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**SECOND SUBSTITUTE SENATE BILL 5021**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Van De Wege, Walsh, Keiser, Conway, Hunt, Hobbs, Wellman, Hasegawa, and Kuderer)

READ FIRST TIME 02/27/19.

1 AN ACT Relating to granting interest arbitration to certain  
2 department of corrections employees; and adding a new section to  
3 chapter 41.80 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.80  
6 RCW to read as follows:

7 (1) In order to maintain dedicated and uninterrupted services to  
8 the supervision of criminal offenders that are in state correctional  
9 facilities and on community supervision, it is the legislature's  
10 intent to grant certain employees of the department of corrections  
11 interest arbitration rights as an alternative means of settling  
12 disputes.

13 (2) This section applies only to employees covered by chapter  
14 41.06 RCW working for the department of corrections, except  
15 confidential employees as defined in RCW 41.80.005, members of the  
16 Washington management service, internal auditors, and nonsupervisory  
17 marine department employees.

18 (3) Negotiations between the employer and the exclusive  
19 bargaining representative of a unit of employees shall be commenced  
20 at least five months before submission of the budget to the  
21 legislature. If no agreement has been reached sixty days after the

1 commencement of such negotiations then, at any time thereafter,  
2 either party may declare that an impasse exists and may submit the  
3 dispute to the commission for mediation, with or without the  
4 concurrence of the other party. The commission shall appoint a  
5 mediator, who shall promptly meet with the representatives of the  
6 parties, either jointly or separately, and shall take such other  
7 steps as he or she may deem appropriate in order to persuade the  
8 parties to resolve their differences and effect an agreement. A  
9 mediator, however, does not have a power of compulsion. The mediator  
10 may consider only matters that are subject to bargaining under this  
11 chapter.

12 (4) If an agreement is not reached following a reasonable period  
13 of negotiations and mediation, and the director, upon recommendation  
14 of the assigned mediator, finds that the parties remain at impasse,  
15 then an arbitrator must be appointed to resolve the dispute. The  
16 issues for determination by the arbitrator must be limited to the  
17 issues certified by the executive director.

18 (5) Within ten working days after the first Monday in September  
19 of every odd-numbered year, the governor or the governor's designee  
20 and the bargaining representatives for any bargaining units covered  
21 by this section shall attempt to agree on an interest arbitrator to  
22 be used if the parties are not successful in negotiating a  
23 comprehensive collective bargaining agreement. The parties will  
24 select an arbitrator by mutual agreement or by alternatively striking  
25 names from a regional list of seven qualified arbitrators provided by  
26 the federal mediation and conciliation service.

27 (a) The fees and expenses of the arbitrator, the court reporter,  
28 if any, and the cost of the hearing room, if any, will be shared  
29 equally between the parties. Each party is responsible for the costs  
30 of its attorneys, representatives and witnesses, and all other costs  
31 related to the development and presentation of their case.

32 (b) Immediately upon selecting an interest arbitrator, the  
33 parties shall cooperate to reserve dates with the arbitrator for a  
34 potential hearing between August 1st and September 15th of the  
35 following even-numbered year. The parties shall also prepare a  
36 schedule of at least five negotiation dates, absent an agreement to  
37 the contrary.

38 (c) The parties shall execute a written agreement before December  
39 15th of the odd-numbered year setting forth the name of the  
40 arbitrator and the dates reserved for bargaining and arbitration.

1 (d) (i) The arbitrator must hold a hearing and provide reasonable  
2 notice of the hearing to the parties to the dispute. The hearing must  
3 be informal and each party has the opportunity to present evidence  
4 and make arguments. The arbitrator may not present the case for a  
5 party to the proceedings.

6 (ii) The rules of evidence prevailing in judicial proceedings may  
7 be considered, but are not binding, and any oral testimony or  
8 documentary evidence or other data deemed relevant by the arbitrator  
9 may be received in evidence. A recording of the proceedings must be  
10 taken.

11 (iii) The arbitrator may administer oaths, require the attendance  
12 of witnesses, and require the production of such books, papers,  
13 contracts, agreements, and documents deemed by the arbitrator to be  
14 material to a just determination of the issues in dispute. If a  
15 person refuses to obey a subpoena issued by the arbitrator, or  
16 refuses to be sworn or to make an affirmation to testify, or a  
17 witness, party, or attorney for a party is guilty of contempt while  
18 in attendance at a hearing, the arbitrator may invoke the  
19 jurisdiction of the superior court in the county where the labor  
20 dispute exists, and the court may issue an appropriate order. Any  
21 failure to obey the order may be punished by the court as a contempt  
22 thereof.

23 (6) The arbitrator may consider only matters that are subject to  
24 bargaining under RCW 41.80.020(1), and may not consider those  
25 subjects listed under RCW 41.80.020 (2) and (3) and 41.80.040.

26 (a) In making its determination, the arbitrator shall take into  
27 consideration the following factors:

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

31 (ii) The constitutional and statutory authority of the employer;

32 (iii) Stipulations of the parties;

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

37 (v) The ability of the department of corrections to retain  
38 employees;

39 (vi) The overall compensation presently received by department of  
40 corrections employees, including direct wage compensation, vacations,

1 holidays, and other paid excused time, pensions, insurance benefits,  
2 and all other direct or indirect monetary benefits received;

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

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

8 (b) The decision of an arbitrator under this section is subject  
9 to RCW 41.80.010(3).

10 (7) During the pendency of the proceedings before the arbitrator,  
11 existing wages, hours, and other conditions of employment shall not  
12 be changed by action of either party without the consent of the other  
13 but a party may so consent without prejudice to his or her rights or  
14 position under chapter 41.56 RCW.

15 (8) (a) If the representative of either or both the employees and  
16 the state refuses to submit to the procedures set forth in  
17 subsections (3), (4), and (5) of this section, the parties, or the  
18 commission on its own motion, may invoke the jurisdiction of the  
19 superior court for the county in which the labor dispute exists and  
20 the court may issue an appropriate order. A failure to obey the order  
21 may be punished by the court as a contempt thereof.

22 (b) A decision of the arbitrator is final and binding on the  
23 parties, and may be enforced at the instance of either party, the  
24 arbitrator, or the commission in the superior court for the county  
25 where the dispute arose. However, the decision of the arbitrator is  
26 not binding on the legislature and, if the legislature does not  
27 approve the funds necessary to implement provisions pertaining to the  
28 compensation and fringe benefit provision of an interest arbitration  
29 award, the provisions are not binding on the state or department of  
30 corrections.

31 (9) Subject to the provisions of this section, the parties shall  
32 follow the commission's procedures for interest arbitration.

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