargaining representative, that was necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees.

(ii) Unilaterally implemented modifications to collective bargaining agreements, resulting from the employer being prohibited from negotiating with an exclusive bargaining representative due to a pending representation petition, necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees.

(iii) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the union of physicians of Washington, an exclusive bargaining representative, that was necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees. If the memorandum of understanding submitted to the legislature as part of the governor's budget document is rejected by the legislature, and the parties reach a new memorandum of understanding by June 30, 2016, within the funds, conditions, and limitations provided in section 204, chapter 36, Laws of 2016 sp. sess., the new memorandum of understanding shall be considered approved by the legislature and may be retroactive to December 1, 2015.

(iv) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the teamsters union local 117, an exclusive bargaining representative, for salary adjustments for the state employee job classifications of psychiatrist, psychiatric social worker, and psychologist.

(b) For the 2015-2017 fiscal biennium, the legislature may act upon the request for funds for modifications to a 2015-2017 collective bargaining agreement under (a)(i), (ii), (iii), and (iv) of this subsection if funds are requested by the governor before final legislative action on the supplemental omnibus appropriations act by the sitting legislature.

(c) The request for funding made under this subsection and any action by the legislature taken pursuant to this subsection is limited to the modifications described in this subsection and may not otherwise affect the original terms of the 2015-2017 collective bargaining agreement.

(d) Subsection (3)(a) and (b) of this section do not apply to requests for funding made pursuant to this subsection.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

The intent and purpose of sections 4 through 10 of this act is to recognize that there exists a public policy in the state of Washington against strikes as a means of settling labor disputes; that the uninterrupted and dedicated service of department of corrections employees is vital to the welfare and public safety of the state of Washington; and to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

Negotiations between the employer and the exclusive bargaining representative of a unit of department of corrections employees shall be commenced at least five months before the submission of the budget to the legislature. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who must promptly meet with the representatives of the parties, either jointly or separately, and take such other steps as the mediator deems appropriate in order to persuade the parties to resolve their differences and effect an agreement. A mediator does not have a power of compulsion. The mediator may consider only matters that are subject to bargaining under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

(1)(a) Within ten working days after the first Monday in September of every odd-numbered year, the state's bargaining representative and the exclusive bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel:

(i) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or

(ii) Either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen.

(b) Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair must be shared equally between the parties.

(2) Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(3) If the parties are not successful in negotiating a comprehensive collective bargaining agreement, a hearing shall be held. The hearing must be informal and each party must have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings must be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held under this section, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel must be concluded within twenty-five days following the selection or designation of the neutral chair of the arbitration panel, unless the parties agree to a longer period.

(4) The neutral chair shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chair must make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof must be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute.

(5) Except as provided in this subsection, the written determination is final and binding upon both parties.

(a) The written determination is subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

(b) The written determination is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefits of an arbitrated collective bargaining agreement, is not binding on the state.

(6) The arbitration panel may consider only matters that are subject to bargaining under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

An interest arbitration panel created under section 5 of this act, in the performance of its duties under this chapter, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

In making its determination, the panel must be mindful of the legislative purpose enumerated in section 3 of this act and, as additional standards or guidelines to aid it in reaching a decision, must take into consideration the following factors:

(1) The financial ability of the department of corrections to pay for the compensation and benefit provisions of a collective bargaining agreement;

(2) The constitutional and statutory authority of the employer;

(3) Stipulations of the parties;

(4) Comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like state government employers of similar size in the western United States;

(5) The ability of the department of corrections to retain employees;

(6) The overall compensation presently received by department of corrections employees, including direct wage compensation, vacations, holidays, and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received;

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

(8) Such other factors that are normally or traditionally taken into consideration in the determination of matters subject to bargaining under RCW 41.80.020(1).

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

During the pendency of the proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to the party's rights or position under sections 4 through 10 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

(1) If the representative of either or both the department of corrections employees and the employer refuses to submit to the procedures set forth in sections 4 and 5 of this act, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and the court shall have jurisdiction to issue an appropriate order. A failure to obey the order may be punished by the court as a contempt thereof.

(2) Except as provided in this subsection, a decision of the arbitration panel is final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel, or the commission in the superior court for the county where the dispute arose.

(a) The written determination is subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

(b) The written determination is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefits of an arbitrated collective bargaining agreement, is not binding on the state.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

The right of department of corrections employees to engage in any strike, work slowdown, or stoppage is not granted. An employee organization recognized as the exclusive bargaining representative of department of corrections employees subject to this chapter that willfully disobeys a lawful order of enforcement by a superior court under this section and section 9 of this act, or willfully offers resistance to an order, whether by strike or otherwise, is in contempt of court as provided in chapter 7.21 RCW. An employer that willfully disobeys a lawful order of enforcement by a superior court under section 9 of this act or willfully offers resistance to such order is in contempt of court as provided in chapter 7.21 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 41.80 RCW to read as follows:

(1) By January 1, 2020, the public employment relations commission shall review the appropriateness of the bargaining units that consist of or include department of corrections employees and exist on the effective date of this section. If the commission determines that an existing bargaining unit is not appropriate under RCW 41.80.070, the commission may modify the unit.

(2) The exclusive bargaining representatives certified to represent the bargaining units that consist of or include department of corrections employees and exist on the effective date of this section shall continue as the exclusive bargaining representative without the necessity of an election as of the effective date of this section. However, there may be proceedings concerning representation under this chapter thereafter.

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