
SENATE BILL 6224

State of Washington

66th Legislature

2020 Regular Session

By Senators Lovelett, Conway, Hunt, Keiser, Kuderer, and Stanford

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1 AN ACT Relating to collective bargaining for administrative law
2 judges; amending RCW 34.12.030 and 34.12.100; reenacting and amending
3 RCW 41.80.005 and 41.80.010; adding a new section to chapter 41.80
4 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the independent
7 adjudication services provided by administrative law judges of the
8 office of administrative hearings are crucial to the due process
9 rights of the citizens of this state and the just functioning of the
10 government. Administrative law judges of the office of administrative
11 hearings are exempt from civil service under RCW 34.12.030(5). These
12 administrative law judges currently have no mechanism through which
13 to collectively bargain for salary increases. The legislature finds
14 the office of administrative hearings has experienced increased
15 difficulty recruiting and retaining administrative law judges due to
16 the disparity in wages paid to administrative law judges as compared
17 to similar public sector positions. This type of turnover is costly
18 to the office of administrative hearings, negatively impacts morale,
19 interferes with the ability of the office to develop a succession
20 plan, and ultimately harms the citizens of this state. Therefore, it
21 is the legislature's intent to empower these administrative law

1 judges to collectively bargain for fair wages that will foster job
2 satisfaction and the highest standards of professional competence
3 among administrative law judges.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.80
5 RCW to read as follows:

6 (1) In addition to the agencies defined in RCW 41.80.005 and
7 subject to the provisions of this section, this chapter applies to
8 administrative law judges of the office of administrative hearings
9 appointed under RCW 34.12.030(1).

10 (2)(a) Administrative law judges of the office of administrative
11 hearings who are not otherwise excluded from bargaining under (b) of
12 this subsection are granted the right to collectively bargain.

13 (b) Administrative law judges in supervisory positions,
14 administrative law judges serving on a contractual basis under RCW
15 34.12.030(2), confidential employees as defined in RCW 41.80.005, and
16 any administrative law judge who reports directly to the chief
17 administrative law judge are excluded from this section and do not
18 have the right to collectively bargain.

19 (3) The only unit appropriate for the purpose of collective
20 bargaining under this chapter is a statewide unit of all
21 administrative law judges of the office of administrative hearings
22 not otherwise excluded from bargaining.

23 **Sec. 3.** RCW 41.80.005 and 2019 c 234 s 1 and 2019 c 145 s 3 are
24 each reenacted and amended to read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

27 (1) "Agency" means any agency as defined in RCW 41.06.020 and
28 covered by chapter 41.06 RCW. "Agency" also includes the assistant
29 attorneys general of the attorney general's office and the
30 administrative law judges of the office of administrative hearings,
31 regardless of whether those employees are exempt under chapter 41.06
32 RCW.

33 (2) "Collective bargaining" means the performance of the mutual
34 obligation of the representatives of the employer and the exclusive
35 bargaining representative to meet at reasonable times and to bargain
36 in good faith in an effort to reach agreement with respect to the
37 subjects of bargaining specified under RCW 41.80.020. The obligation

1 to bargain does not compel either party to agree to a proposal or to
2 make a concession, except as otherwise provided in this chapter.

3 (3) "Commission" means the public employment relations
4 commission.

5 (4) "Confidential employee" means an employee who, in the regular
6 course of his or her duties, assists in a confidential capacity
7 persons who formulate, determine, and effectuate management policies
8 with regard to labor relations or who, in the regular course of his
9 or her duties, has authorized access to information relating to the
10 effectuation or review of the employer's collective bargaining
11 policies, or who assists or aids a manager. "Confidential employee"
12 also includes employees who assist assistant attorneys general who
13 advise and represent managers or confidential employees in personnel
14 or labor relations matters, or who advise or represent the state in
15 tort actions.

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

18 (6) "Employee" means any employee, including employees whose work
19 has ceased in connection with the pursuit of lawful activities
20 protected by this chapter, covered by chapter 41.06 RCW. "Employee"
21 includes assistant attorneys general of the office of the attorney
22 general and administrative law judges of the office of administrative
23 hearings, regardless of their exemption under chapter 41.06 RCW.

24 "Employee" does not include:

25 (a) Employees covered for collective bargaining by chapter 41.56
26 RCW;

27 (b) Confidential employees;

28 (c) Members of the Washington management service;

29 (d) Internal auditors in any agency; or

30 (e) Any employee of the commission, the office of financial
31 management, or the office of risk management within the department of
32 enterprise services.

33 (7) "Employee organization" means any organization, union, or
34 association in which employees participate and that exists for the
35 purpose, in whole or in part, of collective bargaining with
36 employers.

37 (8) "Employer" means the state of Washington.

38 (9) "Exclusive bargaining representative" means any employee
39 organization that has been certified under this chapter as the
40 representative of the employees in an appropriate bargaining unit.

1 (10) "Institutions of higher education" means the University of
2 Washington, Washington State University, Central Washington
3 University, Eastern Washington University, Western Washington
4 University, The Evergreen State College, and the various state
5 community colleges.

6 (11) "Labor dispute" means any controversy concerning terms,
7 tenure, or conditions of employment, or concerning the association or
8 representation of persons in negotiating, fixing, maintaining,
9 changing, or seeking to arrange terms or conditions of employment
10 with respect to the subjects of bargaining provided in this chapter,
11 regardless of whether the disputants stand in the proximate relation
12 of employer and employee.

13 (12) "Manager" means "manager" as defined in RCW 41.06.022.

14 (13) "Supervisor" means an employee who has authority, in the
15 interest of the employer, to hire, transfer, suspend, lay off,
16 recall, promote, discharge, direct, reward, or discipline employees,
17 or to adjust employee grievances, or effectively to recommend such
18 action, if the exercise of the authority is not of a merely routine
19 nature but requires the consistent exercise of individual judgment.
20 However, no employee who is a member of the Washington management
21 service may be included in a collective bargaining unit established
22 under this section.

23 (14) "Unfair labor practice" means any unfair labor practice
24 listed in RCW 41.80.110.

25 (15) "Uniformed personnel" means duly sworn police officers
26 employed as members of a police force established pursuant to RCW
27 28B.10.550.

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

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

34 (2) (a) (i) Except as otherwise provided, if an exclusive
35 bargaining representative represents more than one bargaining unit,
36 the exclusive bargaining representative shall negotiate with each
37 employer representative as designated in subsection (1) of this
38 section one master collective bargaining agreement on behalf of all

1 the employees in bargaining units that the exclusive bargaining
2 representative represents.

3 (ii) For those exclusive bargaining representatives who represent
4 fewer than a total of five hundred employees each, negotiation shall
5 be by a coalition of all those exclusive bargaining representatives.
6 The coalition shall bargain for a master collective bargaining
7 agreement covering all of the employees represented by the coalition.
8 The governor's designee and the exclusive bargaining representative
9 or representatives are authorized to enter into supplemental
10 bargaining of agency-specific issues for inclusion in or as an
11 addendum to the master collective bargaining agreement, subject to
12 the parties' agreement regarding the issues and procedures for
13 supplemental bargaining. Exclusive bargaining representatives that
14 represent employees covered under chapter 41.06 RCW and exclusive
15 bargaining representatives that represent employees exempt under
16 chapter 41.06 RCW shall constitute separate coalitions and must
17 negotiate separate master collective bargaining agreements. This
18 ~~((section))~~ subsection does not prohibit cooperation and coordination
19 of bargaining between two or more exclusive bargaining
20 representatives.

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

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

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

38 (3) The governor shall submit a request for funds necessary to
39 implement the compensation and fringe benefit provisions in the
40 master collective bargaining agreement or for legislation necessary

1 to implement the agreement. Requests for funds necessary to implement
2 the provisions of bargaining agreements shall not be submitted to the
3 legislature by the governor unless such requests:

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

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

9 The legislature shall approve or reject the submission of the
10 request for funds as a whole. The legislature shall not consider a
11 request for funds to implement a collective bargaining agreement
12 unless the request is transmitted to the legislature as part of the
13 governor's budget document submitted under RCW 43.88.030 and
14 43.88.060. If the legislature rejects or fails to act on the
15 submission, either party may reopen all or part of the agreement or
16 the exclusive bargaining representative may seek to implement the
17 procedures provided for in RCW 41.80.090.

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

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

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

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

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

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

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

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

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

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

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

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

38 (C) If the director of the office of financial management does
39 not certify a request under (c)(ii)(B) of this subsection as being
40 feasible financially for the state, the parties shall enter into

1 collective bargaining solely for the purpose of reaching a mutually
2 agreed upon modification of the agreement necessary to address the
3 absence of those requested funds. The legislature may act upon the
4 compensation and fringe benefit provisions of the modified collective
5 bargaining agreement if those provisions are agreed upon and
6 submitted to the office of financial management and legislative
7 budget committees before final legislative action on the biennial or
8 supplemental operating budget by the sitting legislature.

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

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

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

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

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

1 **Sec. 5.** RCW 34.12.030 and 1981 c 67 s 3 are each amended to read
2 as follows:

3 (1) The chief administrative law judge shall appoint
4 administrative law judges to fulfill the duties prescribed in this
5 chapter. All administrative law judges shall have a demonstrated
6 knowledge of administrative law and procedures. The chief
7 administrative law judge may establish different levels of
8 administrative law judge positions.

9 (2) The chief administrative law judge may also contract with
10 qualified individuals to serve as administrative law judges for
11 specified hearings. Such individuals shall be compensated for their
12 services on a contractual basis for each hearing, in accordance with
13 chapter 43.88 RCW. The chief administrative law judge may not
14 contract with any individual who is at that time an employee of the
15 state.

16 (3) The chief administrative law judge may appoint such clerical
17 and other specialized or technical personnel as may be necessary to
18 carry on the work of this chapter.

19 (4) ~~((The))~~ Subject to any collective bargaining agreement, the
20 administrative law judges appointed under subsection (1) of this
21 section are subject to discipline and termination, for cause, by the
22 chief administrative law judge. Upon written request by the person so
23 disciplined or terminated, the chief administrative law judge shall
24 forthwith put the reasons for such action in writing. The person
25 affected has a right of review by the superior court of Thurston
26 county on petition for reinstatement or other remedy filed within
27 thirty days of receipt of such written reasons.

28 (5) All employees of the office except the chief administrative
29 law judge and the administrative law judges are subject to chapter
30 41.06 RCW.

31 (6) Administrative law judges appointed under subsection (1) of
32 this section have the right to collectively bargain under chapter
33 41.80 RCW, regardless of their exemption from chapter 41.06 RCW.

34 (7) The office may adopt rules for its own operation and in
35 furtherance of this chapter in accordance with chapter 34.05 RCW.

36 **Sec. 6.** RCW 34.12.100 and 2015 3rd sp.s. c 1 s 310 are each
37 amended to read as follows:

38 The chief administrative law judge shall be paid a salary fixed
39 by the governor after recommendation of the director of financial

1 management. ((The)) Subject to any collective bargaining agreement,
2 the salaries of administrative law judges appointed under the terms
3 of this chapter shall be determined by the chief administrative law
4 judge after recommendation of the director of financial management.

5 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of
7 the state government and its existing public institutions, and takes
8 effect immediately.

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