
SUBSTITUTE SENATE BILL 5297

State of Washington

66th Legislature

2019 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Hunt, Conway, Keiser, Dhingra, Saldaña, Kuderer, and Pedersen)

READ FIRST TIME 01/30/19.

1 AN ACT Relating to extending collective bargaining rights to
2 assistant attorneys general; amending RCW 41.80.005, 41.80.010,
3 43.10.070, and 43.10.060; adding a new section to chapter 41.80 RCW;
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the legal
7 services provided by assistant attorneys general in the office of the
8 attorney general are crucial to the ability of the state officials,
9 agencies, colleges, boards, and commissions to function and fulfill
10 their obligations to the citizens of the state. Assistant attorneys
11 general are exempt from civil service under RCW 41.06.070. The
12 assistant attorneys general currently have no mechanism through which
13 to collectively bargain for salary increases. The legislature finds
14 the office of the attorney general has experienced increased
15 difficulty recruiting and retaining attorneys due to the disparity in
16 wages paid to assistant attorneys general as compared to attorneys in
17 other public sector positions. This type of turnover is costly to the
18 office of the attorney general, negatively impacts morale, interferes
19 with the ability of the office to succession plan, and ultimately
20 harms the citizens of this state. Therefore, it is the legislature's
21 intent to empower assistant attorneys general to collectively bargain

1 for fair wages that will foster job satisfaction and the highest
2 standards of professional competence among assistant attorneys
3 general.

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 assistant attorneys general.

9 (2)(a) Assistant attorneys general who are not otherwise excluded
10 from bargaining under (b) of this subsection are granted the right to
11 collectively bargain.

12 (b) Division chiefs, deputy attorneys general, the solicitor
13 general, assistant attorneys general in the labor and personnel
14 division, special assistant attorneys general, confidential employees
15 as defined in RCW 41.80.005, and any assistant or deputy attorney
16 general who reports directly to the attorney general are excluded
17 from this section and do not have the right to collectively bargain.

18 (3) The only unit appropriate for the purpose of collective
19 bargaining under this chapter is a statewide unit of all assistant
20 attorneys general not otherwise excluded from bargaining.

21 (4) The governor or the governor's designee and an exclusive
22 bargaining representative shall negotiate one master collective
23 bargaining agreement for assistant attorneys general.

24 **Sec. 3.** RCW 41.80.005 and 2011 1st sp.s. c 43 s 444 are each
25 amended to read as follows:

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

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

32 (2) "Collective bargaining" means the performance of the mutual
33 obligation of the representatives of the employer and the exclusive
34 bargaining representative to meet at reasonable times and to bargain
35 in good faith in an effort to reach agreement with respect to the
36 subjects of bargaining specified under RCW 41.80.020. The obligation
37 to bargain does not compel either party to agree to a proposal or to
38 make a concession, except as otherwise provided in this chapter.

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

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

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

16 (6) "Employee" means any employee, including employees whose work
17 has ceased in connection with the pursuit of lawful activities
18 protected by this chapter, covered by chapter 41.06 RCW(~~(, except)~~).
19 "Employee" includes assistant attorneys general of the office of the
20 attorney general, regardless of their exemption under chapter 41.06
21 RCW. "Employee" does not include:

22 (a) Employees covered for collective bargaining by chapter 41.56
23 RCW;

24 (b) Confidential employees;

25 (c) Members of the Washington management service;

26 (d) Internal auditors in any agency; or

27 (e) Any employee of the commission, the office of financial
28 management, or the office of risk management within the department of
29 enterprise services.

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

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

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

38 (10) "Institutions of higher education" means the University of
39 Washington, Washington State University, Central Washington
40 University, Eastern Washington University, Western Washington

1 University, The Evergreen State College, and the various state
2 community colleges.

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

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

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

20 (14) "Unfair labor practice" means any unfair labor practice
21 listed in RCW 41.80.110.

22 **Sec. 4.** RCW 41.80.010 and 2017 3rd sp.s. c 23 s 3 are each
23 amended to read as follows:

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

28 (2)(a) Except as otherwise provided, if an exclusive bargaining
29 representative represents more than one bargaining unit, the
30 exclusive bargaining representative shall negotiate with each
31 employer representative as designated in subsection (1) of this
32 section one master collective bargaining agreement on behalf of all
33 the employees in bargaining units that the exclusive bargaining
34 representative represents. For those exclusive bargaining
35 representatives who represent fewer than a total of five hundred
36 employees each, negotiation shall be by a coalition of all those
37 exclusive bargaining representatives. The coalition shall bargain for
38 a master collective bargaining agreement covering all of the
39 employees represented by the coalition. The governor's designee and

1 the exclusive bargaining representative or representatives are
2 authorized to enter into supplemental bargaining of agency-specific
3 issues for inclusion in or as an addendum to the master collective
4 bargaining agreement, subject to the parties' agreement regarding the
5 issues and procedures for supplemental bargaining. This section does
6 not prohibit cooperation and coordination of bargaining between two
7 or more exclusive bargaining representatives.

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

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

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

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

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

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

36 The legislature shall approve or reject the submission of the
37 request for funds as a whole. The legislature shall not consider a
38 request for funds to implement a collective bargaining agreement
39 unless the request is transmitted to the legislature as part of the
40 governor's budget document submitted under RCW 43.88.030 and

1 43.88.060. If the legislature rejects or fails to act on the
2 submission, either party may reopen all or part of the agreement or
3 the exclusive bargaining representative may seek to implement the
4 procedures provided for in RCW 41.80.090.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (iii) In the case of a bargaining unit of employees of
36 institutions of higher education in which the exclusive bargaining
37 representative is certified during or after the conclusion of a
38 legislative session, the legislature may act upon the compensation
39 and fringe benefit provisions of the unit's initial collective
40 bargaining agreement if those provisions are agreed upon and

1 submitted to the office of financial management and legislative
2 budget committees before final legislative action on the biennial or
3 supplemental operating budget by the sitting legislature.

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

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

17 (7) For the 2013-2015 fiscal biennium, a collective bargaining
18 agreement related to employee health care benefits negotiated between
19 the employer and coalition pursuant to RCW 41.80.020(3) regarding the
20 dollar amount expended on behalf of each employee shall be a separate
21 agreement for which the governor may request funds necessary to
22 implement the agreement. The legislature may act upon a 2013-2015
23 collective bargaining agreement related to employee health care
24 benefits if an agreement is reached and submitted to the office of
25 financial management and legislative budget committees before final
26 legislative action on the biennial or supplemental operating
27 appropriations act by the sitting legislature.

28 (8)(a) For the 2015-2017 fiscal biennium, the governor may
29 request funds to implement:

30 (i) Modifications to collective bargaining agreements as set
31 forth in a memorandum of understanding negotiated between the
32 employer and the service employees international union healthcare
33 1199nw, an exclusive bargaining representative, that was necessitated
34 by an emergency situation or an imminent jeopardy determination by
35 the center for medicare and medicaid services that relates to the
36 safety or health of the clients, employees, or both the clients and
37 employees.

38 (ii) Unilaterally implemented modifications to collective
39 bargaining agreements, resulting from the employer being prohibited
40 from negotiating with an exclusive bargaining representative due to a

1 pending representation petition, necessitated by an emergency
2 situation or an imminent jeopardy determination by the center for
3 medicare and medicaid services that relates to the safety or health
4 of the clients, employees, or both the clients and employees.

5 (iii) Modifications to collective bargaining agreements as set
6 forth in a memorandum of understanding negotiated between the
7 employer and the union of physicians of Washington, an exclusive
8 bargaining representative, that was necessitated by an emergency
9 situation or an imminent jeopardy determination by the center for
10 medicare and medicaid services that relates to the safety or health
11 of the clients, employees, or both the clients and employees. If the
12 memorandum of understanding submitted to the legislature as part of
13 the governor's budget document is rejected by the legislature, and
14 the parties reach a new memorandum of understanding by June 30, 2016,
15 within the funds, conditions, and limitations provided in section
16 204, chapter 36, Laws of 2016 sp. sess., the new memorandum of
17 understanding shall be considered approved by the legislature and may
18 be retroactive to December 1, 2015.

19 (iv) Modifications to collective bargaining agreements as set
20 forth in a memorandum of understanding negotiated between the
21 employer and the teamsters union local 117, an exclusive bargaining
22 representative, for salary adjustments for the state employee job
23 classifications of psychiatrist, psychiatric social worker, and
24 psychologist.

25 (b) For the 2015-2017 fiscal biennium, the legislature may act
26 upon the request for funds for modifications to a 2015-2017
27 collective bargaining agreement under (a) (i), (ii), (iii), and (iv)
28 of this subsection if funds are requested by the governor before
29 final legislative action on the supplemental omnibus appropriations
30 act by the sitting legislature.

31 (c) The request for funding made under this subsection and any
32 action by the legislature taken pursuant to this subsection is
33 limited to the modifications described in this subsection and may not
34 otherwise affect the original terms of the 2015-2017 collective
35 bargaining agreement.

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

38 **Sec. 5.** RCW 43.10.070 and 1965 c 8 s 43.10.070 are each amended
39 to read as follows:

1 Subject to any collective bargaining agreement, the attorney
2 general shall fix the compensation of all assistants, attorneys, and
3 employees, and in the event they are assigned to any department,
4 board, or commission, such department, board, or commission shall pay
5 the compensation as fixed by the attorney general, not however in
6 excess of the amount made available to the department by law for
7 legal services.

8 **Sec. 6.** RCW 43.10.060 and 2009 c 549 s 5049 are each amended to
9 read as follows:

10 The attorney general may appoint necessary assistants(~~(, who~~
11 ~~shall hold office at his or her pleasure, and)~~) who shall have the
12 power to perform any act which the attorney general is authorized by
13 law to perform. Subject to any collective bargaining agreement,
14 assistants shall hold office at the attorney general's pleasure.

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