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**SUBSTITUTE SENATE BILL 5055**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Nguyen, Saldaña, Billig, Darneille, Das, Hunt, Keiser, Kuderer, Liias, Lovelett, Nobles, Stanford, and Wilson, C.)

AN ACT Relating to establishing a statewide roster for arbitrating law enforcement personnel disciplinary grievances and publishing their decisions; amending RCW 41.56.122, 41.56.125, 41.56.905, 36.65.050, 41.80.020, and 41.80.030; reenacting and amending RCW 41.56.030; and adding a new section to chapter 41.58 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 41.58 RCW to read as follows:

(1) For the purposes of this section, the definitions in this subsection have the meanings given them.

(a) "Employer" means a political subdivision or law enforcement agency employing law enforcement personnel.

(b)(i) "Law enforcement personnel" means:

(A) Any individual employed, hired, or otherwise commissioned to enforce criminal laws by any municipal, county, or state agency or department, or combination thereof, that has, as its primary function, the enforcement of criminal laws in general, rather than the implementation or enforcement of laws related to specialized subject matter areas. For the purposes of this subsection (1)(b), officers employed, hired, or otherwise commissioned by the department of fish and wildlife are considered law enforcement personnel.

(B) Corrections officers and community corrections officers employed by the department of corrections.

(ii) "Law enforcement personnel" does not include any individual hired as an attorney to prosecute or litigate state or local criminal laws or ordinances, nor any civilian individuals hired to do administrative work.

(iii) For the purposes of this subsection (1)(b), "primary function" means that function to which the greater allocation of resources is made.

(c) "Disciplinary grievance" means a dispute or disagreement regarding any disciplinary action, discharge, or termination decision arising under a collective bargaining agreement covering law enforcement personnel.

(d) "Grievance arbitration" means binding arbitration of a disciplinary grievance under the grievance procedures established in a collective bargaining agreement covering law enforcement personnel.

(2)(a) The arbitrator selection procedure established under this section applies to all grievance arbitrations for disciplinary actions, discharges, or terminations of law enforcement personnel which are heard on or after January 1, 2022.

(b)(i) The grievance procedures for all collective bargaining agreements covering law enforcement personnel negotiated or renewed on or after January 1, 2022, must include the arbitrator selection procedure established in this section if the collective bargaining agreement provides for arbitration as a means of resolving grievances for disciplinary actions, discharges, or terminations.

(ii) The provisions of grievance procedures governing the appeal of disciplinary grievances in collective bargaining agreements covering law enforcement personnel negotiated or renewed prior to January 1, 2022, that provide for arbitration but do not contain the arbitrator selection procedures established in this section expire upon the expiration date of the collective bargaining agreement and may not be extended or rolled over beyond the expiration date of the collective bargaining agreement.

(c) This section does not require any party to a collective bargaining agreement in existence on the effective date of this section to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this act unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(3) All fees charged by arbitrators under this section must be in accordance with a schedule of fees established by the commission on an annual basis. The parties are responsible for paying the arbitrator's fees as set forth in the parties' negotiated fee-sharing provisions of their collective bargaining agreement or, in the absence of contractual fee-sharing provisions, shall be borne equally by the parties.

(4) The commission must appoint a roster of a minimum of nine persons and a maximum of 18 persons suited and qualified by training and experience to act as arbitrators for law enforcement personnel grievance arbitrations under this section.

(a) The commission may only consider appointing persons who possess:

(i) A minimum of six years' experience as a full-time labor relations advocate and who has been the principal representative of either labor or management in at least 10 arbitration proceedings;

(ii) A minimum of six years' experience as a full-time labor mediator with substantial mediation experience;

(iii) A minimum of six years' experience as an arbitrator and who has decided at least 10 cases involving collective bargaining disputes; or

(iv) A minimum of six years' experience as a practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration.

(b) In making these appointments, and as applicable, the commission must consider these factors:

(i) A candidate's familiarity, experience, and technical and theoretical understanding of and experience with labor law, the grievance process, and the field of labor arbitration;

(ii) A candidate's ability and willingness to travel through the state, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties;

(iii) A candidate's experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and

(iv) A candidate's familiarity and experience with the law enforcement profession, including ride-alongs with on-duty officers, participation in a citizen's academy conducted by a law enforcement agency, or other activities that provide exposure to the environments, choices, and judgments required by officers in the field.

(5) The appointments are effective immediately upon selection by the commission. Except for appointments subject to subsection (6) of this section, appointments are for three years to expire on the first Monday in January.

(6) The commission must make at least three of the initial appointments to the roster of arbitrators for terms to expire on the first Monday in January 2024, at least three of the appointments for terms to expire on the first Monday in January 2025, and at least three of the appointments for terms to expire on the first Monday in January 2026. The initial terms of arbitrators appointed under this subsection may be for longer than three years.

(7) Subsequent appointments to the roster of arbitrators must be for three-year terms to expire on the first Monday in January, with the terms of no more than three arbitrators to expire in the same year.

(8) Nothing in this section prevents roster arbitrators from issuing decisions, or retaining jurisdiction to address issues relating to remedy, after the expiration of their term, if the arbitration hearing occurred during the term of their appointment.

(9) An arbitrator may be reappointed to the roster upon expiration of the arbitrator's term. If the arbitrator is not reappointed, the arbitrator may continue to serve until a successor is appointed, but in no case later than July 1st of the year in which the arbitrator's term expires.

(10) The commission may remove an arbitrator from the roster through a majority vote. A vacancy on the roster caused by a removal, a resignation, or another reason must be filled by the commission as necessary to fill the remainder of the arbitrator's term. A vacancy on the roster occurring with less than six months remaining in the arbitrator's term must be filled for the existing term and the following three-year term.

(11) A person appointed to the arbitrator roster under this section must complete training as developed, implemented, and required by the executive director. The commission may adopt rules establishing training requirements consistent with this section. The commission may also establish fees in order to cover the costs of developing and providing the training. At a minimum, an initial training must include:

(a) At least six hours on the topics of cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and

(b) At least six hours on topics related to the daily experience of law enforcement personnel, which may include ride-alongs with on-duty officers, participation in a citizen's academy conducted by a law enforcement agency, shoot/don't shoot training provided by a law enforcement agency, or other activities that provide exposure to the environments, choices, and judgments required of officers in the field. For the purposes of this subsection (11)(b), "shoot/don't shoot training" means an interactive firearms training that simulates real-world scenarios to train law enforcement personnel on the use of force.

(12) An arbitrator appointed to the roster of arbitrators must complete the required initial training within six months of the arbitrator's appointment.

(13)(a) The executive director must assign an arbitrator or panel of arbitrators from the roster to each law enforcement personnel grievance arbitration under this section on rotation through the roster alphabetically ordered by last name.

(i) If the arbitrator is unable to hear the case within three months from the request for an arbitrator, the executive director must appoint the next arbitrator from the roster alphabetically.

(ii) If an arbitrator has a conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality, the arbitrator must disclose such conflict to the executive director. The executive director may determine whether the conflict merits assigning the next arbitrator on the roster. Either party may petition the executive director to have an assigned arbitrator removed due to a conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality. If their petition is granted by the executive director, the executive director must assign the next arbitrator or panel of arbitrators on the roster.

(b) The arbitrator or panel of arbitrators shall decide the disciplinary grievance, and the decision is binding subject to the provisions of chapter 7.04A RCW.

(c) The parties may not participate in, negotiate for, or agree to the selection of an arbitrator or arbitration panel under this section. Employers and law enforcement personnel, through their certified exclusive bargaining representatives, do not have the right to negotiate for or agree to a collective bargaining agreement or a grievance arbitration selection procedure that is inconsistent with this section, if the collective bargaining agreement provides for arbitration as a means of resolving grievances for disciplinary actions, discharges, or terminations.

(14) The commission must post law enforcement grievance arbitration decisions made under this section on its website within 30 days of the date the grievance arbitration decision is made, with names of grievants and witnesses redacted.

(15) The arbitrator selection procedure for law enforcement grievance arbitrations established under this section supersedes any inconsistent provisions in any other chapter governing employee relations and collective bargaining for law enforcement personnel.

**Sec.**  RCW 41.56.122 and 2019 c 230 s 11 are each amended to read as follows:

((~~A~~)) Subject to section 1 of this act, a collective bargaining agreement may provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

**Sec.**  RCW 41.56.125 and 1975 1st ex.s. 296 s 23 are each amended to read as follows:

((~~In~~)) Except for law enforcement personnel grievance arbitrations subject to section 1 of this act, in addition to any other method for selecting arbitrators, the parties may request the public employment relations commission to, and the commission shall, appoint a qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between such public employer and such bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator shall conduct such arbitration of such dispute in a manner as provided for in the collective bargaining agreement: PROVIDED, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: PROVIDED FURTHER, That the provisions of chapter 49.08 RCW shall have no application to this chapter.

**Sec.**  RCW 41.56.905 and 1983 c 287 s 5 are each amended to read as follows:

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015 and section 1 of this act, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

**Sec.**  RCW 36.65.050 and 1984 c 91 s 5 are each amended to read as follows:

((~~If~~)) Subject to the requirements of RCW 41.56.100 and section 1 of this act, if the city-county government includes a fire protection or law enforcement unit that was, prior to the formation of the city-county, governed by a state statute providing for binding arbitration in collective bargaining, then the entire fire protection or law enforcement unit of the city-county shall be governed by that statute.

**Sec.**  RCW 41.80.020 and 2015 3rd sp.s. c 1 s 318 are each amended to read as follows:

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

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

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

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of financial management, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013‑2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

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

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

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

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

(8) Section 1 of this act applies to uniformed personnel.

**Sec.**  RCW 41.56.030 and 2020 c 298 s 1 and 2020 c 289 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(2) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(3) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures, subject to section 1 of this act, and collective negotiations on personnel matters, including wages, hours, and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

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

(6) "Executive director" means the executive director of the commission.

(7) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) under chapter 43.216 RCW, is either licensed by the state or is exempt from licensing.

(8) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010 who ranks below lieutenant and includes officers, detectives, and sergeants of the department of fish and wildlife.

(9) "Individual provider" means an individual provider as defined in RCW 74.39A.240(3) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(10) "Institution 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)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services, whether paid by a broker, language access agency, or the respective department:

(i) For department of social and health services appointments, department of children, youth, and families appointments, medicaid enrollee appointments, or who provided these services on or after January 1, 2011, and before June 10, 2012;

(ii) For department of labor and industries authorized medical and vocational providers who provided these services on or after January 1, 2019; or

(iii) For state agencies who provided these services on or after January 1, 2019.

(b) "Language access provider" does not mean a manager or employee of a broker or a language access agency.

(12) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(13) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(14) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, in a correctional facility created under RCW 70.48.095, or in a detention facility created under chapter 13.40 RCW that is located in a county with a population over one million five hundred thousand, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer; or (i) court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order.

**Sec.**  RCW 41.80.030 and 2002 c 354 s 304 are each amended to read as follows:

(1) The parties to a collective bargaining agreement shall reduce the agreement to writing and both shall execute it.

(2) ((~~A~~)) Except as provided in section 1 of this act and RCW 41.80.020, a collective bargaining agreement shall contain provisions that:

(a) Provide for a grievance procedure that culminates with final and binding arbitration of all disputes arising over the interpretation or application of the collective bargaining agreement and that is valid and enforceable under its terms when entered into in accordance with this chapter; and

(b) Require processing of disciplinary actions or terminations of employment of employees covered by the collective bargaining agreement entirely under the procedures of the collective bargaining agreement. Any employee, when fully reinstated, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, and retirement and federal old age, survivors, and disability insurance act credits, but without back pay for any period of suspension.

(3)(a) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same bargaining units, the effective date of the collective bargaining agreement may be the day after the termination of the previous collective bargaining agreement, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date.

(b) If a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and the exclusive bargaining representative representing different bargaining units, the effective date of the collective bargaining agreement may be the day after the termination date of whichever previous collective bargaining agreement covering one or more of the units terminated first, and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with that effective date.

**--- END ---**