

2SSB 5021 - H COMM AMD  
By Committee on Appropriations

ADOPTED 04/10/2019

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 41.80  
4 RCW to read as follows:

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

11 (2) This section applies only to employees covered by chapter  
12 41.06 RCW working for the department of corrections, except  
13 confidential employees as defined in RCW 41.80.005, members of the  
14 Washington management service, internal auditors, and nonsupervisory  
15 marine department employees.

16 (3) Negotiations between the employer and the exclusive  
17 bargaining representative of a unit of employees shall be commenced  
18 at least five months before submission of the budget to the  
19 legislature. If no agreement has been reached sixty days after the  
20 commencement of such negotiations then, at any time thereafter,  
21 either party may declare that an impasse exists and may submit the  
22 dispute to the commission for mediation, with or without the  
23 concurrence of the other party. The commission shall appoint a  
24 mediator, who shall promptly meet with the representatives of the  
25 parties, either jointly or separately, and shall take such other  
26 steps as he or she may deem appropriate in order to persuade the  
27 parties to resolve their differences and effect an agreement. A  
28 mediator, however, does not have a power of compulsion. The mediator  
29 may consider only matters that are subject to bargaining under this  
30 chapter.

31 (4) If an agreement is not reached following a reasonable period  
32 of negotiations and mediation, and the director, upon recommendation

1 of the assigned mediator, finds that the parties remain at impasse,  
2 then an arbitrator must be appointed to resolve the dispute. The  
3 issues for determination by the arbitrator must be limited to the  
4 issues certified by the executive director.

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

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

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

25 (c) The parties shall execute a written agreement before December  
26 15th of the odd-numbered year setting forth the name of the  
27 arbitrator and the dates reserved for bargaining and arbitration.

28 (d) (i) The arbitrator must hold a hearing and provide reasonable  
29 notice of the hearing to the parties to the dispute. The hearing must  
30 be informal and each party has the opportunity to present evidence  
31 and make arguments. The arbitrator may not present the case for a  
32 party to the proceedings.

33 (ii) The rules of evidence prevailing in judicial proceedings may  
34 be considered, but are not binding, and any oral testimony or  
35 documentary evidence or other data deemed relevant by the arbitrator  
36 may be received in evidence. A recording of the proceedings must be  
37 taken.

38 (iii) The arbitrator may administer oaths, require the attendance  
39 of witnesses, and require the production of such books, papers,  
40 contracts, agreements, and documents deemed by the arbitrator to be

1 material to a just determination of the issues in dispute. If a  
2 person refuses to obey a subpoena issued by the arbitrator, or  
3 refuses to be sworn or to make an affirmation to testify, or a  
4 witness, party, or attorney for a party is guilty of contempt while  
5 in attendance at a hearing, the arbitrator may invoke the  
6 jurisdiction of the superior court in the county where the labor  
7 dispute exists, and the court may issue an appropriate order. Any  
8 failure to obey the order may be punished by the court as a contempt  
9 thereof.

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

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

15 (i) The financial ability of the department of corrections to pay  
16 for the compensation and benefit provisions of a collective  
17 bargaining agreement;

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

19 (iii) Stipulations of the parties;

20 (iv) Comparison of the wages, hours, and conditions of employment  
21 of personnel involved in the proceedings with the wages, hours, and  
22 conditions of employment of like personnel of like state government  
23 employers of similar size in the western United States;

24 (v) The ability of the department of corrections to retain  
25 employees;

26 (vi) The overall compensation presently received by department of  
27 corrections employees, including direct wage compensation, vacations,  
28 holidays, and other paid excused time, pensions, insurance benefits,  
29 and all other direct or indirect monetary benefits received;

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

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

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

37 (7) During the pendency of the proceedings before the arbitrator,  
38 existing wages, hours, and other conditions of employment shall not  
39 be changed by action of either party without the consent of the other

1 but a party may so consent without prejudice to his or her rights or  
2 position under chapter 41.56 RCW.

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

10 (b) A decision of the arbitrator is final and binding on the  
11 parties, and may be enforced at the instance of either party, the  
12 arbitrator, or the commission in the superior court for the county  
13 where the dispute arose. However, the decision of the arbitrator is  
14 not binding on the legislature and, if the legislature does not  
15 approve the funds necessary to implement provisions pertaining to the  
16 compensation and fringe benefit provision of an interest arbitration  
17 award, the provisions are not binding on the state or department of  
18 corrections.

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

21 NEW SECTION. **Sec. 2.** If specific funding for the purposes of  
22 this act, referencing this act by bill or chapter number, is not  
23 provided by June 30, 2019, in the omnibus appropriations act, this  
24 act is null and void."

25 Correct the title.

EFFECT: Adds a null and void clause. The bill is null and void  
unless funded in the budget.

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