S-3980.2

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**SUBSTITUTE SENATE BILL 5773**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Stanford, Keiser, Conway, Das, Dhingra, Frockt, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Mullet, Nguyen, Nobles, Randall, Saldaña, Van De Wege, and C. Wilson)

AN ACT Relating to extending collective bargaining rights to employees of the legislative branch of state government; amending RCW 41.80.005, 41.80.010, 41.80.007, and 41.80.140; and adding new sections to chapter 41.80 RCW.

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

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

(1) In addition to the agencies defined in RCW 41.80.005 and except as otherwise provided, this chapter applies to all employees of the legislative branch of state government, including employees of the joint legislative audit and review committee, the statute law committee, the legislative ethics board, the legislative evaluation and accountability program committee, the office of the state actuary, the legislative service center, the office of legislative support services, the joint transportation committee, and the redistricting commission.

(2) This chapter does not apply to:

(a) Elected or appointed members of the legislature;

(b) The chief clerk, deputy chief clerk, secretary of the senate, and deputy secretary of the senate;

(c) Directors and assistant directors of legislative staff work groups, and administrators, directors, and members of committees, boards, and commissions;

(d) Caucus chiefs of staff and caucus deputy chiefs of staff;

(e)(i)(A) Counsel for the house of representatives and the senate that provide direct legal advice to the administration of the house of representatives and the senate, respectively; and

(B) The speaker's attorney and leadership counsel to the minority caucus of the house of representatives.

(ii) This subsection (2)(e) does not include staff counsel for senate committee services, the office of program research, or the caucuses;

(f) Commissioners of the Washington state redistricting commission; and

(g) Employees hired on a temporary or seasonal basis, except for legislative and committee assistants, session aides, and security personnel, temporarily hired by the house of representatives or the senate for the legislative session.

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

(1) Except as otherwise provided in this chapter, the matters subject to bargaining for legislative branch employees under section 1 of this act 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 any matters relating to retirement benefits, health care benefits, or other employee insurance benefits.

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

(4) Except as otherwise provided in this chapter, if a conflict exists between policies adopted by the legislature, 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, resolution, or concurrent resolution is invalid and unenforceable.

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

For the purpose of negotiating agreements with the exclusive bargaining representative of employees of the legislative branch, as described in section 1 of this act, the secretary of the senate, the chief clerk of the house of representatives, the senate facilities and operations committee, the house executive rules committee, and, if applicable, the administrators or the directors of the joint legislative audit and review committee, the statute law committee, the legislative ethics board, the legislative evaluation and accountability program committee, the office of the state actuary, the legislative service center, the office of legislative support services, the joint transportation committee, and the redistricting commission, shall coordinate with each other to:

(1) Select a negotiator or negotiators to negotiate on behalf of the legislative branch;

(2) Create a streamlined process for approving negotiated collective bargaining agreements on behalf of the legislative branch; and

(3) Create procedures consistent with section 4 of this act for timely submitting requests for funding to the appropriate legislative committees if appropriations are necessary to implement provisions of the collective bargaining agreements.

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

(1) If appropriations are necessary to implement the compensation and fringe benefit provisions of a collective bargaining agreement reached between the legislative branch and exclusive bargaining representatives of legislative branch employees, the senate, the house of representatives, and the legislative entities specified in section 1 of this act shall submit a request for funds to the appropriate legislative committees according to procedures established as required under section 3 of this act and set forth in this section. Requests for funds necessary to implement the provisions of collective bargaining agreements entered into under section 1 of this act shall not be submitted unless such agreements have been finalized by October 1st prior to the regular legislative session in which the funds are requested.

(2) The legislature shall approve or reject the submission of the request for funds as a whole. 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.

(3) 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, all parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(4) After the expiration date of a collective bargaining agreement negotiated under section 1 of this act, 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 legislative branch employer may unilaterally implement according to law.

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

(1) Collective bargaining negotiations under section 1 of this act must commence no later than July 1st of each even-numbered year.

(2) Except as provided in subsection (3) of this section, the duration of any collective bargaining agreement under section 1 of this act shall not exceed one fiscal biennium.

(3) Collective bargaining negotiations under section 1 of this act shall commence no earlier than June 1, 2023. No collective bargaining agreement entered into under section 1 of this act may take effect prior to July 1, 2024. Any collective bargaining agreement that takes effect after July 1, 2024, but prior to July 1, 2025, must expire no later than July 1, 2025.

**Sec.**  RCW 41.80.005 and 2021 c 180 s 1 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. "Agency" also includes the assistant attorneys general of the attorney general's office and the administrative law judges of the office of administrative hearings, regardless of whether those employees are exempt under chapter 41.06 RCW. The employees of the legislative branch of state government, as described in section 1 of this act, are considered an "agency" for the sole purpose of collective bargaining, regardless of their exemption under 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.

(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. "Employee" includes assistant attorneys general of the office of the attorney general and administrative law judges of the office of administrative hearings, regardless of their exemption under chapter 41.06 RCW. "Employee" also includes employees of the legislative branch, as described in section 1 of this act, regardless of their exemption under chapter 41.06 RCW. "Employee" does not include:

(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) "Uniformed personnel" means duly sworn police officers employed as members of a police force established pursuant to RCW 28B.10.550.

**Sec.**  RCW 41.80.010 and 2021 c 334 s 968 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 and except as provided for in section 3 of this act for employees of the legislative branch.

(2)(a)(i) Except as otherwise provided, 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.

(ii) 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. Exclusive bargaining representatives that represent employees covered under chapter 41.06 RCW and exclusive bargaining representatives that represent employees exempt under chapter 41.06 RCW shall constitute separate coalitions and must negotiate separate master collective bargaining agreements. This subsection does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection 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. This subsection also does not apply to exclusive bargaining representatives who represent employees of the legislative branch, as described in section 1 of this act.

(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.

(d) For assistant attorneys general, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement.

(3)(a) 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)~~)) (i) 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)~~)) (ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

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.

(b) This subsection does not apply to the employees of the legislative branch, as described in section 1 of this act.

(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)(a) For the 2019-2021 fiscal biennium, the legislature may approve funding for a collective bargaining agreement negotiated by a higher education institution and the Washington federation of state employees and ratified by the exclusive bargaining representative before final legislative action on the omnibus appropriations act by the sitting legislature.

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

(8)(a) For the 2021-2023 fiscal biennium, the legislature may approve funding for a collective bargaining agreement negotiated by the governor or governor's designee and the Washington public employees association community college coalition and the general government agencies and ratified by the exclusive bargaining representative before final legislative action on the omnibus appropriations act by the sitting legislature.

(b) For the 2021-2023 fiscal biennium, the legislature may approve funding for a collective bargaining agreement negotiated between Highline Community College and the Washington public employees association and ratified by the exclusive bargaining representative before final legislative action on the omnibus appropriations act by the sitting legislature.

(c) Subsection (3)(a)(i) and ((~~(b)~~)) (ii) of this section does not apply to requests for funding made pursuant to this subsection.

**Sec.**  RCW 41.80.007 and 2017 3rd sp.s. c 23 s 2 are each amended to read as follows:

(1) A joint committee on employment relations is established, composed of the following members:

(a) Two members with leadership positions in the house of representatives, representing each of the two largest caucuses;

(b) The chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses;

(c) Two members with leadership positions in the senate, representing each of the two largest caucuses;

(d) The chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses; and

(e) One nonvoting member, appointed by the governor, representing the office of financial management.

(2) The committee shall elect a chairperson and a vice chairperson.

(3) The governor or a designee shall convene meetings of the committee. The committee must meet at least six times, generally every two months, for the purpose of consulting with the governor or the governor's designee and institutions of higher education on matters related to collective bargaining with state employees conducted under the authority of this chapter and chapters 41.56, 47.64, and 74.39A RCW, but not collective bargaining with employees of the legislative branch. The governor or the governor's designee or the institution of higher education may not share internal bargaining notes.

(4) In years when master collective bargaining agreements are negotiated, the committee must meet prior to the start of bargaining to identify goals and objectives for public employee collective bargaining that the governor may take into consideration during negotiations.

(5) One meeting must be convened following the governor's budget submittal to the legislature to consult with the committee regarding the appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements and to advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) The committee shall, by a majority of the members, adopt rules to govern its conduct as may be necessary or appropriate, including reasonable procedures for calling and conducting meetings of the committee, ensuring reasonable advance notice of each meeting, and providing for the right of the public to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and confidential information used or to be used in collective bargaining, including the specific details of bargaining proposals.

(7) The committee may, by a majority of the members, meet more or less frequently. A quorum of the joint committee is not required for the meeting to take place. Meetings may take place by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes presence in person at a meeting.

**Sec.**  RCW 41.80.140 and 2016 sp.s. c 36 s 924 are each amended to read as follows:

(1) The office of financial management's labor relations service account is created in the custody of the state treasurer to be used as a revolving fund for the payment of labor relations services required for the negotiation of the collective bargaining agreements entered into under this chapter. An amount not to exceed one-tenth of one percent of the approved allotments of salaries and wages for all bargaining unit positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education and employees of the legislative branch as specified in section 1 of this act, shall be charged to the operations appropriations of each agency and credited to the office of financial management's labor relations service account as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time. Payment for services rendered under this chapter shall be made on a quarterly basis to the state treasurer and deposited into the office of financial management's labor relations service account.

(2) Moneys from the office of financial management's labor relations service account shall be disbursed by the state treasurer by warrants on vouchers authorized by the director of financial management or the director's designee. An appropriation is not required.

(3) During the 2015-2017 fiscal biennium, the legislature may transfer moneys from the office of financial management's labor relations service account to the state general fund such amounts as reflect the excess fund balance of the account.

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