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**SUBSTITUTE SENATE BILL 5772**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Kohl-Welles, Franklin, Keiser and  
Kline)

READ FIRST TIME 02/28/07.

1       AN ACT Relating to certifying an employee organization for the  
2 purposes of state collective bargaining; and amending RCW 41.56.060,  
3 41.76.020, and 41.80.080.

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

5       **Sec. 1.** RCW 41.56.060 and 2005 c 232 s 1 are each amended to read  
6 as follows:

7       (1)(a) The commission, after hearing upon reasonable notice, shall  
8 decide in each application for certification as an exclusive bargaining  
9 representative, the unit appropriate for the purpose of collective  
10 bargaining. In determining, modifying, or combining the bargaining  
11 unit, the commission shall consider the duties, skills, and working  
12 conditions of the public employees; the history of collective  
13 bargaining by the public employees and their bargaining  
14 representatives; the extent of organization among the public employees;  
15 and the desire of the public employees. The commission shall determine  
16 the bargaining representative by: (a) Examination of organization  
17 membership rolls; (b) comparison of signatures on organization  
18 bargaining authorization cards; or (c) conducting an election  
19 specifically therefor.

1       (b) When only one organization is seeking certification as the  
2 representative of unrepresented employees, and the showing of interest  
3 submitted in support of the petition indicates that the organization  
4 has been authorized by a majority of the employees to act as their  
5 representative for the purposes of collective bargaining, the executive  
6 director of the public employment relations commission shall (i)(A)  
7 conduct a cross-check comparing bargaining authorization cards against  
8 the employer's records, and (B) if majority support exists, certify the  
9 organization as the sole representative; or (ii) at the petitioner's  
10 request, conduct an election.

11       (2) For classified employees of school districts and educational  
12 service districts:

13       (a) Appropriate bargaining units existing on July 24, 2005, may not  
14 be divided into more than one unit without the agreement of the public  
15 employer and the certified bargaining representative of the unit; and

16       (b) In making bargaining unit determinations under this section,  
17 the commission must consider, in addition to the factors listed in  
18 subsection (1) of this section, the avoidance of excessive  
19 fragmentation.

20       **Sec. 2.** RCW 41.76.020 and 2002 c 356 s 7 are each amended to read  
21 as follows:

22       The commission shall certify exclusive bargaining representatives  
23 in accordance with the procedures specified in this section.

24       (1) No question concerning representation may be raised within one  
25 year following issuance of a certification under this section.

26       (2) If there is a valid collective bargaining agreement in effect,  
27 no question concerning representation may be raised except during the  
28 period not more than ninety nor less than sixty days prior to the  
29 expiration date of the agreement: PROVIDED, That in the event a valid  
30 collective bargaining agreement, together with any renewals or  
31 extensions thereof, has been or will be in existence for more than  
32 three years, then a question concerning representation may be raised  
33 not more than ninety nor less than sixty days prior to the third  
34 anniversary date or any subsequent anniversary date of the agreement;  
35 and if the exclusive bargaining representative is removed as the result  
36 of such procedure, the collective bargaining agreement shall be deemed

1 to be terminated as of the date of the certification or the anniversary  
2 date following the filing of the petition, whichever is later.

3 (3) An employee organization seeking certification as exclusive  
4 bargaining representative of a bargaining unit, or faculty members  
5 seeking decertification of their exclusive bargaining representative,  
6 must make a confidential showing to the commission of credible evidence  
7 demonstrating that at least thirty percent of the faculty in the  
8 bargaining unit are in support of the petition. The petition must  
9 indicate the name, address, and telephone number of any employee  
10 organization known to claim an interest in the bargaining unit.

11 (4) A petition filed by an employer must be supported by credible  
12 evidence demonstrating the good faith basis on which the employer  
13 claims the existence of a question concerning the representation of its  
14 faculty.

15 (5) Any employee organization which makes a confidential showing to  
16 the commission of credible evidence demonstrating that it has the  
17 support of at least ten percent of the faculty in the bargaining unit  
18 involved is entitled to intervene in proceedings under this section and  
19 to have its name listed as a choice on the ballot in an election  
20 conducted by the commission.

21 (6) The commission shall determine any question concerning  
22 representation by conducting a secret ballot election among the faculty  
23 members in the bargaining unit, except under the following  
24 circumstances:

25 ~~(a) ((If only one employee organization is seeking certification as~~  
26 ~~exclusive bargaining representative of a bargaining unit for which~~  
27 ~~there is no incumbent exclusive bargaining representative, the~~  
28 ~~commission may, upon the concurrence of the employer and the employee~~  
29 ~~organization, determine the question concerning representation by~~  
30 ~~conducting a cross check comparing the employee organization's~~  
31 ~~membership records or bargaining authorization cards against the~~  
32 ~~employment records of the employer))~~ When only one organization is  
33 seeking certification as the representative of unrepresented employees,  
34 and the showing of interest submitted in support of the petition  
35 indicates that the organization has been authorized by a majority of  
36 the employees to act as their representative for the purposes of  
37 collective bargaining, the director of the public employment relations  
38 commission shall (i)(A) conduct a cross-check comparing bargaining

1 authorization cards against the employer's records, and (B) if majority  
2 support exists, certify the organization as the sole representative; or  
3 (ii) at the petitioner's request, conduct an election; or

4 (b) If the commission determines that a serious unfair labor  
5 practice has been committed which interfered with the election process  
6 and precludes the holding of a fair election, the commission may  
7 determine the question concerning representation by conducting a cross-  
8 check comparing the employee organization's membership records or  
9 bargaining authorization cards against the employment records of the  
10 employer.

11 (7) The representation election ballot must contain a choice for  
12 each employee organization qualifying under subsection (3) or (5) of  
13 this section, together with a choice for no representation. The  
14 representation election shall be determined by the majority of the  
15 valid ballots cast. If there are three or more choices on the ballot  
16 and none of the three or more choices receives a majority of the valid  
17 ballots cast, a runoff election shall be conducted between the two  
18 choices receiving the highest and second highest numbers of votes.

19 (8) The commission shall certify as the exclusive bargaining  
20 representative the employee organization that has been determined to  
21 represent a majority of faculty members in a bargaining unit.

22 **Sec. 3.** RCW 41.80.080 and 2002 c 354 s 309 are each amended to  
23 read as follows:

24 (1)(a) The commission shall determine all questions pertaining to  
25 representation and shall administer all elections and be responsible  
26 for the processing and adjudication of all disputes that arise as a  
27 consequence of elections. The commission shall adopt rules that  
28 provide for at least the following:

29 ~~((a))~~ (i) Secret balloting;

30 ~~((b))~~ (ii) Consulting with employee organizations;

31 ~~((c))~~ (iii) Access to lists of employees, job classification,  
32 work locations, and home mailing addresses;

33 ~~((d))~~ (iv) Absentee voting;

34 ~~((e))~~ (v) Procedures for the greatest possible participation in  
35 voting;

36 ~~((f))~~ (vi) Campaigning on the employer's property during working  
37 hours; and

1       (~~(g)~~) (vii) Election observers.

2       **(b) When only one organization is seeking certification as the**  
3 **representative of unrepresented employees, and the showing of interest**  
4 **submitted in support of the petition indicates that the organization**  
5 **has been authorized by a majority of the employees to act as their**  
6 **representative for the purposes of collective bargaining, the director**  
7 **of the public employment relations commission shall (i)(A) conduct a**  
8 **cross-check comparing bargaining authorization cards against the**  
9 **employer's records, and (B) if majority support exists, certify the**  
10 **organization as the sole representative; or (ii) at the petitioner's**  
11 **request, conduct an election.**

12       (2)(a) If an employee organization has been certified as the  
13 exclusive bargaining representative of the employees of a bargaining  
14 unit, the employee organization may act for and negotiate master  
15 collective bargaining agreements that will include within the coverage  
16 of the agreement all employees in the bargaining unit as provided in  
17 RCW 41.80.010(2)(a). However, if a master collective bargaining  
18 agreement is in effect for the exclusive bargaining representative, it  
19 shall apply to the bargaining unit for which the certification has been  
20 issued. Nothing in this section requires the parties to engage in new  
21 negotiations during the term of that agreement.

22       (b) This subsection (2) does not apply to exclusive bargaining  
23 representatives who represent employees of institutions of higher  
24 education.

25       (3) The certified exclusive bargaining representative shall be  
26 responsible for representing the interests of all the employees in the  
27 bargaining unit. This section shall not be construed to limit an  
28 exclusive representative's right to exercise its discretion to refuse  
29 to process grievances of employees that are unmeritorious.

30       (4) No question concerning representation may be raised if:

31       (a) Fewer than twelve months have elapsed since the last  
32 certification or election; or

33       (b) A valid collective bargaining agreement exists covering the  
34 unit, except for that period of no more than one hundred twenty  
35 calendar days nor less than ninety calendar days before the expiration  
36 of the contract.

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