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HOUSE BILL 3178

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State of Washington

59th Legislature

2006 Regular Session

By Representatives Murray and Woods; by request of Department of Transportation

Read first time 01/24/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to collective bargaining by state ferry employees;  
2 amending RCW 47.64.011, 47.64.120, 47.64.130, 47.64.140, 47.64.170,  
3 47.64.200, 47.64.210, 47.64.220, 47.64.220, 47.64.230, 47.64.270, and  
4 47.64.280; adding new sections to chapter 47.64 RCW; creating a new  
5 section; repealing RCW 47.64.180, 47.64.190, and 47.64.240; providing  
6 an effective date; providing an expiration date; and declaring an  
7 emergency.

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

9 **Sec. 1.** RCW 47.64.011 and 1983 c 15 s 2 are each amended to read  
10 as follows:

11 As used in this chapter, unless the context otherwise requires, the  
12 definitions in this section shall apply.

13 (1) (~~"Arbitration" means the procedure whereby the parties~~  
14 ~~involved in an impasse submit their differences to a third party for a~~  
15 ~~final and binding decision or as provided in this chapter.~~

16 (2) ~~"Arbitrator" means either a single arbitrator or a panel of~~  
17 ~~three arbitrators as provided in RCW 47.64.240.~~

18 (3)) "Collective bargaining representative" means the persons

1 designated by the (~~secretary of transportation~~) governor and employee  
2 organizations to be the exclusive representatives during collective  
3 bargaining negotiations.

4 ~~((4))~~ (2) "Commission" means the marine employees' commission  
5 created in RCW 47.64.280.

6 (3) "Department of transportation" means the department as defined  
7 in RCW 47.01.021.

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

9 (5) "Ferry employee" means any employee of the marine  
10 transportation division of the department of transportation who is a  
11 member of a collective bargaining unit represented by a ferry employee  
12 organization and does not include an exempt employee pursuant to RCW  
13 41.06.079.

14 (6) "Ferry employee organization" means any labor organization  
15 recognized to represent a collective bargaining unit of ferry  
16 employees.

17 ~~(7) ("Ferry system management" means those management personnel of~~  
18 ~~the marine transportation division of the department of transportation~~  
19 ~~who have been vested with the day to day management responsibilities of~~  
20 ~~the Washington state ferry system by the transportation commission and~~  
21 ~~who are not members of a collective bargaining unit represented by a~~  
22 ~~ferry employee organization.~~

23 ~~(8))~~ "Lockout" means the refusal of (~~ferry system management~~)  
24 the employer to furnish work to ferry employees in an effort to get  
25 ferry employee organizations to make concessions during collective  
26 bargaining, grievance, or other labor relation negotiations.  
27 Curtailment of employment of ferry employees due to lack of work  
28 resulting from a strike or work stoppage(~~, as defined in subsection~~  
29 ~~(11) of this section,~~) shall not be considered a lockout.

30 ~~((9) "Marine employees' commission" means the commission created~~  
31 ~~in RCW 47.64.280.~~

32 ~~(10))~~ (8) "Office of financial management" means the office as  
33 created in RCW 43.41.050.

34 ~~((11))~~ (9) "Strike or work stoppage" means a ferry employee's  
35 refusal, in concerted action with others, to report to duty, or his or  
36 her willful absence from his or her position, or his or her stoppage or  
37 slowdown of work, or his or her abstinence in whole or in part from the  
38 full, faithful, and proper performance of the duties of employment, for

1 the purpose of inducing, influencing, or coercing a change in  
2 conditions, compensation, rights, privileges, or obligations of his,  
3 her, or any other ferry employee's employment. A refusal, in good  
4 faith, to work under conditions which pose an endangerment to the  
5 health and safety of ferry employees or the public, as determined by  
6 the master of the vessel, shall not be considered a strike for the  
7 purposes of this chapter.

8 ~~((12) "Transportation commission" means the commission as defined  
9 in RCW 47.01.021.))~~

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.64 RCW  
11 to read as follows:

12 (1) For the purpose of negotiating collective bargaining agreements  
13 under this chapter, the employer shall be represented by the governor  
14 or governor's designee.

15 (2) Two or more ferry employee organizations may, upon agreement of  
16 the parties, negotiate, as a coalition with the employer representative  
17 as designated in subsection (1) of this section, a multiunion  
18 collective bargaining agreement on behalf of all the employees in ferry  
19 employee organization bargaining units that the exclusive bargaining  
20 representatives represent. The coalition shall bargain for a  
21 multiunion collective bargaining agreement covering all of the  
22 employees represented by the coalition. The governor's designee and  
23 the exclusive bargaining representative or representatives are  
24 authorized to enter into supplemental bargaining of bargaining unit-  
25 specific issues for inclusion in or as an addendum to the multiunion  
26 collective bargaining agreement, subject to the parties' agreement  
27 regarding the issues and procedures for supplemental bargaining.  
28 Nothing in this section impairs the right of each ferry employee  
29 organization to negotiate a collective bargaining agreement exclusive  
30 to the bargaining unit it represents.

31 **Sec. 3.** RCW 47.64.120 and 1997 c 436 s 1 are each amended to read  
32 as follows:

33 (1) ~~((Ferry system management))~~ The employer and ferry system  
34 employee organizations, through their collective bargaining  
35 representatives, shall meet at reasonable times, to negotiate in good  
36 faith with respect to wages, hours, working conditions, insurance, and

1 health care benefits as limited by RCW 47.64.270, and other matters  
2 mutually agreed upon. Employer funded retirement benefits shall be  
3 provided under the public employees retirement system under chapter  
4 41.40 RCW and shall not be included in the scope of collective  
5 bargaining.

6 (2) Upon ratification of bargaining agreements, ferry employees are  
7 entitled to an amount equivalent to the interest earned on retroactive  
8 compensation increases. For purposes of this section, the interest  
9 earned on retroactive compensation increases is the same monthly rate  
10 of interest that was earned on the amount of the compensation increases  
11 while held in the state treasury. The interest will be computed for  
12 each employee until the date the retroactive compensation is paid, and  
13 must be allocated in accordance with appropriation authority. The  
14 interest earned on retroactive compensation is not considered part of  
15 the ongoing compensation obligation of the state and is not  
16 compensation earnable for the purposes of chapter 41.40 RCW.  
17 Negotiations shall also include grievance procedures for resolving any  
18 questions arising under the agreement, which shall be embodied in a  
19 written agreement and signed by the parties.

20 (3) Except as otherwise provided in this chapter, if a conflict  
21 exists between an executive order, administrative rule, or agency  
22 policy relating to wages, hours, and terms and conditions of employment  
23 and a collective bargaining agreement negotiated under this chapter,  
24 the collective bargaining agreement shall prevail. A provision of a  
25 collective bargaining agreement that conflicts with the terms of a  
26 statute is invalid and unenforceable.

27 **Sec. 4.** RCW 47.64.130 and 1983 c 15 s 4 are each amended to read  
28 as follows:

29 (1) It is an unfair labor practice for ((~~ferry system management~~))  
30 the employer or its representatives:

31 (a) To interfere with, restrain, or coerce employees in the  
32 exercise of the rights guaranteed by this chapter;

33 (b) To dominate or interfere with the formation or administration  
34 of any employee organization or contribute financial or other support  
35 to it(~~(: PROVIDED, That)~~). However, subject to rules made by the  
36 commission pursuant to RCW 47.64.280, an employer shall not be

1 prohibited from permitting employees to confer with it or its  
2 representatives or agents during working hours without loss of time or  
3 pay;

4 (c) To encourage or discourage membership in any employee  
5 organization by discrimination in regard to hiring, tenure of  
6 employment, or any term or condition of employment, but nothing  
7 contained in this subsection prevents an employer from requiring, as a  
8 condition of continued employment, payment of periodic dues and fees  
9 uniformly required to an exclusive bargaining representative pursuant  
10 to RCW 47.64.160(~~(:—PROVIDED, That)~~). However, nothing prohibits  
11 (~~(ferry system management)~~) the employer from agreeing to obtain  
12 employees by referral from a lawful hiring hall operated by or  
13 participated in by a labor organization;

14 (d) To discharge or otherwise discriminate against an employee  
15 because he has filed charges or given testimony under this chapter;

16 (e) To refuse to bargain collectively with the representatives of  
17 its employees.

18 (2) It is an unfair labor practice for an employee organization:

19 (a) To restrain or coerce (i) employees in the exercise of the  
20 rights guaranteed by this chapter(~~(:—PROVIDED, That this paragraph)~~).  
21 However, this subsection does not impair the right of an employee  
22 organization to prescribe its own rules with respect to the acquisition  
23 or retention of membership therein, or (ii) an employer in the  
24 selection of his representatives for the purposes of collective  
25 bargaining or the adjustment of grievances;

26 (b) To cause or attempt to cause an employer to discriminate  
27 against an employee in violation of subsection (1)(c) of this section;

28 (c) To refuse to bargain collectively with an employer(~~(, when it~~  
29 ~~is the representative of its employees subject to RCW 47.64.170)~~).

30 (3) The expression of any view, argument, or opinion, or the  
31 dissemination thereof to the public, whether in written, printed,  
32 graphic, or visual form, shall not constitute or be evidence of an  
33 unfair labor practice under any of the provisions of this chapter, if  
34 the expression contains no threat of reprisal or force or promise of  
35 benefit.

36 **Sec. 5.** RCW 47.64.140 and 1989 c 373 s 25 are each amended to read  
37 as follows:

1 (1) It is unlawful for any ferry system employee or any employee  
2 organization, directly or indirectly, to induce, instigate, encourage,  
3 authorize, ratify, or participate in a strike or work stoppage against  
4 the ferry system.

5 (2) It is unlawful for (~~ferry system management~~) the employer to  
6 authorize, consent to, or condone a strike or work stoppage; or to  
7 conduct a lockout; or to pay or agree to pay any ferry system employee  
8 for any day in which the employee participates in a strike or work  
9 stoppage; or to pay or agree to pay any increase in compensation or  
10 benefits to any ferry system employee in response to or as a result of  
11 any strike or work stoppage or any act that violates subsection (1) of  
12 this section. It is unlawful for any official, director, or  
13 representative of the ferry system to authorize, ratify, or participate  
14 in any violation of this subsection. Nothing in this subsection  
15 prevents new or renewed bargaining and agreement within the scope of  
16 negotiations as defined by this chapter, at any time. No collective  
17 bargaining agreement provision regarding suspension or modification of  
18 any court-ordered penalty provided in this section is binding on the  
19 courts.

20 (3) In the event of any violation or imminently threatened  
21 violation of subsection (1) or (2) of this section, any citizen  
22 domiciled within the jurisdictional boundaries of the state may  
23 petition the superior court for Thurston county for an injunction  
24 restraining the violation or imminently threatened violation. Rules of  
25 civil procedure regarding injunctions apply to the action. However,  
26 the court shall grant a temporary injunction if it appears to the court  
27 that a violation has occurred or is imminently threatened; the  
28 plaintiff need not show that the violation or threatened violation  
29 would greatly or irreparably injure him or her; and no bond may be  
30 required of the plaintiff unless the court determines that a bond is  
31 necessary in the public interest. Failure to comply with any temporary  
32 or permanent injunction granted under this section is a contempt of  
33 court as provided in chapter 7.21 RCW. The court may impose a penalty  
34 of up to ten thousand dollars for an employee organization or the ferry  
35 system, for each day during which the failure to comply continues. The  
36 sanctions for a ferry employee found to be in contempt shall be as  
37 provided in chapter 7.21 RCW. An individual or an employee

1 organization which makes an active good faith effort to comply fully  
2 with the injunction shall not be deemed to be in contempt.

3 (4) The right of ferry system employees to engage in strike or work  
4 slowdown or stoppage is not granted and nothing in this chapter may be  
5 construed to grant such a right.

6 (5) Each of the remedies and penalties provided by this section is  
7 separate and several, and is in addition to any other legal or  
8 equitable remedy or penalty.

9 (6) In addition to the remedies and penalties provided by this  
10 section the successful litigant is entitled to recover reasonable  
11 attorney fees and costs incurred in the litigation.

12 (7) Notwithstanding the provisions of chapter 88.04 RCW and chapter  
13 88.08 RCW, the department of transportation shall (~~(promulgate)~~) adopt  
14 rules (~~(and regulations)~~) allowing vessels, as defined in RCW  
15 (~~(88.04.300)~~) 88.04.015, as well as other watercraft, to engage in  
16 emergency passenger service on the waters of Puget Sound in the event  
17 ferry employees engage in a work slowdown or stoppage. Such emergency  
18 rules (~~(and regulations)~~) shall allow emergency passenger service on  
19 the waters of Puget Sound within seventy-two hours following a work  
20 slowdown or stoppage. Such rules (~~(and regulations)~~) that are  
21 (~~(promulgated)~~) adopted shall give due consideration to the needs and  
22 the health, safety, and welfare of the people of the state of  
23 Washington.

24 **Sec. 6.** RCW 47.64.170 and 1983 c 15 s 8 are each amended to read  
25 as follows:

26 (1) Any ferry employee organization certified as the bargaining  
27 representative shall be the exclusive representative of all ferry  
28 employees in the bargaining unit and shall represent all such employees  
29 fairly.

30 (2) A ferry employee organization or organizations and the  
31 (~~(secretary of transportation)~~) governor may each designate any  
32 individual as its representative to engage in collective bargaining  
33 negotiations.

34 (3) Negotiating sessions, including strategy meetings of (~~(ferry~~  
35 ~~system management)~~) the employer or employee organizations, mediation,  
36 and the deliberative process of arbitrators are exempt from the  
37 provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may

1 be open to the public by mutual consent of the parties. (~~Any meeting~~  
2 ~~of the transportation commission, during which a collective bargaining~~  
3 ~~agreement is subject to ratification, shall be open to the public.~~)

4 (4) Terms of any collective bargaining agreement may be enforced by  
5 civil action in Thurston county superior court upon the initiative of  
6 either party.

7 (5) Ferry system employees or any employee organization shall not  
8 negotiate or attempt to negotiate directly with (~~a member of the~~  
9 ~~transportation commission if the commission has~~) anyone other than the  
10 person who has been appointed or authorized a bargaining representative  
11 for the purpose of bargaining with the ferry employees or their  
12 representative(~~, unless the member of the commission is the designated~~  
13 ~~bargaining representative of the ferry system~~)).

14 (6)(a) The negotiation of a proposed collective bargaining  
15 agreement by representatives of (~~ferry system management~~) the  
16 employer and a ferry employee organization shall commence (~~in each~~  
17 ~~odd numbered year immediately following adoption by the legislature and~~  
18 ~~approval by the governor of the biennial budget~~) on or about September  
19 1st of every odd-numbered year. However, negotiations for the 2007-  
20 2009 biennial agreements may commence at any time after the effective  
21 date of this section. Negotiations for agreements pertaining to the  
22 2009-2011 biennium and all subsequent negotiations must conclude on or  
23 about April 1st of the year following the year in which the  
24 negotiations commence. After April 1st, the parties shall be deemed  
25 to be at impasse and shall proceed to mediation under RCW 47.64.230 and  
26 sections 12 through 14 of this act.

27 (b) For negotiations covering the 2009-2011 biennium and subsequent  
28 biennia, the time periods specified in this section, and in RCW  
29 47.64.210 and sections 12 through 14 of this act, must ensure  
30 conclusion of all agreements on or before September 1st of the even-  
31 numbered year next preceding the biennial budget period during which  
32 the agreement should take effect. These time periods may only be  
33 altered by mutual agreement of the parties in writing. Any such  
34 agreement and any impasse procedures agreed to by the parties under RCW  
35 47.64.200 must include an agreement regarding the new time periods that  
36 will allow final resolution by negotiations or arbitration by September  
37 1st of each even-numbered year.

1           (7) ~~Until a new collective bargaining agreement is ((negotiated, or~~  
2 ~~until an award is made by the arbitrator))~~ in effect, the terms and  
3 conditions of the previous collective bargaining agreement shall remain  
4 in force. ~~((The wage and benefit provisions of any collective~~  
5 ~~bargaining agreement, or arbitrator's award in lieu thereof, that is~~  
6 ~~concluded after July 1st of an odd-numbered year shall be retroactive~~  
7 ~~to July 1st.))~~ It is the intent of this section that the collective  
8 bargaining agreement or arbitrator's award shall commence on July 1st  
9 of each odd-numbered year and shall terminate on June 30th of the next  
10 odd-numbered year to coincide with the ensuing biennial budget year, as  
11 defined by RCW 43.88.020(7), to the extent practical. It is further  
12 the intent of this section that all collective bargaining agreements be  
13 concluded by September 1st of the even-numbered year before the  
14 commencement of the biennial budget during which the agreements are to  
15 be in effect.

16           (8) ~~((Any ferry union contract terminating before July 1, 1983,~~  
17 ~~shall, with the agreement of the parties, remain in effect until a~~  
18 ~~contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120~~  
19 ~~through 47.64.280. The contract may be retroactive to the expiration~~  
20 ~~date of the prior contract, and the cost to the department of three~~  
21 ~~months retroactive compensation and benefits for this 1983 contract~~  
22 ~~negotiation only shall not be included in calculating the limitation~~  
23 ~~imposed by RCW 47.64.180. If the parties cannot agree to contract~~  
24 ~~extension, any increase agreed to for the three-month period shall be~~  
25 ~~included in calculating the limit imposed by RCW 47.64.180.~~

26           (9) ~~Any ferry union contract which would terminate after July 1,~~  
27 ~~1983, may, by agreement of the parties, be terminated as of July 1,~~  
28 ~~1983, and a new contract concluded pursuant to RCW 47.64.006,~~  
29 ~~47.64.011, and 47.64.120 through 47.64.280. Any contract terminating~~  
30 ~~after July 1, 1983, is subject to this chapter only upon its expiration~~  
31 ~~and shall not be renewed for a period beyond July 1, 1985.))~~ (a) The  
32 governor shall submit a request either for funds necessary to implement  
33 the collective bargaining agreements including, but not limited to, the  
34 compensation and fringe benefit provisions or for legislation necessary  
35 to implement the agreement, or both. Requests for funds necessary to  
36 implement the collective bargaining agreements shall not be submitted  
37 to the legislature by the governor unless such requests:

1 (i) Have been submitted to the director of the office of financial  
2 management by October 1st before the legislative session at which the  
3 requests are to be considered; and

4 (ii) Have been certified by the director of the office of financial  
5 management as being feasible financially for the state.

6 (b) The governor shall submit a request either for funds necessary  
7 to implement the arbitration awards or for legislation necessary to  
8 implement the arbitration awards, or both. Requests for funds  
9 necessary to implement the arbitration awards shall not be submitted to  
10 the legislature by the governor unless such requests have been  
11 submitted to the director of the office of financial management by  
12 October 1st before the legislative session at which the requests are to  
13 be considered.

14 (c) The legislature shall approve or reject the submission of the  
15 request for funds necessary to implement the collective bargaining  
16 agreements or arbitration awards as a whole for each agreement or  
17 award. The legislature shall not consider a request for funds to  
18 implement a collective bargaining agreement or arbitration award unless  
19 the request is transmitted to the legislature as part of the governor's  
20 budget document submitted under RCW 43.88.030 and 43.88.060. If the  
21 legislature rejects or fails to act on the submission, either party may  
22 reopen all or part of the agreement and award or the exclusive  
23 bargaining representative may seek to implement the procedures provided  
24 for in RCW 47.64.210 and section 12 of this act.

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

31 **Sec. 7.** RCW 47.64.200 and 1983 c 15 s 11 are each amended to read  
32 as follows:

33 As the first step in the performance of their duty to bargain,  
34 ~~((ferry system management))~~ the employer and the employee organization  
35 shall endeavor to agree upon impasse procedures. ~~((The agreement shall~~  
36 ~~provide for implementation of these impasse procedures not later than~~  
37 ~~July 1st in each odd numbered year following enactment of the biennial~~

1 ~~budget-))~~ Unless otherwise agreed to by the employee organization and  
2 the employer in their impasse procedures, the arbitrator or panel is  
3 limited to selecting the most reasonable offer, in its judgment, of the  
4 final offers on each impasse item submitted by the parties. The  
5 employee organization and the employer may mutually agree to the  
6 impasse procedure under which the arbitrator or panel may issue a  
7 decision it deems just and appropriate with respect to each impasse  
8 item. If the parties fail to agree upon impasse procedures under this  
9 section, the impasse procedures provided in RCW 47.64.210 (~~(through)~~)  
10 and 47.64.230 and sections 12 through 14 of this act apply. It is  
11 unlawful for either party to refuse to participate in the impasse  
12 procedures provided in RCW 47.64.210 (~~(through)~~) and 47.64.230 and  
13 sections 12 through 14 of this act.

14 **Sec. 8.** RCW 47.64.210 and 1983 c 15 s 12 are each amended to read  
15 as follows:

16 In the absence of an impasse agreement between the parties or the  
17 failure of either party to utilize its procedures by (~~August~~) April  
18 1st in (~~each odd numbered year, the marine employees' commission~~  
19 shall, upon the request of either party,)) the even-numbered year  
20 preceding the biennium, either party may request the commission appoint  
21 an impartial and disinterested person to act as mediator (~~(pursuant to~~  
22 ~~RCW 47.64.280))~~). It is the function of the mediator to bring the  
23 parties together to effectuate a settlement of the dispute, but the  
24 mediator shall not compel the parties to agree.

25 **Sec. 9.** RCW 47.64.220 and 1999 c 256 s 1 are each amended to read  
26 as follows:

27 (1) Prior to collective bargaining and for purposes of collective  
28 bargaining and arbitration, the (~~marine employees'~~) commission shall  
29 conduct a salary survey. The results of the survey shall be published  
30 in a report which shall be a public document comparing wages, hours,  
31 employee benefits, and conditions of employment of involved ferry  
32 employees with those of public and private sector employees in states  
33 along the west coast of the United States, including Alaska, and in  
34 British Columbia doing directly comparable but not necessarily  
35 identical work, giving consideration to factors peculiar to the area  
36 and the classifications involved. Such survey report shall be for the

1 purpose of disclosing generally prevailing levels of compensation,  
2 benefits, and conditions of employment. It shall be used to guide  
3 generally but not to define or limit collective bargaining between the  
4 parties. (~~The commission shall make such other findings of fact as  
5 the parties may request during bargaining or impasse.~~)

6 (2) (~~Except as provided in subsection (3) of this section,~~)  
7 Salary and employee benefit information collected from private  
8 employers that identifies a specific employer with the salary and  
9 employee benefit rates which that employer pays to its employees is not  
10 subject to public disclosure under chapter 42.17 RCW.

11 (~~(3) A person or entity, having reason to believe that the salary  
12 survey results are inaccurate, may submit a petition to the state  
13 auditor requesting an audit of the data upon which the salary survey  
14 results are based. The state auditor shall review and analyze all data  
15 collected for the salary survey, including proprietary information, but  
16 is prohibited from disclosing the salary survey data to any other  
17 person or entity, except by court order.~~)

18 **Sec. 10.** RCW 47.64.220 and 2005 c 274 s 308 are each amended to  
19 read as follows:

20 (1) Prior to collective bargaining and for purposes of collective  
21 bargaining and arbitration, the (~~marine employees'~~) commission shall  
22 conduct a salary survey. The results of the survey shall be published  
23 in a report which shall be a public document comparing wages, hours,  
24 employee benefits, and conditions of employment of involved ferry  
25 employees with those of public and private sector employees in states  
26 along the west coast of the United States, including Alaska, and in  
27 British Columbia doing directly comparable but not necessarily  
28 identical work, giving consideration to factors peculiar to the area  
29 and the classifications involved. Such survey report shall be for the  
30 purpose of disclosing generally prevailing levels of compensation,  
31 benefits, and conditions of employment. It shall be used to guide  
32 generally but not to define or limit collective bargaining between the  
33 parties. (~~The commission shall make such other findings of fact as  
34 the parties may request during bargaining or impasse.~~)

35 (2) (~~Except as provided in subsection (3) of this section,~~)  
36 Salary and employee benefit information collected from private

1 employers that identifies a specific employer with the salary and  
2 employee benefit rates which that employer pays to its employees is not  
3 subject to public disclosure under chapter 42.56 RCW.

4 ~~((3) A person or entity, having reason to believe that the salary  
5 survey results are inaccurate, may submit a petition to the state  
6 auditor requesting an audit of the data upon which the salary survey  
7 results are based. The state auditor shall review and analyze all data  
8 collected for the salary survey, including proprietary information, but  
9 is prohibited from disclosing the salary survey data to any other  
10 person or entity, except by court order.))~~

11 **Sec. 11.** RCW 47.64.230 and 1983 c 15 s 14 are each amended to read  
12 as follows:

13 By mutual agreement, the parties may waive mediation ~~((and fact-~~  
14 ~~finding, as provided for in RCW 47.64.210 and 47.64.220,))~~ and proceed  
15 with binding arbitration as provided for in ~~((RCW 47.64.240))~~ sections  
16 12 through 14 of this act. The waiver shall be in writing and be  
17 signed by the representatives of the parties.

18 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.64 RCW  
19 to read as follows:

20 (1) If an agreement has not been reached following a reasonable  
21 period of negotiations and, when applicable, mediation, but in either  
22 event by April 15th, upon the recommendation of the assigned mediator  
23 that the parties remain at impasse, all impasse items shall be  
24 submitted to arbitration under this section. The issues for  
25 arbitration shall be limited to the issues certified by the commission.

26 (2) The parties may agree to submit the dispute to a single  
27 arbitrator, whose authority and duties shall be the same as those of an  
28 arbitration panel. If the parties cannot agree on the arbitrator  
29 within five working days, the selection shall be made under subsection  
30 (3) of this section. The full costs of arbitration under this section  
31 shall be shared equally by the parties to the dispute.

32 (3) Within seven days following the issuance of the determination  
33 of the commission, each party shall name one person to serve as its  
34 arbitrator on the arbitration panel. The two members so appointed  
35 shall meet within seven days following the appointment of the later  
36 appointed member to attempt to choose a third member to act as the

1 neutral chair of the arbitration panel. Upon the failure of the  
2 arbitrators to select a neutral chair within seven days, either party  
3 may apply to the federal mediation and conciliation service, or the  
4 American arbitration association to provide a list of five qualified  
5 arbitrators from which the neutral chair shall be chosen. Each party  
6 shall pay the fees and expenses of its arbitrator, and the fees and  
7 expenses of the neutral chair shall be shared equally between the  
8 parties.

9 (4) In consultation with the parties, the arbitrator or arbitration  
10 panel shall promptly establish a date, time, and place for a hearing  
11 and shall provide reasonable notice thereof to the parties to the  
12 dispute. The parties shall exchange final positions in writing, with  
13 copies to the arbitrator or arbitration panel, with respect to every  
14 issue to be arbitrated, on a date mutually agreed upon, but in no event  
15 later than ten working days before the date set for hearing. A  
16 hearing, which shall be informal, shall be held, and each party shall  
17 have the opportunity to present evidence and make argument. No member  
18 of the arbitration panel may present the case for a party to the  
19 proceedings. The rules of evidence prevailing in judicial proceedings  
20 may be considered, but are not binding, and any oral testimony or  
21 documentary evidence or other data deemed relevant by the chair of the  
22 arbitration panel may be received in evidence. A recording of the  
23 proceedings shall be taken. The arbitration panel has the power to  
24 administer oaths, require the attendance of witnesses, and require the  
25 production of such books, papers, contracts, agreements, and documents  
26 as may be deemed by the panel to be material to a just determination of  
27 the issues in dispute. If any person refuses to obey a subpoena issued  
28 by the arbitration panel, or refuses to be sworn or to make an  
29 affirmation to testify, or any witness, party, or attorney for a party  
30 is guilty of any contempt while in attendance at any hearing held  
31 hereunder, the arbitration panel may invoke the jurisdiction of the  
32 superior court in the county where the labor dispute exists, and the  
33 court has jurisdiction to issue an appropriate order. Any failure to  
34 obey the order may be punished by the court as a contempt thereof.

35 (5) The neutral chair shall consult with the other members of the  
36 arbitration panel, if a panel has been created. Within thirty days  
37 following the conclusion of the hearing, the neutral chair shall make  
38 written findings of fact and a written determination of the issues in

1 dispute, based on the evidence presented. A copy thereof shall be  
2 served on each of the other members of the arbitration panel, and on  
3 each of the parties to the dispute. That determination is final and  
4 binding upon both parties, subject to review by the superior court upon  
5 the application of either party solely upon the question of whether the  
6 decision of the panel was arbitrary or capricious.

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 47.64 RCW  
8 to read as follows:

9 An interest arbitration proceeding under section 12 of this act  
10 exercises a state function and is, for the purposes of this chapter,  
11 functioning as a state agency. Chapter 34.05 RCW does not apply to an  
12 interest arbitration proceeding under this chapter.

13 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.64 RCW  
14 to read as follows:

15 (1) The mediator, arbitrator, or arbitration panel may consider  
16 only matters that are subject to bargaining under this act.

17 (2) The decision of an arbitration panel is not binding on the  
18 legislature and, if the legislature does not approve the funds  
19 necessary to implement provisions pertaining to wages and wage-related  
20 matters of an arbitrated collective bargaining agreement, is not  
21 binding on the state, the department of transportation, or the ferry  
22 employee organization.

23 (3) The employer may increase tolls by the amount of the Seattle  
24 consumer price index, or less, for the purpose of providing revenue to  
25 fund collective bargaining agreements and arbitration awards.

26 (4) In making its determination, the arbitration panel shall be  
27 mindful of the legislative purpose under RCW 47.64.005 and 47.64.006  
28 and, as additional standards or guidelines to aid it in reaching a  
29 decision, shall take into consideration the following factors:

30 (a) Past collective bargaining contracts between the parties  
31 including the bargaining that led up to the contracts;

32 (b) The constitutional and statutory authority of the employer;

33 (c) Stipulations of the parties;

34 (d) The results of the salary survey as required in RCW 47.64.220;

35 (e) Comparison of wages, hours, employee benefits, and conditions  
36 of employment of the involved ferry employees with those of public and

1 private sector employees in states along the west coast of the United  
2 States, including Alaska, and in British Columbia doing directly  
3 comparable but not necessarily identical work, giving consideration to  
4 factors peculiar to the area and the classifications involved;

5 (f) Changes in any of the foregoing circumstances during the  
6 pendency of the proceedings;

7 (g) The limitations on ferry toll increases and operating subsidies  
8 as may be imposed by the legislature; and

9 (h) Other factors that are normally or traditionally taken into  
10 consideration in the determination of matters that are subject to  
11 bargaining under this chapter.

12 NEW SECTION. **Sec. 15.** A new section is added to chapter 47.64 RCW  
13 to read as follows:

14 Collective bargaining under this chapter may not be for the  
15 purposes of making a collective bargaining agreement take effect before  
16 July 1, 2007. No party may engage in collective bargaining under this  
17 chapter to amend a collective bargaining agreement in effect on the  
18 effective date of this section. A collective bargaining agreement or  
19 amendment thereto entered into under this chapter shall not be  
20 effective before July 1, 2007, and may not have any retroactive effect.

21 NEW SECTION. **Sec. 16.** This act applies prospectively only and not  
22 retroactively. It applies to collective bargaining agreements, the  
23 negotiations of collective bargaining agreements, mediations,  
24 arbitrations, and other actions under this act that arise or are  
25 commenced on or after the effective date of this section. It does not  
26 apply to collective bargaining agreements, either in effect or for  
27 which the negotiations have begun, or mediations and arbitrations that  
28 arose or commenced before the effective date of this section.

29 **Sec. 17.** RCW 47.64.270 and 1995 1st sp.s. c 6 s 6 are each amended  
30 to read as follows:

31 Absent a collective bargaining agreement to the contrary, the  
32 department of transportation shall provide contributions to insurance  
33 and health care plans for ferry system employees and dependents, as  
34 determined by the state health care authority, under chapter 41.05 RCW;  
35 and the ((~~ferry system management~~)) employer and employee organizations

1 may collectively bargain for other insurance and health care plans, and  
2 employer contributions may exceed that of other state agencies as  
3 provided in RCW 41.05.050(~~(, subject to RCW 47.64.180)~~). To the extent  
4 that ferry employees by bargaining unit have absorbed the required  
5 offset of wage increases by the amount that the employer's contribution  
6 for employees' and dependents' insurance and health care plans exceeds  
7 that of other state general government employees in the 1985-87 fiscal  
8 biennium, employees shall not be required to absorb a further offset  
9 except to the extent the differential between employer contributions  
10 for those employees and all other state general government employees  
11 increases during any subsequent fiscal biennium. If such differential  
12 increases in the 1987-89 fiscal biennium or the 1985-87 offset by  
13 bargaining unit is insufficient to meet the required deduction, the  
14 amount available for compensation shall be reduced by bargaining unit  
15 by the amount of such increase or the 1985-87 shortage in the required  
16 offset. Compensation shall include all wages and employee benefits.

17 **Sec. 18.** RCW 47.64.280 and 1984 c 287 s 95 are each amended to  
18 read as follows:

19 (1) There is created the marine employees' commission. The  
20 governor shall appoint the commission with the consent of the senate.  
21 The commission shall consist of three members: One member to be  
22 appointed from labor, one member from industry, and one member from the  
23 public who has significant knowledge of maritime affairs. The public  
24 member shall be (~~(chairman)~~) chair of the commission. One of the  
25 original members shall be appointed for a term of three years, one for  
26 a term of four years, and one for a term of five years. Their  
27 successors shall be appointed for terms of five years each, except that  
28 any person chosen to fill a vacancy shall be appointed only for the  
29 unexpired term of the member whom he or she succeeds. Commission  
30 members are eligible for reappointment. Any member of the commission  
31 may be removed by the governor, upon notice and hearing, for neglect of  
32 duty or malfeasance in office, but for no other cause. Commission  
33 members are not eligible for state retirement under chapter 41.40 RCW  
34 by virtue of their service on the commission. Members of the  
35 commission shall be compensated in accordance with RCW 43.03.250 and  
36 shall receive reimbursement for official travel and other expenses at

1 the same rate and on the same terms as provided for the transportation  
2 commission by RCW 47.01.061. The payments shall be made from the Puget  
3 Sound ferry operations account.

4 (2) The (~~marine employees~~) commission shall: (a) Adjust all  
5 complaints, grievances, and disputes between labor and management  
6 arising out of the operation of the ferry system as provided in RCW  
7 47.64.150; (b) provide for impasse mediation as required in RCW  
8 47.64.210; (c) conduct fact-finding and provide salary surveys as  
9 required in RCW 47.64.220; and (d) (~~provide for the selection of an~~  
10 ~~impartial arbitrator as~~) perform those duties required in (~~RCW~~  
11 ~~47.64.240(5)~~) section 12 of this act.

12 (3) In adjudicating all complaints, grievances, and disputes, the  
13 party claiming labor disputes shall, in writing, notify the (~~marine~~  
14 ~~employees~~) commission, which shall make careful inquiry into the  
15 cause thereof and issue an order advising the ferry employee, or the  
16 ferry employee organization representing him or her, and the department  
17 of transportation, as to the decision of the commission.

18 The parties are entitled to offer evidence relating to disputes at  
19 all hearings conducted by the commission. The orders and awards of the  
20 commission are final and binding upon any ferry employee or employees  
21 or their representative affected thereby and upon the department.

22 The commission shall adopt rules of procedure under chapter 34.05  
23 RCW.

24 The commission has the authority to subpoena any ferry employee or  
25 employees, or their representatives, and any member or representative  
26 of the department, and any witnesses. The commission may require  
27 attendance of witnesses and the production of all pertinent records at  
28 any hearings held by the commission. The subpoenas of the commission  
29 are enforceable by order of any superior court in the state of  
30 Washington for the county within which the proceeding may be pending.  
31 The commission may hire staff as necessary, appoint consultants, enter  
32 into contracts, and conduct studies as reasonably necessary to carry  
33 out this chapter.

34 NEW SECTION. **Sec. 19.** The following acts or parts of acts are  
35 each repealed:

36 (1) RCW 47.64.180 (Agreements and awards limited by appropriation)  
37 and 1983 c 15 s 9;

1           (2) RCW 47.64.190 (Marine employees' commission review for  
2 compliance with fiscal limitations--Effective date of agreements and  
3 arbitration orders) and 1983 c 15 s 10; and

4           (3) RCW 47.64.240 (Binding arbitration) and 1989 c 327 s 3 & 1983  
5 c 15 s 15.

6           NEW SECTION.   **Sec. 20.** Section 9 of this act expires July 1, 2006.

7           NEW SECTION.   **Sec. 21.** Except for section 10 of this act which  
8 takes effect July 1, 2006, this act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 immediately.

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