
SUBSTITUTE SENATE BILL 5073

State of Washington

64th Legislature

2015 Regular Session

By Senate Government Operations & Security (originally sponsored by Senators Roach and Liias; by request of Office of Financial Management)

READ FIRST TIME 01/28/15.

1 AN ACT Relating to nonsubstantive updates and realignments of the
2 statutory responsibilities of the office of financial management;
3 amending RCW 43.82.055, 43.82.150, 43.88.160, 47.04.280, 47.64.170,
4 47.64.360, 79.44.060, 28A.345.060, 34.05.030, 34.12.100, 41.04.665,
5 41.04.680, 41.06.157, 41.06.167, 42.17A.705, 41.80.020, 43.03.040,
6 43.06.013, 43.41.113, 43.131.090, 48.37.060, and 49.74.020;
7 reenacting and amending RCW 41.04.340 and 41.06.020; adding new
8 sections to chapter 43.19 RCW; recodifying RCW 43.41.130, 43.41.140,
9 43.41.150, 43.41.370, and 43.41.380; and repealing RCW 43.41.190 and
10 43.41.195.

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

12 **PART I**
13 **GENERAL PROVISIONS**

14 **Sec. 101.** RCW 43.82.055 and 2007 c 506 s 6 are each amended to
15 read as follows:

16 The office of financial management shall:

17 (1) Work with the department of (~~general~~
18 ~~administration~~)enterprise services and all other state agencies to
19 determine the long-term facility needs of state government; (~~and~~)

1 (2) Develop and submit a six-year facility plan to the
2 legislature by January 1st of every odd-numbered year(~~(, beginning~~
3 ~~January 1, 2009,)~~) that includes state agency space requirements and
4 other pertinent data necessary for cost-effective facility planning.
5 The department of (~~general administration~~)enterprise services shall
6 assist with this effort as required by the office of financial
7 management; and

8 (3) Establish and enforce policies and workplace strategies that
9 promote the efficient use of state facilities.

10 **Sec. 102.** RCW 43.82.150 and 2007 c 506 s 7 are each amended to
11 read as follows:

12 (1) The office of financial management shall develop and maintain
13 an inventory system to account for all facilities owned or leased
14 (~~facilities utilized~~) by state government. At a minimum, the
15 inventory system must include the facility owner, location, type,
16 condition, use data, and size of each facility. In addition, for
17 owned facilities, the inventory system must include the date and cost
18 of original construction and the cost of any major remodeling or
19 renovation. The inventory must be updated by all agencies,
20 departments, boards, commissions, and institutions by June 30th of
21 each year. The office of financial management shall publish a report
22 summarizing information contained in the inventory system for each
23 agency by October 1st of each year, beginning in 2010 and shall
24 submit this report to the appropriate fiscal committees of the
25 legislature.

26 (2) (~~All agencies, departments, boards, commissions, and~~
27 ~~institutions of the state of Washington shall provide to the office~~
28 ~~of financial management a complete inventory of owned and leased~~
29 ~~facilities by September 1, 2010. The inventory must be updated and~~
30 ~~submitted to the office of financial management by September 1st of~~
31 ~~each subsequent year.)) The (~~inventories~~)inventory required under
32 this subsection must be submitted in a standard format prescribed by
33 the office of financial management.~~

34 (3) (~~The office of financial management shall report to the~~
35 ~~legislature by September 1, 2008, on recommended improvements to the~~
36 ~~inventory system, redevelopment costs, and an implementation schedule~~
37 ~~for the redevelopment of the inventory system. The report shall also~~
38 ~~make recommendations on other improvements that will improve~~

1 ~~accountability and assist in the evaluation of budget requests and~~
2 ~~facility management by the governor and the legislature.~~

3 (4)) For the purposes of this section, "facilities" means
4 buildings and other structures with walls and a roof. "Facilities"
5 does not mean roads, bridges, parking areas, utility systems, and
6 other similar improvements to real property.

7 **Sec. 103.** RCW 43.88.160 and 2012 c 230 s 1 are each amended to
8 read as follows:

9 This section sets forth the major fiscal duties and
10 responsibilities of officers and agencies of the executive branch.
11 The regulations issued by the governor pursuant to this chapter shall
12 provide for a comprehensive, orderly basis for fiscal management and
13 control, including efficient accounting and reporting therefor, for
14 the executive branch of the state government and may include, in
15 addition, such requirements as will generally promote more efficient
16 public management in the state.

17 (1) Governor; director of financial management. The governor,
18 through the director of financial management, shall devise and
19 supervise a modern and complete accounting system for each agency to
20 the end that all revenues, expenditures, receipts, disbursements,
21 resources, and obligations of the state shall be properly and
22 systematically accounted for. The accounting system shall include the
23 development of accurate, timely records and reports of all financial
24 affairs of the state. The system shall also provide for central
25 accounts in the office of financial management at the level of detail
26 deemed necessary by the director to perform central financial
27 management. The director of financial management shall adopt and
28 periodically update an accounting procedures manual. Any agency
29 maintaining its own accounting and reporting system shall comply with
30 the updated accounting procedures manual and the rules of the
31 director adopted under this chapter. An agency may receive a waiver
32 from complying with this requirement if the waiver is approved by the
33 director. Waivers expire at the end of the fiscal biennium for which
34 they are granted. The director shall forward notice of waivers
35 granted to the appropriate legislative fiscal committees. The
36 director of financial management may require such financial,
37 statistical, and other reports as the director deems necessary from
38 all agencies covering any period.

1 (2) Except as provided in chapter 43.88C RCW, the director of
2 financial management is responsible for quarterly reporting of
3 primary operating budget drivers such as applicable workloads,
4 caseload estimates, and appropriate unit cost data. These reports
5 shall be transmitted to the legislative fiscal committees or by
6 electronic means to the legislative evaluation and accountability
7 program committee. Quarterly reports shall include actual monthly
8 data and the variance between actual and estimated data to date. The
9 reports shall also include estimates of these items for the remainder
10 of the budget period.

11 (3) The director of financial management shall report at least
12 annually to the appropriate legislative committees regarding the
13 status of all appropriated capital projects, including transportation
14 projects, showing significant cost overruns or underruns. If funds
15 are shifted from one project to another, the office of financial
16 management shall also reflect this in the annual variance report.
17 Once a project is complete, the report shall provide a final summary
18 showing estimated start and completion dates of each project phase
19 compared to actual dates, estimated costs of each project phase
20 compared to actual costs, and whether or not there are any
21 outstanding liabilities or unsettled claims at the time of
22 completion.

23 (4) In addition, the director of financial management, as agent
24 of the governor, shall:

25 (a) Develop and maintain a system of internal controls and
26 internal audits comprising methods and procedures to be adopted by
27 each agency that will safeguard its assets, check the accuracy and
28 reliability of its accounting data, promote operational efficiency,
29 and encourage adherence to prescribed managerial policies for
30 accounting and financial controls. The system developed by the
31 director shall include criteria for determining the scope and
32 comprehensiveness of internal controls required by classes of
33 agencies, depending on the level of resources at risk.

34 Each agency head or authorized designee in an agency that meets
35 risk-based criteria to be developed by the director of financial
36 management shall be assigned the responsibility and authority for
37 establishing and maintaining internal audits following
38 ~~((the))professional audit standards ((of internal auditing of the~~
39 ~~institute of internal auditors))~~;

1 (b) Make surveys and analyses of agencies with the object of
2 determining better methods and increased effectiveness in the use of
3 manpower and materials; and the director shall authorize expenditures
4 for employee training to the end that the state may benefit from
5 training facilities made available to state employees;

6 (c) Establish policies for allowing the contracting of child care
7 services;

8 (d) Report to the governor with regard to duplication of effort
9 or lack of coordination among agencies;

10 (e) Review any pay and classification plans, and changes
11 thereunder, developed by any agency for their fiscal impact:
12 PROVIDED, That none of the provisions of this subsection shall affect
13 merit systems of personnel management now existing or hereafter
14 established by statute relating to the fixing of qualifications
15 requirements for recruitment, appointment, or promotion of employees
16 of any agency. The director shall advise and confer with agencies
17 including appropriate standing committees of the legislature as may
18 be designated by the speaker of the house and the president of the
19 senate regarding the fiscal impact of such plans and may amend or
20 alter the plans, except that for the following agencies no amendment
21 or alteration of the plans may be made without the approval of the
22 agency concerned: Agencies headed by elective officials;

23 (f) Fix the number and classes of positions or authorized
24 employee years of employment for each agency and during the fiscal
25 period amend the determinations previously fixed by the director
26 except that the director shall not be empowered to fix the number or
27 the classes for the following: Agencies headed by elective officials;

28 (g) Adopt rules to effectuate provisions contained in (a) through
29 (f) of this subsection.

30 (5) The treasurer shall:

31 (a) Receive, keep, and disburse all public funds of the state not
32 expressly required by law to be received, kept, and disbursed by some
33 other persons: PROVIDED, That this subsection shall not apply to
34 those public funds of the institutions of higher learning which are
35 not subject to appropriation;

36 (b) Receive, disburse, or transfer public funds under the
37 treasurer's supervision or custody;

38 (c) Keep a correct and current account of all moneys received and
39 disbursed by the treasurer, classified by fund or account;

1 (d) Coordinate agencies' acceptance and use of credit cards and
2 other payment methods, if the agencies have received authorization
3 under RCW 43.41.180;

4 (e) Perform such other duties as may be required by law or by
5 regulations issued pursuant to this law.

6 It shall be unlawful for the treasurer to disburse public funds
7 in the treasury except upon forms or by alternative means duly
8 prescribed by the director of financial management. These forms or
9 alternative means shall provide for authentication and certification
10 by the agency head or the agency head's designee that the services
11 have been rendered or the materials have been furnished; or, in the
12 case of loans or grants, that the loans or grants are authorized by
13 law; or, in the case of payments for periodic maintenance services to
14 be performed on state owned equipment, that a written contract for
15 such periodic maintenance services is currently in effect; and the
16 treasurer shall not be liable under the treasurer's surety bond for
17 erroneous or improper payments so made. When services are lawfully
18 paid for in advance of full performance by any private individual or
19 business entity other than equipment maintenance providers or as
20 provided for by RCW 42.24.035, such individual or entity other than
21 central stores rendering such services shall make a cash deposit or
22 furnish surety bond coverage to the state as shall be fixed in an
23 amount by law, or if not fixed by law, then in such amounts as shall
24 be fixed by the director of the department of enterprise services but
25 in no case shall such required cash deposit or surety bond be less
26 than an amount which will fully indemnify the state against any and
27 all losses on account of breach of promise to fully perform such
28 services. No payments shall be made in advance for any equipment
29 maintenance services to be performed more than twelve months after
30 such payment except that institutions of higher education as defined
31 in RCW 28B.10.016 may make payments in advance for equipment
32 maintenance services to be performed up to sixty months after such
33 payment. Any such bond so furnished shall be conditioned that the
34 person, firm or corporation receiving the advance payment will apply
35 it toward performance of the contract. The responsibility for
36 recovery of erroneous or improper payments made under this section
37 shall lie with the agency head or the agency head's designee in
38 accordance with rules issued pursuant to this chapter. Nothing in
39 this section shall be construed to permit a public body to advance

1 funds to a private service provider pursuant to a grant or loan
2 before services have been rendered or material furnished.

3 (6) The state auditor shall:

4 (a) Report to the legislature the results of current post audits
5 that have been made of the financial transactions of each agency; to
6 this end the auditor may, in the auditor's discretion, examine the
7 books and accounts of any agency, official, or employee charged with
8 the receipt, custody, or safekeeping of public funds. Where feasible
9 in conducting examinations, the auditor shall utilize data and
10 findings from the internal control system prescribed by the office of
11 financial management. The current post audit of each agency may
12 include a section on recommendations to the legislature as provided
13 in (c) of this subsection.

14 (b) Give information to the legislature, whenever required, upon
15 any subject relating to the financial affairs of the state.

16 (c) Make the auditor's official report on or before the thirty-
17 first of December which precedes the meeting of the legislature. The
18 report shall be for the last complete fiscal period and shall include
19 determinations as to whether agencies, in making expenditures,
20 complied with the laws of this state. The state auditor is authorized
21 to perform or participate in performance verifications and
22 performance audits as expressly authorized by the legislature in the
23 omnibus biennial appropriations acts or in the performance audit work
24 plan approved by the joint legislative audit and review committee.
25 The state auditor, upon completing an audit for legal and financial
26 compliance under chapter 43.09 RCW or a performance verification, may
27 report to the joint legislative audit and review committee or other
28 appropriate committees of the legislature, in a manner prescribed by
29 the joint legislative audit and review committee, on facts relating
30 to the management or performance of governmental programs where such
31 facts are discovered incidental to the legal and financial audit or
32 performance verification. The auditor may make such a report to a
33 legislative committee only if the auditor has determined that the
34 agency has been given an opportunity and has failed to resolve the
35 management or performance issues raised by the auditor. If the
36 auditor makes a report to a legislative committee, the agency may
37 submit to the committee a response to the report. This subsection (6)
38 shall not be construed to authorize the auditor to allocate other
39 than de minimis resources to performance audits except as expressly
40 authorized in the appropriations acts or in the performance audit

1 work plan. The results of a performance audit conducted by the state
2 auditor that has been requested by the joint legislative audit and
3 review committee must only be transmitted to the joint legislative
4 audit and review committee.

5 (d) Be empowered to take exception to specific expenditures that
6 have been incurred by any agency or to take exception to other
7 practices related in any way to the agency's financial transactions
8 and to cause such exceptions to be made a matter of public record,
9 including disclosure to the agency concerned and to the director of
10 financial management. It shall be the duty of the director of
11 financial management to cause corrective action to be taken within
12 six months, such action to include, as appropriate, the withholding
13 of funds as provided in RCW 43.88.110. The director of financial
14 management shall annually report by December 31st the status of audit
15 resolution to the appropriate committees of the legislature, the
16 state auditor, and the attorney general. The director of financial
17 management shall include in the audit resolution report actions taken
18 as a result of an audit including, but not limited to, types of
19 personnel actions, costs and types of litigation, and value of
20 recouped goods or services.

21 (e) Promptly report any irregularities to the attorney general.

22 (f) Investigate improper governmental activity under chapter
23 42.40 RCW.

24 In addition to the authority given to the state auditor in this
25 subsection (6), the state auditor is authorized to conduct
26 performance audits identified in RCW 43.09.470. Nothing in this
27 subsection (6) shall limit, impede, or restrict the state auditor
28 from conducting performance audits identified in RCW 43.09.470.

29 (7) The joint legislative audit and review committee may:

30 (a) Make post audits of the financial transactions of any agency
31 and management surveys and program reviews as provided for in chapter
32 44.28 RCW as well as performance audits and program evaluations. To
33 this end the joint committee may in its discretion examine the books,
34 accounts, and other records of any agency, official, or employee.

35 (b) Give information to the legislature or any legislative
36 committee whenever required upon any subject relating to the
37 performance and management of state agencies.

38 (c) Make a report to the legislature which shall include at least
39 the following:

1 (i) Determinations as to the extent to which agencies in making
2 expenditures have complied with the will of the legislature and in
3 this connection, may take exception to specific expenditures or
4 financial practices of any agencies; and

5 (ii) Such plans as it deems expedient for the support of the
6 state's credit, for lessening expenditures, for promoting frugality
7 and economy in agency affairs, and generally for an improved level of
8 fiscal management.

9 **Sec. 104.** RCW 47.04.280 and 2013 c 199 s 1 are each amended to
10 read as follows:

11 (1) It is the intent of the legislature to establish policy goals
12 for the planning, operation, performance of, and investment in, the
13 state's transportation system. The policy goals established under
14 this section are deemed consistent with the benchmark categories
15 adopted by the state's blue ribbon commission on transportation on
16 November 30, 2000. Public investments in transportation should
17 support achievement of these policy goals:

18 (a) Economic vitality: To promote and develop transportation
19 systems that stimulate, support, and enhance the movement of people
20 and goods to ensure a prosperous economy;

21 (b) Preservation: To maintain, preserve, and extend the life and
22 utility of prior investments in transportation systems and services;

23 (c) Safety: To provide for and improve the safety and security of
24 transportation customers and the transportation system;

25 (d) Mobility: To improve the predictable movement of goods and
26 people throughout Washington state;

27 (e) Environment: To enhance Washington's quality of life through
28 transportation investments that promote energy conservation, enhance
29 healthy communities, and protect the environment; and

30 (f) Stewardship: To continuously improve the quality,
31 effectiveness, and efficiency of the transportation system.

32 (2) The powers, duties, and functions of state transportation
33 agencies must be performed in a manner consistent with the policy
34 goals set forth in subsection (1) of this section.

35 (3) These policy goals are intended to be the basis for
36 establishing detailed and measurable objectives and related
37 performance measures.

38 (4) It is the intent of the legislature that the (~~office of~~
39 ~~financial management~~) department of transportation establish

1 objectives and performance measures for the department (~~of~~
2 ~~transportation~~) and other state agencies with transportation-related
3 responsibilities to ensure transportation system performance at
4 local, regional, and state government levels progresses toward the
5 attainment of the policy goals set forth in subsection (1) of this
6 section. (~~The office of financial management shall submit initial~~
7 ~~objectives and performance measures to the legislature for its review~~
8 ~~and shall provide copies of the same to the commission during the~~
9 ~~2008 legislative session.~~) The (~~office of financial~~
10 ~~management~~) department of transportation shall submit objectives and
11 performance measures to the legislature for its review and shall
12 provide copies of the same to the commission during each regular
13 session of the legislature during an even-numbered year thereafter.

14 (5) A local or regional agency engaging in transportation
15 planning may voluntarily establish objectives and performance
16 measures to demonstrate progress toward the attainment of the policy
17 goals set forth in subsection (1) of this section or any other
18 transportation policy goals established by the local or regional
19 agency. A local or regional agency engaging in transportation
20 planning is encouraged to provide local and regional objectives and
21 performance measures to be included with the objectives and
22 performance measures submitted to the legislature pursuant to
23 subsection (4) of this section.

24 (6) This section does not create a private right of action.

25 **Sec. 105.** RCW 47.64.170 and 2013 c 306 s 521 are each amended to
26 read as follows:

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

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

34 (3) Negotiating sessions, including strategy meetings of the
35 employer or employee organizations, mediation, and the deliberative
36 process of arbitrators are exempt from the provisions of chapter
37 42.30 RCW. Hearings conducted by arbitrators may be open to the
38 public by mutual consent of the parties.

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

4 (5) Ferry system employees or any employee organization shall not
5 negotiate or attempt to negotiate directly with anyone other than the
6 person who has been appointed or authorized a bargaining
7 representative for the purpose of bargaining with the ferry employees
8 or their representative.

9 (6)(a) Within ten working days after the first Monday in
10 September of every odd-numbered year, the parties shall attempt to
11 agree on an interest arbitrator to be used if the parties are not
12 successful in negotiating a comprehensive collective bargaining
13 agreement. If the parties cannot agree on an arbitrator within the
14 ten-day period, either party may request a list of seven arbitrators
15 from the federal mediation and conciliation service. The parties
16 shall select an interest arbitrator using the coin toss/alternate
17 strike method within thirty calendar days of receipt of the list.
18 Immediately upon selecting an interest arbitrator, the parties shall
19 cooperate to reserve dates with the arbitrator for potential
20 arbitration between August 1st and September 15th of the following
21 even-numbered year. The parties shall also prepare a schedule of at
22 least five negotiation dates for the following year, absent an
23 agreement to the contrary. The parties shall execute a written
24 agreement before November 1st of each odd-numbered year setting forth
25 the name of the arbitrator and the dates reserved for bargaining and
26 arbitration. This subsection (6)(a) imposes minimum obligations only
27 and is not intended to define or limit a party's full, good faith
28 bargaining obligation under other sections of this chapter.

29 (b) The negotiation of a proposed collective bargaining agreement
30 by representatives of the employer and a ferry employee organization
31 shall commence on or about February 1st of every even-numbered year.

32 (c) For negotiations covering the 2009-2011 biennium and
33 subsequent biennia, the time periods specified in this section, and
34 in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure
35 conclusion of all agreements on or before October 1st of the even-
36 numbered year next preceding the biennial budget period during which
37 the agreement should take effect. These time periods may only be
38 altered by mutual agreement of the parties in writing. Any such
39 agreement and any impasse procedures agreed to by the parties under
40 RCW 47.64.200 must include an agreement regarding the new time

1 periods that will allow final resolution by negotiations or
2 arbitration by October 1st of each even-numbered year.

3 (7) It is the intent of this section that the collective
4 bargaining agreement or arbitrator's award shall commence on July 1st
5 of each odd-numbered year and shall terminate on June 30th of the
6 next odd-numbered year to coincide with the ensuing biennial budget
7 year, as defined by RCW 43.88.020(7), to the extent practical. It is
8 further the intent of this section that all collective bargaining
9 agreements be concluded by October 1st of the even-numbered year
10 before the commencement of the biennial budget year during which the
11 agreements are to be in effect. After the expiration date of a
12 collective bargaining agreement negotiated under this chapter, except
13 to the extent provided in subsection (11) of this section and RCW
14 47.64.270(4), all of the terms and conditions specified in the
15 collective bargaining agreement remain in effect until the effective
16 date of a subsequently negotiated agreement, not to exceed one year
17 from the expiration date stated in the agreement. Thereafter, the
18 employer may unilaterally implement according to law.

19 (8) The office of financial management shall conduct a salary
20 survey, for use in collective bargaining and arbitration(~~(, which~~
21 ~~must be conducted through a contract with a firm nationally~~
22 ~~recognized in the field of human resources management consulting)).~~

23 (9) Except as provided in subsection (11) of this section:

24 (a) The governor shall submit a request either for funds
25 necessary to implement the collective bargaining agreements
26 including, but not limited to, the compensation and fringe benefit
27 provisions or for legislation necessary to implement the agreement,
28 or both. Requests for funds necessary to implement the collective
29 bargaining agreements shall not be submitted to the legislature by
30 the governor unless such requests:

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

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

36 (b) The governor shall submit a request either for funds
37 necessary to implement the arbitration awards or for legislation
38 necessary to implement the arbitration awards, or both. Requests for
39 funds necessary to implement the arbitration awards shall not be
40 submitted to the legislature by the governor unless such requests:

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

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

6 (c) The legislature shall approve or reject the submission of the
7 request for funds necessary to implement the collective bargaining
8 agreements or arbitration awards as a whole for each agreement or
9 award. The legislature shall not consider a request for funds to
10 implement a collective bargaining agreement or arbitration award
11 unless the request is transmitted to the legislature as part of the
12 governor's budget document submitted under RCW 43.88.030 and
13 43.88.060. If the legislature rejects or fails to act on the
14 submission, either party may reopen all or part of the agreement and
15 award or the exclusive bargaining representative may seek to
16 implement the procedures provided for in RCW 47.64.210 and 47.64.300.

17 (10) If, after the compensation and fringe benefit provisions of
18 an agreement are approved by the legislature, a significant revenue
19 shortfall occurs resulting in reduced appropriations, as declared by
20 proclamation of the governor or by resolution of the legislature,
21 both parties shall immediately enter into collective bargaining for a
22 mutually agreed upon modification of the agreement.

23 (11)(a) For the collective bargaining agreements negotiated for
24 the 2011-2013 fiscal biennium, the legislature may consider a request
25 for funds to implement a collective bargaining agreement even if the
26 request for funds was not received by the office of financial
27 management by October 1st and was not transmitted to the legislature
28 as part of the governor's budget document submitted under RCW
29 43.88.030 and 43.88.060.

30 (b) For the 2013-2015 fiscal biennium, a collective bargaining
31 agreement related to employee health care benefits negotiated between
32 the employer and coalition pursuant to RCW 41.80.020(3) regarding the
33 dollar amount expended on behalf of each employee must be a separate
34 agreement for which the governor may request funds necessary to
35 implement the agreement. The legislature may act upon a 2013-2015
36 collective bargaining agreement related to employee health care
37 benefits if an agreement is reached and submitted to the office of
38 financial management and legislative budget committees before final
39 legislative action on the biennial or supplemental operating budget
40 by the sitting legislature.

1 (c) For the collective bargaining agreements negotiated for the
2 2013-2015 fiscal biennium, the legislature may consider a request for
3 funds to implement a collective bargaining agreement reached after
4 October 1st after a determination of financial infeasibility by the
5 director of the office of financial management if the request for
6 funds is transmitted to the legislature as part of the governor's
7 budget document submitted under RCW 43.88.030 and 43.88.060.

8 **Sec. 106.** RCW 47.64.360 and 2011 1st sp.s. c 16 s 12 are each
9 amended to read as follows:

10 (1) The ~~((office of financial management))~~department of
11 transportation shall complete a government management and
12 accountability performance report that provides a baseline assessment
13 of current performance on the performance measures identified in RCW
14 47.64.355 ~~((and section 11 of this act))~~ using final 2009-2011 data.
15 This report must be presented to the legislature by November 1, 2011,
16 through the attainment report required in RCW 47.01.071(5) and
17 47.04.280.

18 (2) By December 31, 2012, and each year thereafter, the ~~((office~~
19 ~~of financial management))~~department of transportation shall complete
20 a performance report for the prior fiscal year. This report must be
21 reviewed by the joint transportation committee.

22 (3) Management shall lead implementation of the performance
23 measures in RCW 47.64.355 ~~((and section 11 of this act))~~.

24 **Sec. 107.** RCW 79.44.060 and 2003 c 334 s 508 are each amended to
25 read as follows:

26 When the chief administrative officer of an agency of state
27 government is satisfied that an assessing district has complied with
28 all the conditions precedent to the levy of assessments for district
29 purposes, pursuant to this chapter against lands occupied, used, or
30 under the jurisdiction of the officer's agency, he or she shall pay
31 them, together with any interest thereon from any funds specifically
32 appropriated to the agency therefor or from any funds of the agency
33 which under existing law have been or are required to be expended to
34 pay assessments on a current basis. ~~((In all other cases, the chief~~
35 ~~administrative officer shall certify to the director of financial~~
36 ~~management that the assessment is one properly chargeable to the~~
37 ~~state. The director of financial management shall pay such~~
38 ~~assessments from funds available or appropriated for this purpose.))~~

1 Except as provided in RCW 79.44.190 no lands of the state shall
2 be subject to a lien for unpaid assessments, nor shall the interest
3 of the state in any land be sold for unpaid assessments where
4 assessment liens attached to the lands prior to state ownership.

5 NEW SECTION. **Sec. 108.** RCW 43.41.130, 43.41.140, 43.41.150,
6 43.41.370, and 43.41.380 are each recodified as sections in chapter
7 43.19 RCW.

8 NEW SECTION. **Sec. 109.** The following acts or parts of acts are
9 each repealed:

10 (1) RCW 43.41.190 (Community network programs—Recommended
11 legislation) and 1994 sp.s. c 7 s 318; and

12 (2) RCW 43.41.195 (Community networks—Fund distribution formula)
13 and 1999 c 372 s 8 & 1994 sp.s. c 7 s 319.

14 PART II

15 HUMAN RESOURCES FUNCTIONS

16 **Sec. 201.** RCW 28A.345.060 and 2011 1st sp.s. c 43 s 467 are each
17 amended to read as follows:

18 The association shall contract with (~~the human resources~~
19 ~~director in~~) the office of financial management to audit in odd-
20 numbered years the association's staff classifications and employees'
21 salaries. The association shall give copies of the audit reports to
22 the office of financial management and the committees of each house
23 of the legislature dealing with common schools.

24 **Sec. 202.** RCW 34.05.030 and 2011 1st sp.s. c 43 s 431 are each
25 amended to read as follows:

26 (1) This chapter shall not apply to:

27 (a) The state militia, or

28 (b) The board of clemency and pardons, or

29 (c) The department of corrections or the indeterminate sentencing
30 review board with respect to persons who are in their custody or are
31 subject to the jurisdiction of those agencies.

32 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not
33 apply:

34 (a) To adjudicative proceedings of the board of industrial
35 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

1 (b) Except for actions pursuant to chapter 46.29 RCW, to the
2 denial, suspension, or revocation of a driver's license by the
3 department of licensing;

4 (c) To the department of labor and industries where another
5 statute expressly provides for review of adjudicative proceedings of
6 a department action, order, decision, or award before the board of
7 industrial insurance appeals;

8 (d) To actions of the Washington personnel resources board, the
9 (~~human resources~~) director (~~, or the office~~) of financial
10 management, and the department of enterprise services when carrying
11 out their duties under chapter 41.06 RCW;

12 (e) To adjustments by the department of revenue of the amount of
13 the surcharge imposed under RCW 82.04.261; or

14 (f) To the extent they are inconsistent with any provisions of
15 chapter 43.43 RCW.

16 (3) Unless a party makes an election for a formal hearing
17 pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through
18 34.05.598 do not apply to a review hearing conducted by the board of
19 tax appeals.

20 (4) The rule-making provisions of this chapter do not apply to:

21 (a) Reimbursement unit values, fee schedules, arithmetic
22 conversion factors, and similar arithmetic factors used to determine
23 payment rates that apply to goods and services purchased under
24 contract for clients eligible under chapter 74.09 RCW; and

25 (b) Adjustments by the department of revenue of the amount of the
26 surcharge imposed under RCW 82.04.261.

27 (5) All other agencies, whether or not formerly specifically
28 excluded from the provisions of all or any part of the administrative
29 procedure act, shall be subject to the entire act.

30 **Sec. 203.** RCW 34.12.100 and 2011 1st sp.s. c 43 s 469 are each
31 amended to read as follows:

32 The chief administrative law judge shall be paid a salary fixed
33 by the governor after recommendation of the (~~human resources~~)
34 director (~~(in the office)~~) of financial management. The salaries of
35 administrative law judges appointed under the terms of this chapter
36 shall be determined by the chief administrative law judge after
37 recommendation of the (~~department of personnel~~) director of
38 financial management.

1 **Sec. 204.** RCW 41.04.340 and 2011 1st sp.s. c 43 s 432 and 2011
2 1st sp.s. c 39 s 12 are each reenacted and amended to read as
3 follows:

4 (1) An attendance incentive program is established for all
5 eligible employees. As used in this section the term "eligible
6 employee" means any employee of the state, other than eligible
7 employees of the community and technical colleges and the state board
8 for community and technical colleges identified in RCW 28B.50.553,
9 and teaching and research faculty at the state and regional
10 universities and The Evergreen State College, entitled to accumulate
11 sick leave and for whom accurate sick leave records have been
12 maintained. No employee may receive compensation under this section
13 for any portion of sick leave accumulated at a rate in excess of one
14 day per month. The state and regional universities and The Evergreen
15 State College shall maintain complete and accurate sick leave records
16 for all teaching and research faculty.

17 (2) In January of the year following any year in which a minimum
18 of sixty days of sick leave is accrued, and each January thereafter,
19 any eligible employee may receive remuneration for unused sick leave
20 accumulated in the previous year at a rate equal to one day's
21 monetary compensation of the employee for each four full days of
22 accrued sick leave in excess of sixty days. Sick leave for which
23 compensation has been received shall be deducted from accrued sick
24 leave at the rate of four days for every one day's monetary
25 compensation.

26 From July 1, 2011, through June 29, 2013, the rate of monetary
27 compensation for the purposes of this subsection shall not be reduced
28 by any temporary salary reduction.

29 (3) At the time of separation from state service due to
30 retirement or death, an eligible employee or the employee's estate
31 may elect to receive remuneration at a rate equal to one day's
32 current monetary compensation of the employee for each four full days
33 of accrued sick leave. From July 1, 2011, through June 29, 2013, the
34 rate of monetary compensation for the purposes of this subsection
35 shall not be reduced by any temporary salary reduction.

36 (4) Remuneration or benefits received under this section shall
37 not be included for the purpose of computing a retirement allowance
38 under any public retirement system in this state.

39 (5) Except as provided in subsections (7) through (9) of this
40 section for employees not covered by chapter 41.06 RCW, this section

1 shall be administered, and rules shall be adopted to carry out its
2 purposes, by the (~~human resources~~) director of financial management
3 for persons subject to chapter 41.06 RCW(~~(: PROVIDED, That~~
4 ~~determination of classes of eligible employees shall be subject to~~
5 ~~approval by the office of financial management)~~).

6 (6) Should the legislature revoke any remuneration or benefits
7 granted under this section, no affected employee shall be entitled
8 thereafter to receive such benefits as a matter of contractual right.

9 (7) In lieu of remuneration for unused sick leave at retirement
10 as provided in subsection (3) of this section, an agency head or
11 designee may with equivalent funds, provide eligible employees with a
12 benefit plan that provides for reimbursement for medical expenses.
13 This plan shall be implemented only after consultation with affected
14 groups of employees. For eligible employees covered by chapter 41.06
15 RCW, procedures for the implementation of these plans shall be
16 adopted by the (~~human resources~~) director of the state health care
17 authority. For eligible employees exempt from chapter 41.06 RCW,
18 (~~and classified employees who have opted out of coverage of chapter~~
19 ~~41.06 RCW as provided in RCW 41.56.201,~~) implementation procedures
20 shall be adopted by an agency head having jurisdiction over the
21 employees.

22 (8) Implementing procedures adopted by the (~~human resources~~)
23 director of the state health care authority or agency heads shall
24 require that each medical expense plan authorized by subsection (7)
25 of this section apply to all eligible employees in any one of the
26 following groups: (a) Employees in an agency; (b) employees in a
27 major organizational subdivision of an agency; (c) employees at a
28 major operating location of an agency; (d) exempt employees under the
29 jurisdiction of an elected or appointed Washington state executive;
30 (e) employees of the Washington state senate; (f) employees of the
31 Washington state house of representatives; (g) classified employees
32 in a bargaining unit established by the (~~director of~~
33 ~~personnel~~)public employment relations commission; or (h) other group
34 of employees defined by an agency head that is not designed to
35 provide an individual-employee choice regarding participation in a
36 medical expense plan. However, medical expense plans for eligible
37 employees in any of the groups under (a) through (h) of this
38 subsection who are covered by a collective bargaining agreement shall
39 be implemented only by written agreement with the bargaining unit's

1 exclusive representative and a separate medical expense plan may be
2 provided for unrepresented employees.

3 (9) Medical expense plans authorized by subsection (7) of this
4 section must require as a condition of participation in the plan that
5 employees in the group affected by the plan sign an agreement with
6 the employer. The agreement must include a provision to hold the
7 employer harmless should the United States government find that the
8 employer or the employee is in debt to the United States as a result
9 of the employee not paying income taxes due on the equivalent funds
10 placed into the plan, or as a result of the employer not withholding
11 or deducting a tax, assessment, or other payment on the funds as
12 required by federal law. The agreement must also include a provision
13 that requires an eligible employee to forfeit remuneration under
14 subsection (3) of this section if the employee belongs to a group
15 that has been designated to participate in the medical expense plan
16 permitted under this section and the employee refuses to execute the
17 required agreement.

18 **Sec. 205.** RCW 41.04.665 and 2011 1st sp.s. c 43 s 435 are each
19 amended to read as follows:

20 (1) An agency head may permit an employee to receive leave under
21 this section if:

22 (a)(i) The employee suffers from, or has a relative or household
23 member suffering from, an illness, injury, impairment, or physical or
24 mental condition which is of an extraordinary or severe nature;

25 (ii) The employee has been called to service in the uniformed
26 services;

27 (iii) A state of emergency has been declared anywhere within the
28 United States by the federal or any state government and the employee
29 has needed skills to assist in responding to the emergency or its
30 aftermath and volunteers his or her services to either a governmental
31 agency or to a nonprofit organization engaged in humanitarian relief
32 in the devastated area, and the governmental agency or nonprofit
33 organization accepts the employee's offer of volunteer services; or

34 (iv) The employee is a victim of domestic violence, sexual
35 assault, or stalking; (~~or~~

36 ~~(v) During the 2009-2011 fiscal biennium only, the employee is~~
37 ~~eligible to use leave in lieu of temporary layoff under section 3(5),~~
38 ~~chapter 32, Laws of 2010 1st sp. sess.;~~)

1 (b) The illness, injury, impairment, condition, call to service,
2 emergency volunteer service, or consequence of domestic violence,
3 sexual assault, temporary layoff under section 3(5), chapter 32, Laws
4 of 2010 1st sp. sess., or stalking has caused, or is likely to cause,
5 the employee to:

6 (i) Go on leave without pay status; or

7 (ii) Terminate state employment;

8 (c) The employee's absence and the use of shared leave are
9 justified;

10 (d) The employee has depleted or will shortly deplete his or her:

11 (i) Annual leave and sick leave reserves if he or she qualifies
12 under (a)(i) of this subsection;

13 (ii) Annual leave and paid military leave allowed under RCW
14 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

15 (iii) Annual leave if he or she qualifies under (a)(iii)((~~7~~))or
16 (iv)((~~7~~ or (~~v~~))) of this subsection;

17 (e) The employee has abided by agency rules regarding:

18 (i) Sick leave use if he or she qualifies under (a)(i) or (iv) of
19 this subsection; or

20 (ii) Military leave if he or she qualifies under (a)(ii) of this
21 subsection; and

22 (f) The employee has diligently pursued and been found to be
23 ineligible for benefits under chapter 51.32 RCW if he or she
24 qualifies under (a)(i) of this subsection.

25 (2) The agency head shall determine the amount of leave, if any,
26 which an employee may receive under this section. However, an
27 employee shall not receive a total of more than five hundred twenty-
28 two days of leave, except that, a supervisor may authorize leave in
29 excess of five hundred twenty-two days in extraordinary circumstances
30 for an employee qualifying for the shared leave program because he or
31 she is suffering from an illness, injury, impairment, or physical or
32 mental condition which is of an extraordinary or severe nature.
33 Shared leave received under the uniformed service shared leave pool
34 in RCW 41.04.685 is not included in this total.

35 (3) An employee may transfer annual leave, sick leave, and his or
36 her personal holiday, as follows:

37 (a) An employee who has an accrued annual leave balance of more
38 than ten days may request that the head of the agency for which the
39 employee works transfer a specified amount of annual leave to another
40 employee authorized to receive leave under subsection (1) of this

1 section. In no event may the employee request a transfer of an amount
2 of leave that would result in his or her annual leave account going
3 below ten days. For purposes of this subsection (3)(a), annual leave
4 does not accrue if the employee receives compensation in lieu of
5 accumulating a balance of annual leave.

6 (b) An employee may transfer a specified amount of sick leave to
7 an employee requesting shared leave only when the donating employee
8 retains a minimum of one hundred seventy-six hours of sick leave
9 after the transfer.

10 (c) An employee may transfer, under the provisions of this
11 section relating to the transfer of leave, all or part of his or her
12 personal holiday, as that term is defined under RCW 1.16.050, or as
13 such holidays are provided to employees by agreement with a school
14 district's board of directors if the leave transferred under this
15 subsection does not exceed the amount of time provided for personal
16 holidays under RCW 1.16.050.

17 (4) An employee of an institution of higher education under RCW
18 28B.10.016, school district, or educational service district who does
19 not accrue annual leave but does accrue sick leave and who has an
20 accrued sick leave balance of more than twenty-two days may request
21 that the head of the agency for which the employee works transfer a
22 specified amount of sick leave to another employee authorized to
23 receive leave under subsection (1) of this section. In no event may
24 such an employee request a transfer that would result in his or her
25 sick leave account going below twenty-two days. Transfers of sick
26 leave under this subsection are limited to transfers from employees
27 who do not accrue annual leave. Under this subsection, "sick leave"
28 also includes leave accrued pursuant to RCW 28A.400.300(~~((+2+))~~)(1)(b)
29 or 28A.310.240(1) with compensation for illness, injury, and
30 emergencies.

31 (5) Transfers of leave made by an agency head under subsections
32 (3) and (4) of this section shall not exceed the requested amount.

33 (6) Leave transferred under this section may be transferred from
34 employees of one agency to an employee of the same agency or, with
35 the approval of the heads of both agencies, to an employee of another
36 state agency.

37 (7) While an employee is on leave transferred under this section,
38 he or she shall continue to be classified as a state employee and
39 shall receive the same treatment in respect to salary, wages, and

1 employee benefits as the employee would normally receive if using
2 accrued annual leave or sick leave.

3 (a) All salary and wage payments made to employees while on leave
4 transferred under this section shall be made by the agency employing
5 the person receiving the leave. The value of leave transferred shall
6 be based upon the leave value of the person receiving the leave.

7 (b) In the case of leave transferred by an employee of one agency
8 to an employee of another agency, the agencies involved shall arrange
9 for the transfer of funds and credit for the appropriate value of
10 leave.

11 (i) Pursuant to rules adopted by the office of financial
12 management, funds shall not be transferred under this section if the
13 transfer would violate any constitutional or statutory restrictions
14 on the funds being transferred.

15 (ii) The office of financial management may adjust the
16 appropriation authority of an agency receiving funds under this
17 section only if and to the extent that the agency's existing
18 appropriation authority would prevent it from expending the funds
19 received.

20 (iii) Where any questions arise in the transfer of funds or the
21 adjustment of appropriation authority, the director of financial
22 management shall determine the appropriate transfer or adjustment.

23 (8) Leave transferred under this section shall not be used in any
24 calculation to determine an agency's allocation of full time
25 equivalent staff positions.

26 (9) The value of any leave transferred under this section which
27 remains unused shall be returned at its original value to the
28 employee or employees who transferred the leave when the agency head
29 finds that the leave is no longer needed or will not be needed at a
30 future time in connection with the illness or injury for which the
31 leave was transferred or for any other qualifying condition. Before
32 the agency head makes a determination to return unused leave in
33 connection with an illness or injury, or any other qualifying
34 condition, he or she must receive from the affected employee a
35 statement from the employee's doctor verifying that the illness or
36 injury is resolved. To the extent administratively feasible, the
37 value of unused leave which was transferred by more than one employee
38 shall be returned on a pro rata basis.

1 (10) An employee who uses leave that is transferred to him or her
2 under this section may not be required to repay the value of the
3 leave that he or she used.

4 (11) The (~~human resources~~) director of financial management may
5 adopt rules as necessary to implement subsection (2) of this section.

6 **Sec. 206.** RCW 41.04.680 and 2011 1st sp.s. c 43 s 437 are each
7 amended to read as follows:

8 The office of financial management and other personnel
9 authorities shall adopt rules or policies governing the accumulation
10 and use of sick leave for state agency and department employees,
11 expressly for the establishment of a plan allowing participating
12 employees to pool sick leave and allowing any sick leave thus pooled
13 to be used by any participating employee who has used all of the sick
14 leave, annual leave, and compensatory leave that has been personally
15 accrued by him or her. Each department or agency of the state may
16 allow employees to participate in a sick leave pool established by
17 the office of financial management and other personnel authorities.

18 (1) For purposes of calculating maximum sick leave that may be
19 donated or received by any one employee, pooled sick leave:

20 (a) Is counted and converted in the same manner as sick leave
21 under the Washington state leave sharing program as provided in this
22 chapter; and

23 (b) Does not create a right to sick leave in addition to the
24 amount that may be donated or received under the Washington state
25 leave sharing program as provided in this chapter.

26 (2) The office of financial management and other personnel
27 authorities, except the personnel authorities for higher education
28 institutions, shall adopt rules which provide:

29 (a) That employees are eligible to participate in the sick leave
30 pool after one year of employment with the state or agency of the
31 state if the employee has accrued a minimum amount of unused sick
32 leave, to be established by rule;

33 (b) That participation in the sick leave pool shall, at all
34 times, be voluntary on the part of the employees;

35 (c) That any sick leave pooled shall be removed from the
36 personally accumulated sick leave balance of the employee
37 contributing the leave;

1 (d) That any sick leave in the pool that is used by a
2 participating employee may be used only for the employee's personal
3 illness, accident, or injury;

4 (e) That a participating employee is not eligible to use sick
5 leave accumulated in the pool until all of his or her personally
6 accrued sick, annual, and compensatory leave has been used;

7 (f) A maximum number of days of sick leave in the pool that any
8 one employee may use;

9 (g) That a participating employee who uses sick leave from the
10 pool is not required to recontribute such sick leave to the pool,
11 except as otherwise provided in this section;

12 (h) That an employee who cancels his or her membership in the
13 sick leave pool is not eligible to withdraw the days of sick leave
14 contributed by that employee to the pool;

15 (i) That an employee who transfers from one position in state
16 government to another position in state government may transfer from
17 one pool to another if the eligibility criteria of the pools are
18 comparable and the administrators of the pools have agreed on a
19 formula for transfer of credits;

20 (j) That alleged abuse of the use of the sick leave pool shall be
21 investigated, and, on a finding of wrongdoing, the employee shall
22 repay all of the sick leave credits drawn from the sick leave pool
23 and shall be subject to such other disciplinary action as is
24 determined by the agency head;

25 (k) That sick leave credits may be drawn from the sick leave pool
26 by a part-time employee on a pro rata basis; and

27 (l) That each department or agency shall maintain accurate and
28 reliable records showing the amount of sick leave which has been
29 accumulated and is unused by employees, in accordance with guidelines
30 established by the (~~department of personnel~~)office of financial
31 management.

32 (3) Personnel authorities for higher education institutions shall
33 adopt policies consistent with the needs of the employees under their
34 respective jurisdictions.

35 **Sec. 207.** RCW 41.06.020 and 2011 1st sp.s. c 43 s 401 are each
36 reenacted and amended to read as follows:

37 Unless the context clearly indicates otherwise, the words used in
38 this chapter have the meaning given in this section.

1 (1) "Affirmative action" means a procedure by which racial
2 minorities, women, persons in the protected age category, persons
3 with disabilities, Vietnam-era veterans, and disabled veterans are
4 provided with increased employment opportunities. It shall not mean
5 any sort of quota system.

6 (2) "Agency" means an office, department, board, commission, or
7 other separate unit or division, however designated, of the state
8 government and all personnel thereof; it includes any unit of state
9 government established by law, the executive officer or members of
10 which are either elected or appointed, upon which the statutes confer
11 powers and impose duties in connection with operations of either a
12 governmental or proprietary nature.

13 (3) "Board" means the Washington personnel resources board
14 established under the provisions of RCW 41.06.110, except that this
15 definition does not apply to the words "board" or "boards" when used
16 in RCW 41.06.070.

17 (4) "Career development" means the progressive development of
18 employee capabilities to facilitate productivity, job satisfaction,
19 and upward mobility through work assignments as well as education and
20 training that are both state-sponsored and are achieved by individual
21 employee efforts, all of which shall be consistent with the needs and
22 obligations of the state and its agencies.

23 (5) "Classified service" means all positions in the state service
24 subject to the provisions of this chapter.

25 (6) "Comparable worth" means the provision of similar salaries
26 for positions that require or impose similar responsibilities,
27 judgments, knowledge, skills, and working conditions.

28 (7) "Competitive service" means all positions in the classified
29 service for which a competitive examination is required as a
30 condition precedent to appointment.

31 (8) "Department" means an agency of government that has as its
32 governing officer a person, or combination of persons such as a
33 commission, board, or council, by law empowered to operate the agency
34 responsible either to (a) no other public officer or (b) the
35 governor.

36 (9) "Director" means the (~~human resources~~) director (~~within~~
37 ~~the office~~) of financial management (~~and appointed under RCW~~
38 ~~43.41.113~~) or the director's designee.

39 (10) "Institutions of higher education" means the University of
40 Washington, Washington State University, Central Washington

1 University, Eastern Washington University, Western Washington
2 University, The Evergreen State College, and the various state
3 community colleges.

4 (11) "Noncompetitive service" means all positions in the
5 classified service for which a competitive examination is not
6 required.

7 (12) "Related boards" means the state board for community and
8 technical colleges; and such other boards, councils, and commissions
9 related to higher education as may be established.

10 (13) "Training" means activities designed to develop job-related
11 knowledge and skills of employees.

12 **Sec. 208.** RCW 41.06.157 and 2011 1st sp.s. c 43 s 411 are each
13 amended to read as follows:

14 (1) To promote the most effective use of the state's workforce
15 and improve the effectiveness and efficiency of the delivery of
16 services to the citizens of the state, the director shall adopt and
17 maintain a comprehensive classification plan for all positions in the
18 classified service. The classification plan must:

19 (a) Be simple and streamlined;

20 (b) Support state agencies in responding to changing
21 technologies, economic and social conditions, and the needs of its
22 citizens;

23 (c) Value workplace diversity;

24 (d) Facilitate the reorganization and decentralization of
25 governmental services;

26 (e) Enhance mobility and career advancement opportunities; and

27 (f) Consider rates in other public employment and private
28 employment in the state.

29 (2) An appointing authority and an employee organization
30 representing classified employees of the appointing authority for
31 collective bargaining purposes may jointly request the (~~human~~
32 ~~resources~~) director of financial management to initiate a
33 classification study.

34 (3) For institutions of higher education and related boards, the
35 director may adopt special salary ranges to be competitive with
36 positions of a similar nature in the state or the locality in which
37 the institution of higher education or related board is located.

38 (4) The director may undertake salary surveys of positions in
39 other public and private employment to establish market rates. Any

1 salary survey information collected from private employers which
2 identifies a specific employer with salary rates which the employer
3 pays to its employees shall not be subject to public disclosure under
4 chapter 42.56 RCW.

5 **Sec. 209.** RCW 41.06.167 and 2011 1st sp.s. c 43 s 413 are each
6 amended to read as follows:

7 The (~~human resources~~) director of financial management shall
8 undertake comprehensive compensation surveys for officers and entry-
9 level officer candidates of the Washington state patrol, with such
10 surveys to be conducted in the year prior to the convening of every
11 other one hundred five day regular session of the state legislature.
12 Salary and fringe benefit survey information collected from private
13 employers which identifies a specific employer with the salary and
14 fringe benefit rates which that employer pays to its employees shall
15 not be subject to public disclosure under chapter 42.56 RCW.

16 **Sec. 210.** RCW 42.17A.705 and 2012 c 229 s 582 are each amended
17 to read as follows:

18 For the purposes of RCW 42.17A.700, "executive state officer"
19 includes:

20 (1) The chief administrative law judge, the director of
21 agriculture, the director of the department of services for the
22 blind, the chief information officer of the office of chief
23 information officer, the director of the state system of community
24 and technical colleges, the director of commerce, the director of the
25 consolidated technology services agency, the secretary of
26 corrections, the director of early learning, the director of ecology,
27 the commissioner of employment security, the chair of the energy
28 facility site evaluation council, the director of enterprise
29 services, the secretary of the state finance committee, the director
30 of financial management, the director of fish and wildlife, the
31 executive secretary of the forest practices appeals board, the
32 director of the gambling commission, the secretary of health, the
33 administrator of the Washington state health care authority, the
34 executive secretary of the health care facilities authority, the
35 executive secretary of the higher education facilities authority, the
36 executive secretary of the horse racing commission, (~~the human
37 resources director,~~) the executive secretary of the human rights
38 commission, the executive secretary of the indeterminate sentence

1 review board, the executive director of the state investment board,
2 the director of labor and industries, the director of licensing, the
3 director of the lottery commission, the director of the office of
4 minority and women's business enterprises, the director of parks and
5 recreation, the executive director of the public disclosure
6 commission, the executive director of the Puget Sound partnership,
7 the director of the recreation and conservation office, the director
8 of retirement systems, the director of revenue, the secretary of
9 social and health services, the chief of the Washington state patrol,
10 the executive secretary of the board of tax appeals, the secretary of
11 transportation, the secretary of the utilities and transportation
12 commission, the director of veterans affairs, the president of each
13 of the regional and state universities and the president of The
14 Evergreen State College, and each district and each campus president
15 of each state community college;

16 (2) Each professional staff member of the office of the governor;

17 (3) Each professional staff member of the legislature; and

18 (4) Central Washington University board of trustees, the boards
19 of trustees of each community college and each technical college,
20 each member of the state board for community and technical colleges,
21 state convention and trade center board of directors, Eastern
22 Washington University board of trustees, Washington economic
23 development finance authority, Washington energy northwest executive
24 board, The Evergreen State College board of trustees, executive
25 ethics board, fish and wildlife commission, forest practices appeals
26 board, forest practices board, gambling commission, Washington health
27 care facilities authority, student achievement council, higher
28 education facilities authority, horse racing commission, state
29 housing finance commission, human rights commission, indeterminate
30 sentence review board, board of industrial insurance appeals, state
31 investment board, commission on judicial conduct, legislative ethics
32 board, life sciences discovery fund authority board of trustees,
33 liquor control board, lottery commission, Pacific Northwest electric
34 power and conservation planning council, parks and recreation
35 commission, Washington personnel resources board, board of pilotage
36 commissioners, pollution control hearings board, public disclosure
37 commission, public employees' benefits board, recreation and
38 conservation funding board, salmon recovery funding board, shorelines
39 hearings board, board of tax appeals, transportation commission,
40 University of Washington board of regents, utilities and

1 transportation commission, Washington State University board of
2 regents, and Western Washington University board of trustees.

3 **Sec. 211.** RCW 41.80.020 and 2013 2nd sp.s. c 4 s 972 are each
4 amended to read as follows:

5 (1) Except as otherwise provided in this chapter, the matters
6 subject to bargaining include wages, hours, and other terms and
7 conditions of employment, and the negotiation of any question arising
8 under a collective bargaining agreement.

9 (2) The employer is not required to bargain over matters
10 pertaining to:

11 (a) Health care benefits or other employee insurance benefits,
12 except as required in subsection (3) of this section;

13 (b) Any retirement system or retirement benefit; or

14 (c) Rules of the (~~human resources~~) director of financial
15 management, the director of enterprise services, or the Washington
16 personnel resources board adopted under RCW 41.06.157.

17 (3) Matters subject to bargaining include the number of names to
18 be certified for vacancies, promotional preferences, and the dollar
19 amount expended on behalf of each employee for health care benefits.
20 However, except as provided otherwise in this subsection for
21 institutions of higher education, negotiations regarding the number
22 of names to be certified for vacancies, promotional preferences, and
23 the dollar amount expended on behalf of each employee for health care
24 benefits shall be conducted between the employer and one coalition of
25 all the exclusive bargaining representatives subject to this chapter.
26 The exclusive bargaining representatives for employees that are
27 subject to chapter 47.64 RCW shall bargain the dollar amount expended
28 on behalf of each employee for health care benefits with the employer
29 as part of the coalition under this subsection. Any such provision
30 agreed to by the employer and the coalition shall be included in all
31 master collective bargaining agreements negotiated by the parties.
32 For institutions of higher education, promotional preferences and the
33 number of names to be certified for vacancies shall be bargained
34 under the provisions of RCW 41.80.010(4). For agreements covering the
35 2013-2015 fiscal biennium, any agreement between the employer and the
36 coalition regarding the dollar amount expended on behalf of each
37 employee for health care benefits is a separate agreement and shall
38 not be included in the master collective bargaining agreements
39 negotiated by the parties.

1 (4) The employer and the exclusive bargaining representative
2 shall not agree to any proposal that would prevent the implementation
3 of approved affirmative action plans or that would be inconsistent
4 with the comparable worth agreement that provided the basis for the
5 salary changes implemented beginning with the 1983-1985 biennium to
6 achieve comparable worth.

7 (5) The employer and the exclusive bargaining representative
8 shall not bargain over matters pertaining to management rights
9 established in RCW 41.80.040.

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

17 (7) This section does not prohibit bargaining that affects
18 contracts authorized by RCW 41.06.142.

19 **Sec. 212.** RCW 43.03.040 and 2011 1st sp.s. c 39 s 8 are each
20 amended to read as follows:

21 Subject to RCW 41.04.820, the directors of the several
22 departments and members of the several boards and commissions, whose
23 salaries are fixed by the governor and the chief executive officers
24 of the agencies named in RCW 43.03.028(1) as now or hereafter amended
25 shall each severally receive such salaries, payable in monthly
26 installments, as shall be fixed by the governor or the appropriate
27 salary fixing authority, in an amount not to exceed the
28 recommendations of the (~~department of personnel~~)office of financial
29 management. From February 18, 2009, through June 30, 2013, a salary
30 or wage increase shall not be granted to any position under this
31 section, except that increases may be granted for positions for which
32 the employer has demonstrated difficulty retaining qualified
33 employees if the following conditions are met:

34 (1) The salary increase can be paid within existing resources;

35 (2) The salary increase will not adversely impact the provision
36 of client services; and

37 (3) For any state agency of the executive branch, not including
38 institutions of higher education, the salary increase is approved by
39 the director of the office of financial management.

1 Any agency granting a salary increase from February 15, 2010,
2 through June 30, 2011, to a position under this section shall submit
3 a report to the fiscal committees of the legislature no later than
4 July 31, 2011, detailing the positions for which salary increases
5 were granted, the size of the increases, and the reasons for giving
6 the increases.

7 Any agency granting a salary increase from July 1, 2011, through
8 June 30, 2013, to a position under this section shall submit a report
9 to the fiscal committees of the legislature by July 31, 2012, and
10 July 31, 2013, detailing the positions for which salary increases
11 were granted during the preceding fiscal year, the size of the
12 increases, and the reasons for giving the increases.

13 **Sec. 213.** RCW 43.06.013 and 2011 1st sp.s. c 43 s 454 are each
14 amended to read as follows:

15 When requested by the governor or the director of the department
16 of enterprise services, nonconviction criminal history fingerprint
17 record checks shall be conducted through the Washington state patrol
18 identification and criminal history section and the federal bureau of
19 investigation on applicants for agency head positions appointed by
20 the governor. Information received pursuant to this section shall be
21 confidential and made available only to the governor or director of
22 ~~((the department of personnel))~~ financial management or their
23 employees directly involved in the selection, hiring, or background
24 investigation of the subject of the record check. When necessary,
25 applicants may be employed on a conditional basis pending completion
26 of the criminal history record check. "Agency head" as used in this
27 section has the same definition as provided in RCW 34.05.010.

28 **Sec. 214.** RCW 43.41.113 and 2011 1st sp.s. c 43 s 430 are each
29 amended to read as follows:

30 (1) The office of financial management shall direct and supervise
31 the personnel policy and application of the civil service laws,
32 chapter 41.06 RCW.

33 ~~(2) ((The human resources director is created in the office of
34 financial management. The human resources director shall be appointed
35 by the governor, and shall serve at the pleasure of the governor. The
36 director shall receive a salary in an amount fixed by the governor.~~

1 ~~(3)~~) The (~~human resources~~) director or the director's designee
2 has the authority and shall perform the functions as prescribed in
3 chapter 41.06 RCW, or as otherwise prescribed by law.

4 ~~((4))~~(3) The (~~human resources~~) director may delegate to any
5 agency the authority to perform administrative and technical
6 personnel activities if the agency requests such authority and the
7 (~~human resources~~) director is satisfied that the agency has the
8 personnel management capabilities to effectively perform the
9 delegated activities. The (~~human resources~~) director shall
10 prescribe standards and guidelines for the performance of delegated
11 activities. If the (~~human resources~~) director determines that an
12 agency is not performing delegated activities within the prescribed
13 standards and guidelines, the director shall withdraw the authority
14 from the agency to perform such activities.

15 **Sec. 215.** RCW 43.131.090 and 2011 1st sp.s. c 43 s 459 are each
16 amended to read as follows:

17 Unless the legislature specifies a shorter period of time, a
18 terminated entity shall continue in existence until June 30th of the
19 next succeeding year for the purpose of concluding its affairs:
20 PROVIDED, That the powers and authority of the entity shall not be
21 reduced or otherwise limited during this period. Unless otherwise
22 provided:

23 (1) All employees of terminated entities classified under chapter
24 41.06 RCW, the state civil service law, shall be transferred as
25 appropriate or as otherwise provided in the procedures adopted by the
26 (~~human resources~~) director of financial management pursuant to RCW
27 41.06.150;

28 (2) All documents and papers, equipment, or other tangible
29 property in the possession of the terminated entity shall be
30 delivered to the custody of the entity assuming the responsibilities
31 of the terminated entity or if such responsibilities have been
32 eliminated, documents and papers shall be delivered to the state
33 archivist and equipment or other tangible property to the department
34 of enterprise services;

35 (3) All funds held by, or other moneys due to, the terminated
36 entity shall revert to the fund from which they were appropriated, or
37 if that fund is abolished to the general fund;

38 (4) Notwithstanding the provisions of RCW 34.05.020, all rules
39 made by a terminated entity shall be repealed, without further action

1 by the entity, at the end of the period provided in this section,
2 unless assumed and reaffirmed by the entity assuming the related
3 legal responsibilities of the terminated entity;

4 (5) All contractual rights and duties of an entity shall be
5 assigned or delegated to the entity assuming the responsibilities of
6 the terminated entity, or if there is none to such entity as the
7 governor shall direct.

8 **Sec. 216.** RCW 48.37.060 and 2011 1st sp.s. c 43 s 460 are each
9 amended to read as follows:

10 (1) When the commissioner determines that other market conduct
11 actions identified in RCW 48.37.040(4)(a) have not sufficiently
12 addressed issues raised concerning company activities in Washington
13 state, the commissioner has the discretion to conduct market conduct
14 examinations in accordance with the NAIC market conduct uniform
15 examination procedures and the NAIC market regulation handbook.

16 (2)(a) In lieu of an examination of an insurer licensed in this
17 state, the commissioner shall accept an examination report of another
18 state, unless the commissioner determines that the other state does
19 not have laws substantially similar to those of this state, or does
20 not have a market oversight system that is comparable to the market
21 conduct oversight system set forth in this law.

22 (b) The commissioner's determination under (a) of this subsection
23 is discretionary with the commissioner and is not subject to appeal.

24 (c) If the insurer to be examined is part of an insurance holding
25 company system, the commissioner may also seek to simultaneously
26 examine any affiliates of the insurer under common control and
27 management which are licensed to write the same lines of business in
28 this state.

29 (3) Before commencement of a market conduct examination, market
30 conduct oversight personnel shall prepare a work plan consisting of
31 the following:

- 32 (a) The name and address of the insurer being examined;
- 33 (b) The name and contact information of the examiner-in-charge;
- 34 (c) The name of all market conduct oversight personnel initially
35 assigned to the market conduct examination;
- 36 (d) The justification for the examination;
- 37 (e) The scope of the examination;
- 38 (f) The date the examination is scheduled to begin;

1 (g) Notice of any noninsurance department personnel who will
2 assist in the examination;

3 (h) A time estimate for the examination;

4 (i) A budget for the examination if the cost of the examination
5 is billed to the insurer; and

6 (j) An identification of factors that will be included in the
7 billing if the cost of the examination is billed to the insurer.

8 (4)(a) Within ten days of the receipt of the information
9 contained in subsection (3) of this section, insurers may request the
10 commissioner's discretionary review of any alleged conflict of
11 interest, pursuant to RCW 48.37.090(2), of market conduct oversight
12 personnel and noninsurance department personnel assigned to a market
13 conduct examination. The request for review shall specifically
14 describe the alleged conflict of interest in the proposed assignment
15 of any person to the examination.

16 (b) Within five business days of receiving a request for
17 discretionary review of any alleged conflict of interest in the
18 proposed assignment of any person to a market conduct examination,
19 the commissioner or designee shall notify the insurer of any action
20 regarding the assignment of personnel to a market conduct examination
21 based on the insurer's allegation of conflict of interest.

22 (5) Market conduct examinations shall, to the extent feasible,
23 use desk examinations and data requests before an on-site
24 examination.

25 (6) Market conduct examinations shall be conducted in accordance
26 with the provisions set forth in the NAIC market regulation handbook
27 and the NAIC market conduct uniform examinations procedures, subject
28 to the precedence of the provisions of chapter 82, Laws of 2007.

29 (7) The commissioner shall use the NAIC standard data request.

30 (8) Announcement of the examination shall be sent to the insurer
31 and posted on the NAIC's examination tracking system as soon as
32 possible but in no case later than sixty days before the estimated
33 commencement of the examination, except where the examination is
34 conducted in response to extraordinary circumstances as described in
35 RCW 48.37.050(2)(a). The announcement sent to the insurer shall
36 contain the examination work plan and a request for the insurer to
37 name its examination coordinator.

38 (9) If an examination is expanded significantly beyond the
39 original reasons provided to the insurer in the notice of the
40 examination required by subsection (3) of this section, the

1 commissioner shall provide written notice to the insurer, explaining
2 the expansion and reasons for the expansion. The commissioner shall
3 provide a revised work plan if the expansion results in significant
4 changes to the items presented in the original work plan required by
5 subsection (3) of this section.

6 (10) The commissioner shall conduct a preexamination conference
7 with the insurer examination coordinator and key personnel to clarify
8 expectations at least thirty days before commencement of the
9 examination, unless otherwise agreed by the insurer and the
10 commissioner.

11 (11) Before the conclusion of the field work for market conduct
12 examination, the examiner-in-charge shall review examination findings
13 to date with insurer personnel and schedule an exit conference with
14 the insurer, in accordance with procedures in the NAIC market
15 regulation handbook.

16 (12)(a) No later than sixty days after completion of each market
17 conduct examination, the commissioner shall make a full written
18 report of each market conduct examination containing only facts
19 ascertained from the accounts, records, and documents examined and
20 from the sworn testimony of individuals, and such conclusions and
21 recommendations as may reasonably be warranted from such facts.

22 (b) The report shall be certified by the commissioner or by the
23 examiner-in-charge of the examination, and shall be filed in the
24 commissioner's office subject to (c) of this subsection.

25 (c) The commissioner shall furnish a copy of the market conduct
26 examination report to the person examined not less than ten days and,
27 unless the time is extended by the commissioner, not more than thirty
28 days prior to the filing of the report for public inspection in the
29 commissioner's office. If the person so requests in writing within
30 such period, the commissioner shall hold a hearing to consider
31 objections of such person to the report as proposed, and shall not so
32 file the report until after such hearing and until after any
33 modifications in the report deemed necessary by the commissioner have
34 been made.

35 (d) Within thirty days of the end of the period described in (c)
36 of this subsection, unless extended by order of the commissioner, the
37 commissioner shall consider the report, together with any written
38 submissions or rebuttals and any relevant portions of the examiner's
39 work papers and enter an order:

1 (i) Adopting the market conduct examination report as filed or
2 with modification or corrections. If the market conduct examination
3 report reveals that the company is operating in violation of any law,
4 rule, or order of the commissioner, the commissioner may order the
5 company to take any action the commissioner considers necessary and
6 appropriate to cure that violation;

7 (ii) Rejecting the market conduct examination report with
8 directions to the examiners to reopen the examination for purposes of
9 obtaining additional data, documentation, or information, and
10 refiling under this subsection; or

11 (iii) Calling for an investigatory hearing with no less than
12 twenty days' notice to the company for purposes of obtaining
13 additional documentation, data, information, and testimony.

14 (e) All orders entered under (d) of this subsection must be
15 accompanied by findings and conclusions resulting from the
16 commissioner's consideration and review of the market conduct
17 examination report, relevant examiner work papers, and any written
18 submissions or rebuttals. The order is considered a final
19 administrative decision and may be appealed under the administrative
20 procedure act, chapter 34.05 RCW, and must be served upon the company
21 by certified mail or certifiable electronic means, together with a
22 copy of the adopted examination report. A copy of the adopted
23 examination report must be sent by certified mail or certifiable
24 electronic means to each director at the director's residential
25 address or to a personal e-mail account.

26 (f)(i) Upon the adoption of the market conduct examination report
27 under (d) of this subsection, the commissioner shall continue to hold
28 the content of the examination report as private and confidential
29 information for a period of five days except that the order may be
30 disclosed to the person examined. Thereafter, the commissioner may
31 open the report for public inspection so long as no court of
32 competent jurisdiction has stayed its publication.

33 (ii) If the commissioner determines that regulatory action is
34 appropriate as a result of any market conduct examination, he or she
35 may initiate any proceedings or actions as provided by law.

36 (iii) Nothing contained in this subsection requires the
37 commissioner to disclose any information or records that would
38 indicate or show the existence or content of any investigation or
39 activity of a criminal justice agency.

1 (g) The insurer's response shall be included in the
2 commissioner's order adopting the final report as an exhibit to the
3 order. The insurer is not obligated to submit a response.

4 (13) The commissioner may withhold from public inspection any
5 examination or investigation report for so long as he or she deems it
6 advisable.

7 (14)(a) Market conduct examinations within this state of any
8 insurer domiciled or having its home offices in this state, other
9 than a title insurer, made by the commissioner or the commissioner's
10 examiners and employees shall, except as to fees, mileage, and
11 expense incurred as to witnesses, be at the expense of the state.

12 (b) Every other examination, whatsoever, or any part of the
13 market conduct examination of any person domiciled or having its home
14 offices in this state requiring travel and services outside this
15 state, shall be made by the commissioner or by examiners designated
16 by the commissioner and shall be at the expense of the person
17 examined; but a domestic insurer shall not be liable for the
18 compensation of examiners employed by the commissioner for such
19 services outside this state.

20 (c) When making a market conduct examination under this chapter,
21 the commissioner may contract, in accordance with applicable state
22 contracting procedures, for qualified attorneys, appraisers,
23 independent certified public accountants, contract actuaries, and
24 other similar individuals who are independently practicing their
25 professions, even though those persons may from time to time be
26 similarly employed or retained by persons subject to examination
27 under this chapter, as examiners as the commissioner deems necessary
28 for the efficient conduct of a particular examination. The
29 compensation and per diem allowances paid to such contract persons
30 shall be reasonable in the market and time incurred, shall not exceed
31 one hundred twenty-five percent of the compensation and per diem
32 allowances for examiners set forth in the guidelines adopted by the
33 national association of insurance commissioners, unless the
34 commissioner demonstrates that one hundred twenty-five percent is
35 inadequate under the circumstances of the examination, and subject to
36 the provisions of (a) of this subsection.

37 (d)(i) The person examined and liable shall reimburse the state
38 upon presentation of an itemized statement thereof, for the actual
39 travel expenses of the commissioner's examiners, their reasonable
40 living expenses allowance, and their per diem compensation, including

1 salary and the employer's cost of employee benefits, at a reasonable
2 rate approved by the commissioner, incurred on account of the
3 examination. Per diem, salary, and expenses for employees examining
4 insurers domiciled outside the state of Washington shall be
5 established by the commissioner on the basis of the national
6 association of insurance commissioner's recommended salary and
7 expense schedule for zone examiners, or the salary schedule
8 (~~established by the human resources director~~) and the expense
9 schedule established by the office of financial management, whichever
10 is higher. A domestic title insurer shall pay the examination expense
11 and costs to the commissioner as itemized and billed by the
12 commissioner.

13 (ii) The commissioner or the commissioner's examiners shall not
14 receive or accept any additional emolument on account of any
15 examination.

16 (iii) Market conduct examination fees subject to being reimbursed
17 by an insurer shall be itemized and bills shall be provided to the
18 insurer on a monthly basis for review prior to submission for
19 payment, or as otherwise provided by state law.

20 (e) Nothing contained in this chapter limits the commissioner's
21 authority to terminate or suspend any examination in order to pursue
22 other legal or regulatory action under the insurance laws of this
23 state. Findings of fact and conclusions made pursuant to any
24 examination are prima facie evidence in any legal or regulatory
25 action.

26 (f) The commissioner shall maintain active management and
27 oversight of market conduct examination costs, including costs
28 associated with the commissioner's own examiners, and with retaining
29 qualified contract examiners necessary to perform an examination. Any
30 agreement with a contract examiner shall:

31 (i) Clearly identify the types of functions to be subject to
32 outsourcing;

33 (ii) Provide specific timelines for completion of the outsourced
34 review;

35 (iii) Require disclosure to the insurer of contract examiners'
36 recommendations;

37 (iv) Establish and use a dispute resolution or arbitration
38 mechanism to resolve conflicts with insurers regarding examination
39 fees; and

1 (v) Require disclosure of the terms of the contracts with the
2 outside consultants that will be used, specifically the fees and/or
3 hourly rates that can be charged.

4 (g) The commissioner, or the commissioner's designee, shall
5 review and affirmatively endorse detailed billings from the qualified
6 contract examiner before the detailed billings are sent to the
7 insurer.

8 **Sec. 217.** RCW 49.74.020 and 2011 1st sp.s. c 43 s 463 are each
9 amended to read as follows:

10 If the commission reasonably believes that a state agency, an
11 institution of higher education, or the state patrol has failed to
12 comply with an affirmative action rule adopted under RCW 41.06.150 or
13 43.43.340, the commission shall notify the director of the state
14 agency, president of the institution of higher education, or chief of
15 the Washington state patrol of the noncompliance, as well as the
16 ((human resources)) director of financial management. The commission
17 shall give the director of the state agency, president of the
18 institution of higher education, or chief of the Washington state
19 patrol an opportunity to be heard on the failure to comply.

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