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SENATE BILL 5405

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Haugen, King, Sheldon, Fain, Hargrove, Becker, Prentice, Shin, and Tom

Read first time 01/24/11. Referred to Committee on Transportation.

1 AN ACT Relating to promoting efficiency in the Washington state  
2 ferry system through personnel and administration reforms; amending RCW  
3 47.64.120, 47.64.170, 47.64.011, 47.64.210, 47.64.150, and 41.58.060;  
4 reenacting and amending RCW 47.64.090 and 41.06.070; adding a new  
5 section to chapter 47.64 RCW; creating new sections; repealing RCW  
6 47.64.080, 47.64.200, 47.64.230, 47.64.280, 47.64.300, 47.64.310,  
7 47.64.320, and 47.64.330; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the Washington  
10 state ferry system is a critical component of the state's highway  
11 system. The current system is financially unsustainable and the  
12 legislature intends for this act to provide guidance for efficiently  
13 managing scarce resources. The legislature recognizes that labor is  
14 one of the main cost drivers for operating the system and it is time to  
15 take on the difficult task of controlling labor costs. Furthermore,  
16 the legislature finds that ferry system management must play a strong  
17 role in improving the system and controlling costs, and this act is  
18 intended to provide the tools necessary for management to be held  
19 accountable for the performance of the system. Finally, this act

1 intends to reign in abuses that have been brought to light and to give  
2 clear guidance so that the relationship between employees and  
3 management can move from an adversarial one to one where the focus is  
4 on improving efficiencies, customer service, and working cohesively.

5 **Sec. 2.** RCW 47.64.120 and 2010 c 283 s 10 are each amended to read  
6 as follows:

7 (1) Except as otherwise provided in this chapter, the employer and  
8 ferry system employee organizations, through their collective  
9 bargaining representatives, shall meet at reasonable times to negotiate  
10 in good faith with respect to wages, hours, (~~working conditions,~~) and  
11 insurance, and other matters mutually agreed upon. Employer funded  
12 retirement benefits shall be provided under the public employees'  
13 retirement system under chapter 41.40 RCW and shall not be included in  
14 the scope of collective bargaining. Except as provided under RCW  
15 47.64.270, the employer is not required to bargain over health care  
16 benefits. Any retirement system or retirement benefits shall not be  
17 subject to collective bargaining.

18 (2) (~~Upon ratification of bargaining agreements, ferry employees  
19 are entitled to an amount equivalent to the interest earned on  
20 retroactive compensation increases. For purposes of this section, the  
21 interest earned on retroactive compensation increases is the same  
22 monthly rate of interest that was earned on the amount of the  
23 compensation increases while held in the state treasury. The interest  
24 will be computed for each employee until the date the retroactive  
25 compensation is paid, and must be allocated in accordance with  
26 appropriation authority. The interest earned on retroactive  
27 compensation is not considered part of the ongoing compensation  
28 obligation of the state and is not compensation earnable for the  
29 purposes of chapter 41.40 RCW. Negotiations shall also include  
30 grievance procedures for resolving any questions arising under the  
31 agreement, which shall be embodied in a written agreement and signed by  
32 the parties.~~

33 ~~(3))~~ An agreement may not contain provisions that allow:

34 (a) Overtime, standby, call out, holiday, or any other pay to be  
35 paid at a rate greater than time and one-half base pay;

36 (b) Rounding of regular time, overtime, compensatory time, or any  
37 other time at greater than six minute increments;

1 (c) Compensatory time to be earned at a rate greater than time and  
2 one-half;

3 (d) Exchange time to be earned at a rate greater than straight  
4 time;

5 (e) Entitlement to any type of compensation or penalty for other  
6 than work performed;

7 (f) A guaranteed minimum shift period;

8 (g) Minimum call back time or pay at a rate greater than three  
9 hours;

10 (h) Penalty pay;

11 (i) Provisions for parking or parking fees; or

12 (j) Free passage on Washington state ferry vessels for employees or  
13 their families unless passage is for an active employee during that  
14 employee's work shift for work purposes.

15 (3) Effective January 1, 2013, an employee may not have a  
16 compensatory time balance greater than two hundred forty hours. If an  
17 employee's compensatory time balance is above two hundred forty hours  
18 on the employee's employment anniversary date, the hours above two  
19 hundred forty hours must be extinguished. An employee may not receive  
20 monetary reimbursement for compensatory time.

21 (4) The department shall not provide for and an agreement may not  
22 contain provisions that allow the following at a rate greater than what  
23 employees who are subject to chapter 41.80 RCW receive:

24 (a) Annual vacation leave, sick leave, or personal holiday leave  
25 accruals;

26 (b) Accruals of other types of leave not mentioned in this  
27 subsection;

28 (c) Number of compensated holidays;

29 (d) Travel time pay for commuting to and from work;

30 (e) Compensation for meals; or

31 (f) Provisions for take-home vehicles.

32 (5) The employer shall make decisions regarding working conditions  
33 to best suit the operational needs of the state and may not bargain its  
34 own decision or the effects of a decision for any working condition  
35 other than shift bidding, scheduling leave time, and grievance  
36 procedures, provided that the grievance procedures do not expand the  
37 scope of grievances beyond the interpretation and application of terms  
38 permissible under this chapter. The employer shall not bargain over

1 rights of management which, in addition to all powers, duties, and  
2 rights established by constitutional provision or statute, must  
3 include, but not be limited to, the following:

4 (a) Assigning employees to work stations, vessels, or terminals;

5 (b) Directing promotions;

6 (c) Directing who will be laid off in the event of a layoff action,  
7 bumping rights, or layoff options;

8 (d) Directing staffing levels; or

9 (e) Providing for training.

10 (6) A collective bargaining agreement may not contain any provision  
11 that extends the term of an existing collective bargaining agreement or  
12 applicability of items incompatible with this section in an existing  
13 collective bargaining agreement.

14 (7) Except as otherwise provided in this chapter, if a conflict  
15 exists between an executive order, administrative rule, or agency  
16 policy relating to wages((7)) or hours((7, and terms and conditions of  
17 employment)) and a collective bargaining agreement negotiated under  
18 this chapter, the collective bargaining agreement shall prevail. A  
19 provision of a collective bargaining agreement that conflicts with the  
20 terms of a statute is invalid and unenforceable.

21 **Sec. 3.** RCW 47.64.170 and 2010 c 283 s 11 are each amended to read  
22 as follows:

23 (1) Any ferry employee organization certified as the bargaining  
24 representative shall be the exclusive representative of all ferry  
25 employees in the bargaining unit and shall represent all such employees  
26 fairly.

27 (2) A ferry employee organization or organizations and the governor  
28 may each designate any individual as its representative to engage in  
29 collective bargaining negotiations.

30 (3) Negotiating sessions, including strategy meetings of the  
31 employer or employee organizations, and mediation((, and the  
32 deliberative process of arbitrators)) are exempt from the provisions of  
33 chapter 42.30 RCW. ((Hearings conducted by arbitrators may be open to  
34 the public by mutual consent of the parties.))

35 (4) Terms of any collective bargaining agreement may be enforced by  
36 civil action in Thurston county superior court upon the initiative of  
37 either party.

1 (5) Ferry system employees or any employee organization shall not  
2 negotiate or attempt to negotiate directly with anyone other than the  
3 person who has been appointed or authorized a bargaining representative  
4 for the purpose of bargaining with the ferry employees or their  
5 representative.

6 ~~(6)(a) ((Within ten working days after the first Monday in  
7 September of every odd-numbered year, the parties shall attempt to  
8 agree on an interest arbitrator to be used if the parties are not  
9 successful in negotiating a comprehensive collective bargaining  
10 agreement. If the parties cannot agree on an arbitrator within the  
11 ten-day period, either party may request a list of seven arbitrators  
12 from the federal mediation and conciliation service. The parties shall  
13 select an interest arbitrator using the coin toss/alternate strike  
14 method within thirty calendar days of receipt of the list. Immediately  
15 upon selecting an interest arbitrator, the parties shall cooperate to  
16 reserve dates with the arbitrator for potential arbitration between  
17 August 1st and September 15th of the following even-numbered year. The  
18 parties shall also prepare a schedule of at least five negotiation  
19 dates for the following year, absent an agreement to the contrary. The  
20 parties shall execute a written agreement before November 1st of each  
21 odd-numbered year setting forth the name of the arbitrator and the  
22 dates reserved for bargaining and arbitration. This subsection (6)(a)  
23 imposes minimum obligations only and is not intended to define or limit  
24 a party's full, good faith bargaining obligation under other sections  
25 of this chapter.~~

26 ~~(b))~~ The negotiation of a proposed collective bargaining agreement  
27 by representatives of the employer and a ferry employee organization  
28 shall commence on or about February 1st of every even-numbered year.

29 ~~((e))~~ (b) For negotiations covering the 2009-2011 biennium and  
30 subsequent biennia, the time periods specified in this section~~((7))~~ and  
31 ~~((in))~~ RCW 47.64.210 ~~((and 47.64.300 through 47.64.320,))~~ must ensure  
32 conclusion of all agreements on or before October 1st of the even-  
33 numbered year next preceding the biennial budget period during which  
34 the agreement should take effect. These time periods may only be  
35 altered by mutual agreement of the parties in writing. Any such  
36 agreement ~~((and any impasse procedures agreed to by the parties under  
37 RCW 47.64.200))~~ must include an agreement regarding the new time

1 periods that will allow final resolution by negotiations (~~or~~  
2 ~~arbitration~~)) by October 1st of each even-numbered year.

3 (7) It is the intent of this section that the collective bargaining  
4 agreement (~~or arbitrator's award~~) shall commence on July 1st of each  
5 odd-numbered year and shall terminate on June 30th of the next odd-  
6 numbered year to coincide with the ensuing biennial budget year, as  
7 defined by RCW 43.88.020(7), to the extent practical. It is further  
8 the intent of this section that all collective bargaining agreements be  
9 concluded by October 1st of the even-numbered year before the  
10 commencement of the biennial budget year during which the agreements  
11 are to be in effect. After the expiration date of a collective  
12 bargaining agreement negotiated under this chapter, all of the terms  
13 and conditions specified in the collective bargaining agreement remain  
14 in effect until the effective date of a subsequently negotiated  
15 agreement, not to exceed one year from the expiration date stated in  
16 the agreement. Thereafter, the employer may unilaterally implement  
17 according to law.

18 (8) The office of financial management shall conduct a salary  
19 survey, for use in collective bargaining (~~and arbitration~~), which  
20 must be conducted through a contract with a firm nationally recognized  
21 in the field of human resources management consulting.

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

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

32 (ii) Have been certified by the director of the office of financial  
33 management as being feasible financially for the state.

34 (~~(b) (The governor shall submit a request either for funds~~  
35 ~~necessary to implement the arbitration awards or for legislation~~  
36 ~~necessary to implement the arbitration awards, or both. Requests for~~  
37 ~~funds necessary to implement the arbitration awards shall not be~~  
38 ~~submitted to the legislature by the governor unless such requests:~~

1 ~~(i) Have been submitted to the director of the office of financial~~  
2 ~~management by October 1st before the legislative session at which the~~  
3 ~~requests are to be considered; and~~

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

6 ~~(e))~~ The legislature shall approve or reject the submission of the  
7 request for funds necessary to implement the collective bargaining  
8 agreements (~~(or arbitration awards)~~) as a whole for each agreement (~~(or~~  
9 ~~award)~~). The legislature shall not consider a request for funds to  
10 implement a collective bargaining agreement (~~(or arbitration award)~~)  
11 unless the request is transmitted to the legislature as part of the  
12 governor's budget document submitted under RCW 43.88.030 and 43.88.060.  
13 If the legislature rejects or fails to act on the submission, either  
14 party may reopen all or part of the agreement and award or the  
15 exclusive bargaining representative may seek to implement the  
16 procedures provided for in RCW 47.64.210 (~~(and 47.64.300)~~).

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

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.64 RCW  
24 to read as follows:

25 (1) Effective January 1, 2012, all captains of Washington state  
26 ferry vessels are subject to RCW 41.06.500 and may not be included in  
27 a collective bargaining unit. Salary increases for captains must be  
28 directly related to the performance of their responsibilities.

29 (2) The captain, also known as the master of a vessel or the  
30 commanding officer, is the ultimate authority on and has responsibility  
31 for the entire vessel. The captain's responsibilities include, but are  
32 not limited to:

33 (a) Ensuring the safe navigation of the vessel and its crew and  
34 passengers;

35 (b) Following all applicable federal, state, and agency policies  
36 and regulations;

1 (c) Supervising crew in performance, operations, training,  
2 security, and environmental protection; and

3 (d) Overseeing all aspects of vessel operations including, but not  
4 limited to:

5 (i) Schedule adherence;

6 (ii) Customer service;

7 (iii) Cost containment; and

8 (iv) Fuel efficiency.

9 (3) When a vessel has more than one captain, the senior captain has  
10 the ultimate responsibility of the vessel and the other captains of  
11 that vessel shall report to the senior captain.

12 (4) Effective January 1, 2013, all chief officers and chief  
13 engineers of Washington state ferry vessels are subject to RCW  
14 41.06.500 and may not be included in a collective bargaining unit.  
15 Salary increases for chief officers and chief engineers must be  
16 directly related to the performance of their responsibilities.

17 (5) The chief officer, also known as a first mate or first officer,  
18 is the second in command of a vessel and directly assists and supports  
19 the captain in conducting operations. The chief officer's duties  
20 include, but are not limited to:

21 (a) Directly supervising the crew in navigation, cleaning,  
22 training, and discipline matters;

23 (b) Supervising the loading and unloading of passengers and  
24 vehicles;

25 (c) Investigating accidents and safety incidents;

26 (d) Following all applicable federal, state, and agency policies  
27 and regulations;

28 (e) Overseeing vessel security procedures; and

29 (f) Preparing and training to assume command.

30 (6) The chief engineer is the engineering department head and  
31 reports directly to the captain. The chief engineer's duties include,  
32 but are not limited to:

33 (a) Overseeing all aspects of engineering propulsion, electrical,  
34 and machinery components;

35 (b) Ensuring safe and efficient engineering plant operations;

36 (c) Advising the captain of factors affecting the vessel's  
37 operation from an engineering perspective;

1 (d) Supervising the conduct of engineering watchstanders and  
2 directing work and maintenance routines;

3 (e) Following federal, state, and agency policies and regulations;  
4 and

5 (f) Overseeing all fueling to ensure efficient and environmentally  
6 safe operations.

7 (7) With each biennial budget submittal, the department shall  
8 include recommendations for distributing any appropriations the  
9 legislature may provide for incentive pay for vessel captains, chief  
10 officers, or chief engineers.

11 (8) Any employee who is a captain, chief officer, or chief engineer  
12 may not belong to a collective bargaining unit covered under this  
13 chapter for twelve months following their status as a captain, chief  
14 officer, or chief engineer.

15 **Sec. 5.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read  
16 as follows:

17 As used in this chapter, unless the context otherwise requires, the  
18 definitions in this section shall apply.

19 (1) "Collective bargaining representative" means the persons  
20 designated by the governor and employee organizations to be the  
21 exclusive representatives during collective bargaining negotiations.

22 (2) "Commission" means the (~~(marine employees)~~) public employment  
23 relations commission created in RCW (~~(47.64.280)~~) 41.58.010.

24 (3) "Department of transportation" means the department as defined  
25 in RCW 47.01.021.

26 (4) "Employer" means the state of Washington.

27 (5) "Ferry employee" means any employee of the marine  
28 transportation division of the department of transportation who is a  
29 member of a collective bargaining unit represented by a ferry employee  
30 organization and does not include an exempt employee pursuant to RCW  
31 41.06.079.

32 (6) "Ferry employee organization" means any labor organization  
33 recognized to represent a collective bargaining unit of ferry  
34 employees.

35 (7) "Lockout" means the refusal of the employer to furnish work to  
36 ferry employees in an effort to get ferry employee organizations to  
37 make concessions during collective bargaining, grievance, or other

1 labor relation negotiations. Curtailment of employment of ferry  
2 employees due to lack of work resulting from a strike or work stoppage  
3 shall not be considered a lockout.

4 (8) "Office of financial management" means the office as created in  
5 RCW 43.41.050.

6 (9) "Strike or work stoppage" means a ferry employee's refusal, in  
7 concerted action with others, to report to duty, or his or her willful  
8 absence from his or her position, or his or her stoppage or slowdown of  
9 work, or his or her abstinence in whole or in part from the full,  
10 faithful, and proper performance of the duties of employment, for the  
11 purpose of inducing, influencing, or coercing a change in conditions,  
12 compensation, rights, privileges, or obligations of his, her, or any  
13 other ferry employee's employment. A refusal, in good faith, to work  
14 under conditions which pose an endangerment to the health and safety of  
15 ferry employees or the public, as determined by the master of the  
16 vessel, shall not be considered a strike for the purposes of this  
17 chapter.

18 **Sec. 6.** RCW 47.64.210 and 2007 c 160 s 2 are each amended to read  
19 as follows:

20 In the (~~absence of an impasse~~) event there is no agreement  
21 between the parties (~~or the failure of either party to utilize its~~  
22 ~~procedures~~) by August 1st in the even-numbered year preceding the  
23 biennium, either party may request the commission to appoint an  
24 impartial and disinterested person to act as mediator. It is the  
25 function of the mediator to bring the parties together to effectuate a  
26 settlement of the dispute, but the mediator shall not compel the  
27 parties to agree.

28 **Sec. 7.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are  
29 each reenacted and amended to read as follows:

30 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)  
31 of this section, or as provided in RCW 36.54.130 and subsection (3) of  
32 this section, if any party assumes the operation and maintenance of any  
33 ferry or ferry system by rent, lease, or charter from the department of  
34 transportation, such party shall assume and be bound by all the  
35 provisions herein and any agreement or contract for such operation of  
36 any ferry or ferry system entered into by the department shall provide

1 that the wages to be paid, hours of employment, working conditions, and  
2 seniority rights of employees will be established by the ((~~marine~~  
3 ~~employees~~)) commission in accordance with the terms and provisions of  
4 this chapter and it shall further provide that all labor disputes shall  
5 be adjudicated in accordance with chapter 47.64 RCW.

6 (2) If a public transportation benefit area meeting the  
7 requirements of RCW 36.57A.200 has voter approval to operate passenger-  
8 only ferry service, it may enter into an agreement with Washington  
9 State Ferries to rent, lease, or purchase passenger-only vessels,  
10 related equipment, or terminal space for purposes of loading and  
11 unloading the passenger-only ferry. Charges for the vessels,  
12 equipment, and space must be fair market value taking into account the  
13 public benefit derived from the ferry service. A benefit area or  
14 subcontractor of that benefit area that qualifies under this subsection  
15 is not subject to the restrictions of subsection (1) of this section,  
16 but is subject to:

17 (a) The terms of those collective bargaining agreements that it or  
18 its subcontractors negotiate with the exclusive bargaining  
19 representatives of its or its subcontractors' employees under chapter  
20 41.56 RCW or the National Labor Relations Act, as applicable;

21 (b) Unless otherwise prohibited by federal or state law, a  
22 requirement that the benefit area and any contract with its  
23 subcontractors, give preferential hiring to former employees of the  
24 department of transportation who separated from employment with the  
25 department because of termination of the ferry service by the state of  
26 Washington; and

27 (c) Unless otherwise prohibited by federal or state law, a  
28 requirement that the benefit area and any contract with its  
29 subcontractors, on any questions concerning representation of employees  
30 for collective bargaining purposes, may be determined by conducting a  
31 cross-check comparing an employee organization's membership records or  
32 bargaining authorization cards against the employment records of the  
33 employer.

34 (3) If a ferry district is formed under RCW 36.54.110 to operate  
35 passenger-only ferry service, it may enter into an agreement with  
36 Washington State Ferries to rent, lease, or purchase vessels, related  
37 equipment, or terminal space for purposes of loading and unloading the  
38 ferry. Charges for the vessels, equipment, and space must be fair

1 market value taking into account the public benefit derived from the  
2 ferry service. A ferry district or subcontractor of that district that  
3 qualifies under this subsection is not subject to the restrictions of  
4 subsection (1) of this section, but is subject to:

5 (a) The terms of those collective bargaining agreements that it or  
6 its subcontractors negotiate with the exclusive bargaining  
7 representatives of its or its subcontractors' employees under chapter  
8 41.56 RCW or the National Labor Relations Act, as applicable;

9 (b) Unless otherwise prohibited by federal or state law, a  
10 requirement that the ferry district and any contract with its  
11 subcontractors, give preferential hiring to former employees of the  
12 department of transportation who separated from employment with the  
13 department because of termination of the ferry service by the state of  
14 Washington; and

15 (c) Unless otherwise prohibited by federal or state law, a  
16 requirement that the ferry district and any contract with its  
17 subcontractors, on any questions concerning representation of employees  
18 for collective bargaining purposes, may be determined by conducting a  
19 cross-check comparing an employee organization's membership records or  
20 bargaining authorization cards against the employment records of the  
21 employer.

22 (4) The department of transportation shall make its terminal, dock,  
23 and pier space available to private operators of passenger-only ferries  
24 if the space can be made available without limiting the operation of  
25 car ferries operated by the department. These private operators are  
26 not bound by the provisions of subsection (1) of this section. Charges  
27 for the equipment and space must be fair market value taking into  
28 account the public benefit derived from the passenger-only ferry  
29 service.

30 **Sec. 8.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read  
31 as follows:

32 An agreement with a ferry employee organization that is the  
33 exclusive representative of ferry employees in an appropriate unit may  
34 provide procedures for the consideration of ferry employee grievances  
35 and of disputes over the interpretation and application of agreements.  
36 Negotiated procedures may provide for binding arbitration of ferry  
37 employee grievances and of disputes over the interpretation and

1 application of existing agreements. An arbitrator's decision on a  
2 grievance shall not change or amend the terms, conditions, or  
3 applications of the collective bargaining agreement. The procedures  
4 shall provide for the invoking of arbitration only (~~with the~~  
5 ~~approval~~) by mutual agreement of the employee organization and  
6 management. The costs of arbitrators shall be shared equally by the  
7 parties.

8 Ferry system employees shall follow (~~either~~) the grievance  
9 procedures provided in a collective bargaining agreement(~~, or if no~~  
10 ~~such procedures are so provided, shall submit the grievances to the~~  
11 ~~marine employees' commission as provided in RCW 47.64.280~~)).

12 **Sec. 9.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read  
13 as follows:

14 For any matter concerning the state ferry system and employee  
15 relations, collective bargaining, or labor disputes or stoppages, the  
16 provisions of chapter 47.64 RCW and this chapter shall govern.  
17 However, if a conflict exists between the provisions of chapter 47.64  
18 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

19 **Sec. 10.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and  
20 2010 c 1 s 1 are each reenacted and amended to read as follows:

- 21 (1) The provisions of this chapter do not apply to:
  - 22 (a) The members of the legislature or to any employee of, or  
23 position in, the legislative branch of the state government including  
24 members, officers, and employees of the legislative council, joint  
25 legislative audit and review committee, statute law committee, and any  
26 interim committee of the legislature;
  - 27 (b) The justices of the supreme court, judges of the court of  
28 appeals, judges of the superior courts or of the inferior courts, or to  
29 any employee of, or position in the judicial branch of state  
30 government;
  - 31 (c) Officers, academic personnel, and employees of technical  
32 colleges;
  - 33 (d) The officers of the Washington state patrol;
  - 34 (e) Elective officers of the state;
  - 35 (f) The chief executive officer of each agency;

1 (g) In the departments of employment security and social and health  
2 services, the director and the director's confidential secretary; in  
3 all other departments, the executive head of which is an individual  
4 appointed by the governor, the director, his or her confidential  
5 secretary, and his or her statutory assistant directors;

6 (h) In the case of a multimember board, commission, or committee,  
7 whether the members thereof are elected, appointed by the governor or  
8 other authority, serve ex officio, or are otherwise chosen:

9 (i) All members of such boards, commissions, or committees;

10 (ii) If the members of the board, commission, or committee serve on  
11 a part-time basis and there is a statutory executive officer: The  
12 secretary of the board, commission, or committee; the chief executive  
13 officer of the board, commission, or committee; and the confidential  
14 secretary of the chief executive officer of the board, commission, or  
15 committee;

16 (iii) If the members of the board, commission, or committee serve  
17 on a full-time basis: The chief executive officer or administrative  
18 officer as designated by the board, commission, or committee; and a  
19 confidential secretary to the chair of the board, commission, or  
20 committee;

21 (iv) If all members of the board, commission, or committee serve ex  
22 officio: The chief executive officer; and the confidential secretary  
23 of such chief executive officer;

24 (i) The confidential secretaries and administrative assistants in  
25 the immediate offices of the elective officers of the state;

26 (j) Assistant attorneys general;

27 (k) Commissioned and enlisted personnel in the military service of  
28 the state;

29 (l) Inmate, student, part-time, or temporary employees, and part-  
30 time professional consultants, as defined by the Washington personnel  
31 resources board;

32 (m) The public printer or to any employees of or positions in the  
33 state printing plant;

34 (n) Officers and employees of the Washington state fruit  
35 commission;

36 (o) Officers and employees of the Washington apple commission;

37 (p) Officers and employees of the Washington state dairy products  
38 commission;

1 (q) Officers and employees of the Washington tree fruit research  
2 commission;

3 (r) Officers and employees of the Washington state beef commission;

4 (s) Officers and employees of the Washington grain commission;

5 (t) Officers and employees of any commission formed under chapter  
6 15.66 RCW;

7 (u) Officers and employees of agricultural commissions formed under  
8 chapter 15.65 RCW;

9 (v) Officers and employees of the nonprofit corporation formed  
10 under chapter 67.40 RCW;

11 (w) Executive assistants for personnel administration and labor  
12 relations in all state agencies employing such executive assistants  
13 including but not limited to all departments, offices, commissions,  
14 committees, boards, or other bodies subject to the provisions of this  
15 chapter and this subsection shall prevail over any provision of law  
16 inconsistent herewith unless specific exception is made in such law;

17 (x) In each agency with fifty or more employees: Deputy agency  
18 heads, assistant directors or division directors, and not more than  
19 three principal policy assistants who report directly to the agency  
20 head or deputy agency heads;

21 (~~(y) ((All employees of the marine employees' commission;~~  
22 ~~(z))~~) Staff employed by the department of commerce to administer  
23 energy policy functions;

24 (~~((aa))~~) (z) The manager of the energy facility site evaluation  
25 council;

26 (~~((bb))~~) (aa) A maximum of ten staff employed by the department of  
27 commerce to administer innovation and policy functions, including the  
28 three principal policy assistants exempted under (x) of this  
29 subsection;

30 (~~((cc))~~) (bb) Staff employed by Washington State University to  
31 administer energy education, applied research, and technology transfer  
32 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

33 (2) The following classifications, positions, and employees of  
34 institutions of higher education and related boards are hereby exempted  
35 from coverage of this chapter:

36 (a) Members of the governing board of each institution of higher  
37 education and related boards, all presidents, vice presidents, and  
38 their confidential secretaries, administrative, and personal

1 assistants; deans, directors, and chairs; academic personnel; and  
2 executive heads of major administrative or academic divisions employed  
3 by institutions of higher education; principal assistants to executive  
4 heads of major administrative or academic divisions; other managerial  
5 or professional employees in an institution or related board having  
6 substantial responsibility for directing or controlling program  
7 operations and accountable for allocation of resources and program  
8 results, or for the formulation of institutional policy, or for  
9 carrying out personnel administration or labor relations functions,  
10 legislative relations, public information, development, senior computer  
11 systems and network programming, or internal audits and investigations;  
12 and any employee of a community college district whose place of work is  
13 one which is physically located outside the state of Washington and who  
14 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
15 program operating outside of the state of Washington;

16 (b) The governing board of each institution, and related boards,  
17 may also exempt from this chapter classifications involving research  
18 activities, counseling of students, extension or continuing education  
19 activities, graphic arts or publications activities requiring  
20 prescribed academic preparation or special training as determined by  
21 the board: PROVIDED, That no nonacademic employee engaged in office,  
22 clerical, maintenance, or food and trade services may be exempted by  
23 the board under this provision;

24 (c) Printing craft employees in the department of printing at the  
25 University of Washington.

26 (3) In addition to the exemptions specifically provided by this  
27 chapter, the director of personnel may provide for further exemptions  
28 pursuant to the following procedures. The governor or other  
29 appropriate elected official may submit requests for exemption to the  
30 director of personnel stating the reasons for requesting such  
31 exemptions. The director of personnel shall hold a public hearing,  
32 after proper notice, on requests submitted pursuant to this subsection.  
33 If the director determines that the position for which exemption is  
34 requested is one involving substantial responsibility for the  
35 formulation of basic agency or executive policy or one involving  
36 directing and controlling program operations of an agency or a major  
37 administrative division thereof, the director of personnel shall grant  
38 the request and such determination shall be final as to any decision

1 made before July 1, 1993. The total number of additional exemptions  
2 permitted under this subsection shall not exceed one percent of the  
3 number of employees in the classified service not including employees  
4 of institutions of higher education and related boards for those  
5 agencies not directly under the authority of any elected public  
6 official other than the governor, and shall not exceed a total of  
7 twenty-five for all agencies under the authority of elected public  
8 officials other than the governor.

9 The salary and fringe benefits of all positions presently or  
10 hereafter exempted except for the chief executive officer of each  
11 agency, full-time members of boards and commissions, administrative  
12 assistants and confidential secretaries in the immediate office of an  
13 elected state official, and the personnel listed in subsections (1)(j)  
14 through (v) (~~and (y)~~) and (2) of this section, shall be determined by  
15 the director of personnel. Changes to the classification plan  
16 affecting exempt salaries must meet the same provisions for classified  
17 salary increases resulting from adjustments to the classification plan  
18 as outlined in RCW 41.06.152.

19 From February 18, 2009, through June 30, 2011, a salary or wage  
20 increase shall not be granted to any position exempt from  
21 classification under this chapter, except that a salary or wage  
22 increase may be granted to employees pursuant to collective bargaining  
23 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,  
24 or negotiated by the nonprofit corporation formed under chapter 67.40  
25 RCW, and except that increases may be granted for positions for which  
26 the employer has demonstrated difficulty retaining qualified employees  
27 if the following conditions are met:

- 28 (a) The salary increase can be paid within existing resources; and
- 29 (b) The salary increase will not adversely impact the provision of  
30 client services.

31 Any agency granting a salary increase from February 15, 2010,  
32 through June 30, 2011, to a position exempt from classification under  
33 this chapter shall submit a report to the fiscal committees of the  
34 legislature no later than July 31, 2011, detailing the positions for  
35 which salary increases were granted, the size of the increases, and the  
36 reasons for giving the increases.

37 Any person holding a classified position subject to the provisions  
38 of this chapter shall, when and if such position is subsequently

1 exempted from the application of this chapter, be afforded the  
2 following rights: If such person previously held permanent status in  
3 another classified position, such person shall have a right of  
4 reversion to the highest class of position previously held, or to a  
5 position of similar nature and salary.

6 Any classified employee having civil service status in a classified  
7 position who accepts an appointment in an exempt position shall have  
8 the right of reversion to the highest class of position previously  
9 held, or to a position of similar nature and salary.

10 A person occupying an exempt position who is terminated from the  
11 position for gross misconduct or malfeasance does not have the right of  
12 reversion to a classified position as provided for in this section.

13 From February 15, 2010, until June 30, 2011, no monetary  
14 performance-based awards or incentives may be granted by the director  
15 or employers to employees covered by rules adopted under this section.  
16 This subsection does not prohibit the payment of awards provided for in  
17 chapter 41.60 RCW.

18 NEW SECTION. **Sec. 11.** (1) The marine employees' commission is  
19 hereby abolished and its powers, duties, and functions are hereby  
20 transferred to the public employment relations commission.

21 (2)(a) All reports, documents, surveys, books, records, files,  
22 papers, or written material in the possession of the marine employees'  
23 commission shall be delivered to the custody of the public employment  
24 relations commission. All cabinets, furniture, office equipment, motor  
25 vehicles, and other tangible property employed by the marine employees'  
26 commission shall be made available to the public employment relations  
27 commission. All funds, credits, or other assets held by the marine  
28 employees' commission shall be assigned to the public employment  
29 relations commission.

30 (b) Any appropriations made to the marine employees' commission  
31 shall, on the effective date of this section, be transferred and  
32 credited to the public employment relations commission.

33 (c) If any question arises as to the transfer of any funds, books,  
34 documents, records, papers, files, equipment, or other tangible  
35 property used or held in the exercise of the powers and the performance  
36 of the duties and functions transferred, the director of financial

1 management shall make a determination as to the proper allocation and  
2 certify the same to the state agencies concerned.

3 (3) All rules and all pending business before the marine employees'  
4 commission shall be continued and acted upon by the public employment  
5 relations commission. All existing contracts and obligations shall  
6 remain in full force and shall be performed by the public employment  
7 relations commission.

8 (4) The transfer of the powers, duties, and functions of the marine  
9 employees' commission shall not affect the validity of any act  
10 performed before the effective date of this section.

11 (5) If apportionments of budgeted funds are required because of the  
12 transfers directed by this section, the director of financial  
13 management shall certify the apportionments to the agencies affected,  
14 the state auditor, and the state treasurer. Each of these shall make  
15 the appropriate transfer and adjustments in funds and appropriation  
16 accounts and equipment records in accordance with the certification.

17 NEW SECTION. **Sec. 12.** The following acts or parts of acts are  
18 each repealed:

19 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &  
20 1961 c 13 s 47.64.080;

21 (2) RCW 47.64.200 (Impasse procedures) and 2010 c 283 s 12, 2006 c  
22 164 s 7, & 1983 c 15 s 11;

23 (3) RCW 47.64.230 (Waiver of mediation) and 2007 c 160 s 3, 2006 c  
24 164 s 11, & 1983 c 15 s 14;

25 (4) RCW 47.64.280 (Marine employees' commission) and 2010 c 283 s  
26 14, 2006 c 164 s 18, 1984 c 287 s 95, & 1983 c 15 s 19;

27 (5) RCW 47.64.300 (Interest arbitration--Procedures) and 2007 c 160  
28 s 4 & 2006 c 164 s 12;

29 (6) RCW 47.64.310 (Interest arbitration--Function) and 2006 c 164  
30 s 13;

31 (7) RCW 47.64.320 (Parties not bound by arbitration--Arbitration  
32 factors) and 2010 c 283 s 15 & 2006 c 164 s 14; and

33 (8) RCW 47.64.330 (Collective bargaining limitations) and 2006 c  
34 164 s 15.

35 NEW SECTION. **Sec. 13.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 immediately.

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