

SHB 1516 - S AMD 404

By Senators Haugen, King

ADOPTED 04/22/2011

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

3 "Sec. 1. RCW 47.64.120 and 2010 c 283 s 10 are each amended to
4 read as follows:

5 (1) Except as otherwise provided in this chapter, the employer and
6 ferry system employee organizations, through their collective
7 bargaining representatives, shall meet at reasonable times to negotiate
8 in good faith with respect to wages, hours, working conditions, and
9 insurance, and other matters mutually agreed upon. Employer funded
10 retirement benefits shall be provided under the public employees
11 retirement system under chapter 41.40 RCW and shall not be included in
12 the scope of collective bargaining. Except as provided under RCW
13 47.64.270, the employer is not required to bargain over health care
14 benefits. Any retirement system or retirement benefits shall not be
15 subject to collective bargaining.

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

1 (3) The employer shall not bargain over rights of management which,
2 in addition to all powers, duties, and rights established by
3 constitutional provision or statute, must include, but not be limited
4 to, the following:

5 (a) Directing promotions;

6 (b) Directing staffing levels; and

7 (c) Directing the use of part-time shifts.

8 (4) A collective bargaining agreement may not contain any provision
9 that extends the term of an existing collective bargaining agreement or
10 applicability of items incompatible with this section in an existing
11 collective bargaining agreement.

12 (5) Except as otherwise provided in this chapter, if a conflict
13 exists between an executive order, administrative rule, or agency
14 policy relating to wages, hours, and terms and conditions of employment
15 and a collective bargaining agreement negotiated under this chapter,
16 the collective bargaining agreement shall prevail. A provision of a
17 collective bargaining agreement that conflicts with the terms of a
18 statute is invalid and unenforceable.

19 NEW SECTION. Sec. 2. A new section is added to chapter 47.64 RCW
20 to read as follows:

21 (1) Effective July 1, 2013, all captains of Washington state ferry
22 vessels are part of Washington state ferries management.

23 (2) The captain, also known as the master of a vessel or the
24 commanding officer, is the ultimate authority on and has responsibility
25 for the entire vessel. The captain's responsibilities include, but are
26 not limited to:

27 (a) Ensuring the safe navigation of the vessel and its crew and
28 passengers;

29 (b) Following all applicable federal, state, and agency policies
30 and regulations;

31 (c) Supervising crew in performance, operations, training,
32 security, and environmental protection; and

33 (d) Overseeing all aspects of vessel operations including, but not
34 limited to:

35 (i) Vessel arrivals and departures;

36 (ii) Schedule adherence;

37 (iii) Customer service;

1 (iv) Cost containment; and

2 (v) Fuel efficiency.

3 (3) Effective July 1, 2013, the public employment relations
4 commission shall sever from the masters, mates, and pilots bargaining
5 unit all captains. In anticipation of the captains' severance from the
6 masters, mates, and pilots bargaining unit, the public employment
7 relations commission shall conduct an election by August 31, 2011, to
8 determine representation of the captains. If a majority of the
9 captains in the masters, mates, and pilots bargaining unit indicate by
10 vote that they desire to be included in a newly formed captains-only
11 bargaining unit, the public employment relations commission shall
12 certify a captains-only bargaining unit, to be effective July 1, 2013.
13 Notwithstanding the results of the election, captains shall remain a
14 part of the masters, mates, and pilots bargaining unit through June 30,
15 2013.

16 (4) If a new captains-only bargaining unit is created, the employer
17 and the exclusive bargaining representative for the captains-only
18 bargaining unit must negotiate a collective bargaining agreement
19 exclusive to the captains-only bargaining unit.

20 (5) For negotiations covering the 2013-2015 biennium, the employer
21 and the exclusive bargaining representative of the captains-only
22 bargaining unit must negotiate agreements that are consistent with this
23 section.

24 (6) A collective bargaining agreement may not contain any provision
25 that extends the term of an existing collective bargaining agreement or
26 applicability of items incompatible with this section in an existing
27 collective bargaining agreement.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.64 RCW
29 to read as follows:

30 Washington state ferry system management must meet with its union
31 employees twice a year and encourage an open and direct exchange of
32 ideas and concerns between line employees and management.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.64 RCW
34 to read as follows:

35 For the purposes of this section and sections 5 through 10 of this
36 act:

1 (1) "Management" means an employee at the Washington state ferries
2 who is part of Washington management services, is exempt, or is a
3 captain.

4 (2) "Performance measure" means measurable standards to be used by
5 the department to evaluate the sufficiency of the services being
6 provided to ferry riders.

7 (3) "Performance report" means a report that summarizes ferry
8 system performance using the performance measures identified in
9 sections 5 and 6 of this act.

10 (4) "Performance target" means the desired outcome of a performance
11 measure.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.64 RCW
13 to read as follows:

14 Performance targets must be established by an ad hoc committee with
15 members from and designated by the office of the governor. The
16 committee may not consist of more than eleven members. By July 1,
17 2011, the committee shall present performance targets to the
18 representatives of the legislative transportation committees and the
19 joint transportation committee for review of the performance measures
20 listed under this section. The committee may also develop performance
21 measures in addition to the following:

22 (1) Safety performance as measured by passenger injuries per one
23 million passenger miles and by injuries per ten thousand revenue
24 service hours that are recordable by standards of the federal
25 occupational safety and health administration and related to standard
26 operating procedures;

27 (2) Service effectiveness measures including, but not limited to,
28 passenger satisfaction of interactions with ferry employees,
29 cleanliness and comfort of vessels and terminals, and satisfactory
30 response to requests for assistance. Passenger satisfaction must be
31 measured by an evaluation that is created by a contracted market
32 research company and conducted by the Washington state transportation
33 commission as part of the ferry riders' opinion group survey. The
34 Washington state transportation commission shall, to the extent
35 possible, integrate the passenger satisfaction evaluation into the
36 ferry user data survey described in RCW 47.60.286;

1 (3) Cost-containment measures including, but not limited to,
2 operating cost per passenger mile, operating cost per revenue service
3 mile, discretionary overtime as a percentage of straight time, and
4 gallons of fuel consumed per revenue service mile; and

5 (4) Maintenance and capital program effectiveness measures
6 including, but not limited to: Project delivery rate as measured by
7 the number of projects completed on time and within the omnibus
8 transportation appropriations act; vessel and terminal design and
9 engineering costs as measured by a percentage of the total capital
10 program, including measurement of the ongoing operating and maintenance
11 costs; and total vessel out-of-service time.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.64 RCW
13 to read as follows:

14 (1) Beginning on October 1, 2011, the department shall report on
15 peak-direction, peak-time, on-time performance by route for all runs
16 except those delayed or canceled due to tidal conditions. On-time is
17 defined as within ten minutes of the scheduled time. Peak-time for the
18 Mukilteo/Clinton, Edmonds/Kingston, Seattle/Bainbridge,
19 Seattle/Bremerton, Fauntleroy/Vashon/Southworth, and Point
20 Defiance/Tahlequah ferry routes means weekdays from 5:00 a.m. to 9:00
21 a.m. and 3:00 p.m. to 7:00 p.m. Peak-time for the Coupeville
22 (Keystone)/Port Townsend and Anacortes/San Juan Island ferry routes
23 means Fridays from 3:00 p.m. to closing, Saturdays all day, Sundays
24 all day, holidays all day, and Mondays from opening to 12:00 p.m.

25 (2) The department shall, on a quarterly basis, report Washington
26 state ferry system management's performance as it relates to the
27 performance measure in subsection (1) of this section (a) to the
28 transportation committees of the legislature, (b) on its vessels, (c)
29 at all ferry terminals, and (d) on the department's web site. The
30 statistics must include reasons for any delays over five minutes and
31 any delays over ten minutes from the scheduled time.

32 (3) The department may not eliminate any ferry route without prior
33 legislative approval.

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

36 (1) The office of financial management shall complete a performance

1 report that provides a baseline assessment of current performance on
2 the performance measures identified in sections 5 and 6 of this act
3 using final 2009-2011 data. This report must be presented to the joint
4 transportation committee by November 1, 2011, for review.

5 (2) By October 1, 2012, and each year thereafter, the office of
6 financial management shall complete a performance report for the prior
7 fiscal year. This report must be reviewed by the joint transportation
8 committee, and the findings of the report must be incorporated into the
9 governor's proposed biennial transportation budget. The office of
10 financial management shall transmit a copy of the accepted performance
11 report to the legislature with the governor's biennial transportation
12 budget.

13 (3) Management shall lead implementation of the performance
14 measures in sections 5 and 6 of this act.

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

17 If the Washington state ferries does not meet at least eighty
18 percent of the performance target that is set for each performance
19 measure identified in sections 5 and 6 of this act by June 30, 2013,
20 the governor, with the consensus of the chairs and ranking minorities
21 of the transportation committees of the legislature, shall appoint a
22 governor's management representative who, within sixty days, shall
23 develop and submit a corrective action plan to achieve the performance
24 targets in sections 5 and 6 of this act within the following twelve
25 months. The plan must be submitted to the governor and the
26 transportation committees of the legislature.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.64 RCW
28 to read as follows:

29 (1) If the Washington state ferries does not meet at least eighty
30 percent of the performance target that is set for each performance
31 measure identified in sections 5 and 6 of this act by June 30, 2013,
32 the department must:

33 (a) Solicit a fixed cost bid for meeting the performance measures
34 in sections 5 and 6 of this act, which must include a request for
35 information or a request for qualifications to identify qualifications

1 necessary and costs associated with privatizing the management
2 functions of the Washington state ferries; and

3 (b) Present the results of the request for information or request
4 for qualifications to the transportation committees of the legislature
5 and the governor.

6 (2) In consultation with the governor's office, the transportation
7 committees of the legislature shall utilize the information provided in
8 subsection (1) of this section to determine whether or not to
9 competitively contract out the management functions of the Washington
10 state ferry system the following biennium.

11 (3) If the governor and the transportation committees of the
12 legislature opt to competitively contract out the management functions
13 of the Washington state ferry system in the following biennium, the
14 contract must be a fixed cost contract that requires the private
15 management services firm to meet or exceed the performance target for
16 eighty percent of the performance measures under sections 5 and 6 of
17 this act. Based on these performance measures, the contract must
18 provide for incentive or retained payment arrangements as a means of
19 ensuring satisfactory performance of the contract and improved
20 performance of the ferry system over time.

21 (4) The contract must include a requirement that the firm retain
22 existing and future collective bargaining agreements as negotiated
23 between the state and the employees' labor representatives. The
24 private management services firm may rehire Washington management
25 services employees or exempt employees at the Washington state ferries.

26 (5) The contract must be for a two-year period. If the private
27 management services firm meets or exceeds the performance measures
28 under sections 5 and 6 of this act, the contract is renewable for an
29 additional two years for a maximum of ten years. After ten years, the
30 department shall implement an invitation for bid process.

31 (6) Consistent with RCW 41.06.142(3), the contract is not subject
32 to requirements for agencies purchasing services that have been
33 customarily and historically provided by state employees.

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

36 The report required in RCW 47.01.071(5) and 47.04.280 must include
37 the performance measures in sections 5 and 6 of this act.

1 **Sec. 11.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read
2 as follows:

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

5 (1) "Collective bargaining representative" means the persons
6 designated by the governor and employee organizations to be the
7 exclusive representatives during collective bargaining negotiations.

8 (2) "Commission" means the (~~(marine employees)~~) public employment
9 relations commission created in RCW (~~(47.64.280)~~) 41.58.010.

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

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

13 (5) "Ferry employee" means any employee of the marine
14 transportation division of the department of transportation who is a
15 member of a collective bargaining unit represented by a ferry employee
16 organization and does not include an exempt employee pursuant to RCW
17 41.06.079.

18 (6) "Ferry employee organization" means any labor organization
19 recognized to represent a collective bargaining unit of ferry
20 employees.

21 (7) "Lockout" means the refusal of the employer to furnish work to
22 ferry employees in an effort to get ferry employee organizations to
23 make concessions during collective bargaining, grievance, or other
24 labor relation negotiations. Curtailment of employment of ferry
25 employees due to lack of work resulting from a strike or work stoppage
26 shall not be considered a lockout.

27 (8) "Office of financial management" means the office as created in
28 RCW 43.41.050.

29 (9) "Strike or work stoppage" means a ferry employee's refusal, in
30 concerted action with others, to report to duty, or his or her willful
31 absence from his or her position, or his or her stoppage or slowdown of
32 work, or his or her abstinence in whole or in part from the full,
33 faithful, and proper performance of the duties of employment, for the
34 purpose of inducing, influencing, or coercing a change in conditions,
35 compensation, rights, privileges, or obligations of his, her, or any
36 other ferry employee's employment. A refusal, in good faith, to work
37 under conditions which pose an endangerment to the health and safety of

1 ferry employees or the public, as determined by the master of the
2 vessel, shall not be considered a strike for the purposes of this
3 chapter.

4 **Sec. 12.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are
5 each reenacted and amended to read as follows:

6 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)
7 of this section, or as provided in RCW 36.54.130 and subsection (3) of
8 this section, if any party assumes the operation and maintenance of any
9 ferry or ferry system by rent, lease, or charter from the department of
10 transportation, such party shall assume and be bound by all the
11 provisions herein and any agreement or contract for such operation of
12 any ferry or ferry system entered into by the department shall provide
13 that the wages to be paid, hours of employment, working conditions, and
14 seniority rights of employees will be established by the (~~marine~~
15 ~~employees~~) commission in accordance with the terms and provisions of
16 this chapter and it shall further provide that all labor disputes shall
17 be adjudicated in accordance with chapter 47.64 RCW.

18 (2) If a public transportation benefit area meeting the
19 requirements of RCW 36.57A.200 has voter approval to operate passenger-
20 only ferry service, it may enter into an agreement with Washington
21 State Ferries to rent, lease, or purchase passenger-only vessels,
22 related equipment, or terminal space for purposes of loading and
23 unloading the passenger-only ferry. Charges for the vessels,
24 equipment, and space must be fair market value taking into account the
25 public benefit derived from the ferry service. A benefit area or
26 subcontractor of that benefit area that qualifies under this subsection
27 is not subject to the restrictions of subsection (1) of this section,
28 but is subject to:

29 (a) The terms of those collective bargaining agreements that it or
30 its subcontractors negotiate with the exclusive bargaining
31 representatives of its or its subcontractors' employees under chapter
32 41.56 RCW or the National Labor Relations Act, as applicable;

33 (b) Unless otherwise prohibited by federal or state law, a
34 requirement that the benefit area and any contract with its
35 subcontractors, give preferential hiring to former employees of the
36 department of transportation who separated from employment with the

1 department because of termination of the ferry service by the state of
2 Washington; and

3 (c) Unless otherwise prohibited by federal or state law, a
4 requirement that the benefit area and any contract with its
5 subcontractors, on any questions concerning representation of employees
6 for collective bargaining purposes, may be determined by conducting a
7 cross-check comparing an employee organization's membership records or
8 bargaining authorization cards against the employment records of the
9 employer.

10 (3) If a ferry district is formed under RCW 36.54.110 to operate
11 passenger-only ferry service, it may enter into an agreement with
12 Washington State Ferries to rent, lease, or purchase vessels, related
13 equipment, or terminal space for purposes of loading and unloading the
14 ferry. Charges for the vessels, equipment, and space must be fair
15 market value taking into account the public benefit derived from the
16 ferry service. A ferry district or subcontractor of that district that
17 qualifies under this subsection is not subject to the restrictions of
18 subsection (1) of this section, but is subject to:

19 (a) The terms of those collective bargaining agreements that it or
20 its subcontractors negotiate with the exclusive bargaining
21 representatives of its or its subcontractors' employees under chapter
22 41.56 RCW or the National Labor Relations Act, as applicable;

23 (b) Unless otherwise prohibited by federal or state law, a
24 requirement that the ferry district and any contract with its
25 subcontractors, give preferential hiring to former employees of the
26 department of transportation who separated from employment with the
27 department because of termination of the ferry service by the state of
28 Washington; and

29 (c) Unless otherwise prohibited by federal or state law, a
30 requirement that the ferry district and any contract with its
31 subcontractors, on any questions concerning representation of employees
32 for collective bargaining purposes, may be determined by conducting a
33 cross-check comparing an employee organization's membership records or
34 bargaining authorization cards against the employment records of the
35 employer.

36 (4) The department of transportation shall make its terminal, dock,
37 and pier space available to private operators of passenger-only ferries
38 if the space can be made available without limiting the operation of

1 car ferries operated by the department. These private operators are
2 not bound by the provisions of subsection (1) of this section. Charges
3 for the equipment and space must be fair market value taking into
4 account the public benefit derived from the passenger-only ferry
5 service.

6 **Sec. 13.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read
7 as follows:

8 An agreement with a ferry employee organization that is the
9 exclusive representative of ferry employees in an appropriate unit may
10 provide procedures for the consideration of ferry employee grievances
11 and of disputes over the interpretation and application of agreements.
12 Negotiated procedures may provide for binding arbitration of ferry
13 employee grievances and of disputes over the interpretation and
14 application of existing agreements. An arbitrator's decision on a
15 grievance shall not change or amend the terms, conditions, or
16 applications of the collective bargaining agreement. The procedures
17 shall provide for the invoking of arbitration only with the approval of
18 the employee organization. The costs of arbitrators shall be shared
19 equally by the parties.

20 Ferry system employees shall follow ~~((either))~~ the grievance
21 procedures provided in a collective bargaining agreement, or if ~~((no))~~
22 such procedures are ~~((so))~~ not provided, shall submit the grievances to
23 the ~~((marine employees¹))~~ commission ~~((as provided in RCW 47.64.280))~~.

24 **Sec. 14.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read
25 as follows:

26 For any matter concerning the state ferry system and employee
27 relations, collective bargaining, or labor disputes or stoppages, the
28 provisions of chapter 47.64 RCW and this chapter shall govern.
29 However, if a conflict exists between the provisions of chapter 47.64
30 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

31 **Sec. 15.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and
32 2010 c 1 s 1 are each reenacted and amended to read as follows:

33 (1) The provisions of this chapter do not apply to:

34 (a) The members of the legislature or to any employee of, or
35 position in, the legislative branch of the state government including

1 members, officers, and employees of the legislative council, joint
2 legislative audit and review committee, statute law committee, and any
3 interim committee of the legislature;

4 (b) The justices of the supreme court, judges of the court of
5 appeals, judges of the superior courts or of the inferior courts, or to
6 any employee of, or position in the judicial branch of state
7 government;

8 (c) Officers, academic personnel, and employees of technical
9 colleges;

10 (d) The officers of the Washington state patrol;

11 (e) Elective officers of the state;

12 (f) The chief executive officer of each agency;

13 (g) In the departments of employment security and social and health
14 services, the director and the director's confidential secretary; in
15 all other departments, the executive head of which is an individual
16 appointed by the governor, the director, his or her confidential
17 secretary, and his or her statutory assistant directors;

18 (h) In the case of a multimember board, commission, or committee,
19 whether the members thereof are elected, appointed by the governor or
20 other authority, serve ex officio, or are otherwise chosen:

21 (i) All members of such boards, commissions, or committees;

22 (ii) If the members of the board, commission, or committee serve on
23 a part-time basis and there is a statutory executive officer: The
24 secretary of the board, commission, or committee; the chief executive
25 officer of the board, commission, or committee; and the confidential
26 secretary of the chief executive officer of the board, commission, or
27 committee;

28 (iii) If the members of the board, commission, or committee serve
29 on a full-time basis: The chief executive officer or administrative
30 officer as designated by the board, commission, or committee; and a
31 confidential secretary to the chair of the board, commission, or
32 committee;

33 (iv) If all members of the board, commission, or committee serve ex
34 officio: The chief executive officer; and the confidential secretary
35 of such chief executive officer;

36 (i) The confidential secretaries and administrative assistants in
37 the immediate offices of the elective officers of the state;

38 (j) Assistant attorneys general;

1 (k) Commissioned and enlisted personnel in the military service of
2 the state;

3 (l) Inmate, student, part-time, or temporary employees, and part-
4 time professional consultants, as defined by the Washington personnel
5 resources board;

6 (m) The public printer or to any employees of or positions in the
7 state printing plant;

8 (n) Officers and employees of the Washington state fruit
9 commission;

10 (o) Officers and employees of the Washington apple commission;

11 (p) Officers and employees of the Washington state dairy products
12 commission;

13 (q) Officers and employees of the Washington tree fruit research
14 commission;

15 (r) Officers and employees of the Washington state beef commission;

16 (s) Officers and employees of the Washington grain commission;

17 (t) Officers and employees of any commission formed under chapter
18 15.66 RCW;

19 (u) Officers and employees of agricultural commissions formed under
20 chapter 15.65 RCW;

21 (v) Officers and employees of the nonprofit corporation formed
22 under chapter 67.40 RCW;

23 (w) Executive assistants for personnel administration and labor
24 relations in all state agencies employing such executive assistants
25 including but not limited to all departments, offices, commissions,
26 committees, boards, or other bodies subject to the provisions of this
27 chapter and this subsection shall prevail over any provision of law
28 inconsistent herewith unless specific exception is made in such law;

29 (x) In each agency with fifty or more employees: Deputy agency
30 heads, assistant directors or division directors, and not more than
31 three principal policy assistants who report directly to the agency
32 head or deputy agency heads;

33 (y) (~~All employees of the marine employees' commission;~~
34 ~~(z)~~) Staff employed by the department of commerce to administer
35 energy policy functions;

36 (~~(aa)~~) (z) The manager of the energy facility site evaluation
37 council;

1 (~~(bb)~~) (aa) A maximum of ten staff employed by the department of
2 commerce to administer innovation and policy functions, including the
3 three principal policy assistants exempted under (x) of this
4 subsection;

5 (~~(ee)~~) (bb) Staff employed by Washington State University to
6 administer energy education, applied research, and technology transfer
7 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

8 (2) The following classifications, positions, and employees of
9 institutions of higher education and related boards are hereby exempted
10 from coverage of this chapter:

11 (a) Members of the governing board of each institution of higher
12 education and related boards, all presidents, vice presidents, and
13 their confidential secretaries, administrative, and personal
14 assistants; deans, directors, and chairs; academic personnel; and
15 executive heads of major administrative or academic divisions employed
16 by institutions of higher education; principal assistants to executive
17 heads of major administrative or academic divisions; other managerial
18 or professional employees in an institution or related board having
19 substantial responsibility for directing or controlling program
20 operations and accountable for allocation of resources and program
21 results, or for the formulation of institutional policy, or for
22 carrying out personnel administration or labor relations functions,
23 legislative relations, public information, development, senior computer
24 systems and network programming, or internal audits and investigations;
25 and any employee of a community college district whose place of work is
26 one which is physically located outside the state of Washington and who
27 is employed pursuant to RCW 28B.50.092 and assigned to an educational
28 program operating outside of the state of Washington;

29 (b) The governing board of each institution, and related boards,
30 may also exempt from this chapter classifications involving research
31 activities, counseling of students, extension or continuing education
32 activities, graphic arts or publications activities requiring
33 prescribed academic preparation or special training as determined by
34 the board: PROVIDED, That no nonacademic employee engaged in office,
35 clerical, maintenance, or food and trade services may be exempted by
36 the board under this provision;

37 (c) Printing craft employees in the department of printing at the
38 University of Washington.

1 (3) In addition to the exemptions specifically provided by this
2 chapter, the director of personnel may provide for further exemptions
3 pursuant to the following procedures. The governor or other
4 appropriate elected official may submit requests for exemption to the
5 director of personnel stating the reasons for requesting such
6 exemptions. The director of personnel shall hold a public hearing,
7 after proper notice, on requests submitted pursuant to this subsection.
8 If the director determines that the position for which exemption is
9 requested is one involving substantial responsibility for the
10 formulation of basic agency or executive policy or one involving
11 directing and controlling program operations of an agency or a major
12 administrative division thereof, the director of personnel shall grant
13 the request and such determination shall be final as to any decision
14 made before July 1, 1993. The total number of additional exemptions
15 permitted under this subsection shall not exceed one percent of the
16 number of employees in the classified service not including employees
17 of institutions of higher education and related boards for those
18 agencies not directly under the authority of any elected public
19 official other than the governor, and shall not exceed a total of
20 twenty-five for all agencies under the authority of elected public
21 officials other than the governor.

22 The salary and fringe benefits of all positions presently or
23 hereafter exempted except for the chief executive officer of each
24 agency, full-time members of boards and commissions, administrative
25 assistants and confidential secretaries in the immediate office of an
26 elected state official, and the personnel listed in subsections (1)(j)
27 through (v) (~~and (y)~~) and (2) of this section, shall be determined by
28 the director of personnel. Changes to the classification plan
29 affecting exempt salaries must meet the same provisions for classified
30 salary increases resulting from adjustments to the classification plan
31 as outlined in RCW 41.06.152.

32 From February 18, 2009, through June 30, 2011, a salary or wage
33 increase shall not be granted to any position exempt from
34 classification under this chapter, except that a salary or wage
35 increase may be granted to employees pursuant to collective bargaining
36 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,
37 or negotiated by the nonprofit corporation formed under chapter 67.40

1 RCW, and except that increases may be granted for positions for which
2 the employer has demonstrated difficulty retaining qualified employees
3 if the following conditions are met:

4 (a) The salary increase can be paid within existing resources; and

5 (b) The salary increase will not adversely impact the provision of
6 client services.

7 Any agency granting a salary increase from February 15, 2010,
8 through June 30, 2011, to a position exempt from classification under
9 this chapter shall submit a report to the fiscal committees of the
10 legislature no later than July 31, 2011, detailing the positions for
11 which salary increases were granted, the size of the increases, and the
12 reasons for giving the increases.

13 Any person holding a classified position subject to the provisions
14 of this chapter shall, when and if such position is subsequently
15 exempted from the application of this chapter, be afforded the
16 following rights: If such person previously held permanent status in
17 another classified position, such person shall have a right of
18 reversion to the highest class of position previously held, or to a
19 position of similar nature and salary.

20 Any classified employee having civil service status in a classified
21 position who accepts an appointment in an exempt position shall have
22 the right of reversion to the highest class of position previously
23 held, or to a position of similar nature and salary.

24 A person occupying an exempt position who is terminated from the
25 position for gross misconduct or malfeasance does not have the right of
26 reversion to a classified position as provided for in this section.

27 From February 15, 2010, until June 30, 2011, no monetary
28 performance-based awards or incentives may be granted by the director
29 or employers to employees covered by rules adopted under this section.
30 This subsection does not prohibit the payment of awards provided for in
31 chapter 41.60 RCW.

32 NEW SECTION. **Sec. 16.** (1) The marine employees' commission is
33 hereby abolished and its powers, duties, and functions are hereby
34 transferred to the public employment relations commission.

35 (2)(a) All reports, documents, surveys, books, records, files,
36 papers, or written material in the possession of the marine employees'
37 commission shall be delivered to the custody of the public employment

1 relations commission. All cabinets, furniture, office equipment, motor
2 vehicles, and other tangible property employed by the marine employees'
3 commission shall be made available to the public employment relations
4 commission. All funds, credits, or other assets held by the marine
5 employees' commission shall be assigned to the public employment
6 relations commission.

7 (b) Any appropriations made to the marine employees' commission
8 shall, on the effective date of this section, be transferred and
9 credited to the public employment relations commission.

10 (c) If any question arises as to the transfer of any funds, books,
11 documents, records, papers, files, equipment, or other tangible
12 property used or held in the exercise of the powers and the performance
13 of the duties and functions transferred, the director of financial
14 management shall make a determination as to the proper allocation and
15 certify the same to the state agencies concerned.

16 (3) All rules and all pending business before the marine employees'
17 commission shall be continued and acted upon by the public employment
18 relations commission. All existing contracts and obligations shall
19 remain in full force and shall be performed by the public employment
20 relations commission.

21 (4) The transfer of the powers, duties, and functions of the marine
22 employees' commission shall not affect the validity of any act
23 performed before the effective date of this section.

24 (5) If apportionments of budgeted funds are required because of the
25 transfers directed by this section, the director of financial
26 management shall certify the apportionments to the agencies affected,
27 the state auditor, and the state treasurer. Each of these shall make
28 the appropriate transfer and adjustments in funds and appropriation
29 accounts and equipment records in accordance with the certification.

30 NEW SECTION. **Sec. 17.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &
33 1961 c 13 s 47.64.080; and

34 (2) RCW 47.64.280 (Marine employees' commission) and 2010 c 283 s
35 14, 2006 c 164 s 18, 1984 c 287 s 95, & 1983 c 15 s 19.

1 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately."

SHB 1516 - S AMD
By Senators Haugen, King

ADOPTED 04/22/2011

5 On page 1, line 2 of the title, after "system;" strike the
6 remainder of the title and insert "amending RCW 47.64.120, 47.64.011,
7 47.64.150, and 41.58.060; reenacting and amending RCW 47.64.090 and
8 41.06.070; adding new sections to chapter 47.64 RCW; creating a new
9 section; repealing RCW 47.64.080 and 47.64.280; and declaring an
10 emergency."

EFFECT: All language is removed and the following is added: (1) Management rights are defined, and collective bargaining agreements may not include provisions that direct promotions, staffing levels, or the use of part-time shifts; (2) ferry captains are made part of management and may form their own union; (3) WSF management is required to meet with line union employees twice a year to encourage an open and direct exchange of ideas and concerns; (4) performance measures are defined; (5) an ad hoc committee created by the Governor will determine the performance measure targets to be met by June 30, 2013; (6) performance measures must be reported; (7) OFM will report to the Legislature whether targets are met; (8) if at least 80% of each target is not met by June 30, 2013, then a governor's management representative is to be appointed to develop a 12-month corrective action plan, and the department is to solicit requests for qualifications regarding the skills and costs associated with privatizing the management functions of the WSF; (9) if the Governor and Transportation Committees opt to competitively contract out the management functions, a selection process and contractual requirements for a private management services firm are outlined; (10) defined performance measures must be included in the department's attainment report; (11) the Marine Employees' Commission is abolished and responsibilities are transferred to the Public Employment Relations Commission; (12) MEC statutes and outdated employee seniority rights statutes are repealed; and (13) includes an

emergency clause.

--- END ---