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**SUBSTITUTE HOUSE BILL 2212**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Blake, Chapman, Fitzgibbon, Ormsby, Sells, Irwin, Wylie, and Goodman)

AN ACT Relating to providing department of fish and wildlife officers interest arbitration under certain circumstances; amending RCW 41.80.340; and reenacting and amending RCW 41.80.005 and 41.80.010.

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

**Sec.**  RCW 41.80.005 and 2019 c 234 s 1 and 2019 c 145 s 3 are each reenacted and 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, regardless of whether those employees are exempt 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, or who advise or represent the state in tort actions.

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

(6) "Employee" means any employee, including employees whose work has ceased in connection with the pursuit of lawful activities protected by this chapter, covered by chapter 41.06 RCW. "Employee" includes assistant attorneys general of the office of the attorney general, 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~~)):

(a) Duly sworn police officers employed as members of a police force established pursuant to RCW 28B.10.550; and

(b) Fish and wildlife officers as defined in RCW 77.08.010(21) who rank below lieutenant.

**Sec.**  RCW 41.80.010 and 2019 c 415 s 961 and 2019 c 145 s 4 are each reenacted and amended to read as follows:

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

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

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

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

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

(e) Uniformed personnel who are fish and wildlife officers may not be excluded from coalition bargaining for a master agreement of all exclusive bargaining representatives of fewer than five hundred employees. However, any exclusive bargaining representative of uniformed personnel who are fish and wildlife officers may, should it so choose, but not later than the first Monday in September of every odd-numbered year, choose to, alone or in conjunction with any other exclusive bargaining representative of uniformed personnel who are fish and wildlife officers which also so chooses, enter into separate bargaining with the employer regarding agency-specific issues and be subject to the provisions set forth in RCW 41.80.310 through 41.80.370. If any exclusive bargaining representative does not choose to enter into separate bargaining with the employer, RCW 41.80.310 through 41.80.370 do not apply. For purposes of this subsection (2)(e), "agency-specific issues" are limited to those specified in RCW 41.80.020 and include but are not limited to rates of pay and other compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)(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) and (b) of this section do not apply to requests for funding made pursuant to this subsection.

**Sec.**  RCW 41.80.340 and 2019 c 234 s 7 are each amended to read as follows:

In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.80.300 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

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

(2) Stipulations of the parties;

(3) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States, except for uniformed personnel who are fish and wildlife officers, for whom the comparison of hours and conditions of employment is with like personnel of like employers, agencies, or departments, of similar size in the state of Washington;

(4) Changes in any of the circumstances under subsections (1) through (3) of this section during the pendency of the proceedings; and

(5) Such other factors, not confined to the factors under subsections (1) through (4) of this section, that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

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