H-1471.1

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**HOUSE BILL 2017**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Frame, Dolan, Fitzgibbon, Stanford, Kilduff, Macri, Ryu, Valdez, Tarleton, and Pollet

AN ACT Relating to collective bargaining for administrative law judges; amending RCW 41.80.005, 34.12.030, and 34.12.100; adding a new section to chapter 41.80 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that the independent adjudication services provided by administrative law judges of the office of administrative hearings are crucial to the due process rights of the citizens of this state and the just functioning of the government. Administrative law judges of the office of administrative hearings are exempt from civil service under RCW 34.12.030(5). These administrative law judges currently have no mechanism through which to collectively bargain for salary increases. The legislature finds the office of administrative hearings has experienced increased difficulty recruiting and retaining administrative law judges due to the disparity in wages paid to administrative law judges as compared to similar public sector positions. This type of turnover is costly to the office of administrative hearings, negatively impacts morale, interferes with the ability of the office to succession plan, and ultimately harms the citizens of this state. Therefore, it is the legislature's intent to empower these administrative law judges to collectively bargain for fair wages that will foster job satisfaction and the highest standards of professional competence among administrative law judges.

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

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

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

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

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

**Sec.**  RCW 41.80.005 and 2011 1st sp.s. c 43 s 444 are each 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 administrative law judges of the office of administrative hearings, regardless of their exemption 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((~~, except~~)). "Employee" includes administrative law judges of the office of administrative hearings, 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.

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

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

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

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

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

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

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

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

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

The chief administrative law judge shall be paid a salary fixed by the governor after recommendation of the director of financial management. Subject to any collective bargaining agreement, the salaries of administrative law judges appointed under the terms of this chapter shall be determined by the chief administrative law judge after recommendation of the director of financial management.

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