**5623-S AMS ERIC S2516.1 - NOT FOR FLOOR USE**

**SSB 5623** - S AMD **225**

By Senator Ericksen

**NOT CONSIDERED 12/23/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  A new section is added to chapter 4.24 RCW to read as follows:

(1) The legislature finds and declares application of this section to pending claims and actions clarifies existing state law rather than changes it. Public employees who paid agency or fair share fees as a condition of public employment in accordance with state law and supreme court precedent before June 27, 2018, had no legitimate expectation of receiving that money under any available cause of action. Public employers and employee organizations who relied on, and abided by, state law and supreme court precedent in deducting and accepting those fees were not liable to refund them. Agency or fair share fees paid for collective bargaining representation that employee organizations were obligated by state law to provide to public employees. Application of this section to pending claims will preserve, rather than interfere with, important reliance interests.

(2) Public employers and an employee organization, or any of their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving, or retaining agency or fair share fees from public employees, and current or former public employees do not have standing to pursue these claims or actions, if the fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, before June 27, 2018.

(a) This section applies to all claims and actions pending on the effective date of this section, and to claims and actions filed on or after the effective date of this section.

(b) This section may not be interpreted to infer that any relief made unavailable by this section would otherwise be available.

(3) This section is necessary to provide certainty to public employers and employee organizations that relied on state law, and to avoid disruption of public employee labor relations, after the supreme court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31* (2018) 138 S.Ct. 2448.

(4) For purposes of this section:

(a) "Employee organization" means any organization that functioned as an exclusive collective bargaining representative for public employees under any statute, ordinance, regulation, or other state or local law, and any labor organization with which it was affiliated.

(b) "Public employer" means any public employer including, but not limited to, the state, a court, a city, a county, a city and county, a school district, a community college district, an institution of higher education and its board or regents, a transit district, any public authority, any public agency, any other political subdivision or public corporation, or any other entity considered a public employer for purposes of the labor relations statutes of Washington.

**Sec.**  RCW 28B.52.020 and 1991 c 238 s 146 are each amended to read as follows:

As used in this chapter:

(1) "Employee organization" means any organization which includes as members the academic employees of a college district and which has as one of its purposes the representation of the employees in their employment relations with the college district.

(2) "Academic employee" means any teacher, counselor, librarian, or department head, who is employed by any college district, whether full or part time, with the exception of the chief administrative officer of, and any administrator in, each college district.

(3) "Administrator" means any person employed either full or part time by the college district and who performs administrative functions as at least fifty percent or more of his or her assignments, and has responsibilities to hire, dismiss, or discipline other employees. Administrators shall not be members of the bargaining unit unless a majority of such administrators and a majority of the bargaining unit elect by secret ballot for such inclusion pursuant to rules as adopted in accordance with RCW 28B.52.080.

(4) "Commission" means the public employment relations commission.

(5) "Unfair labor practice" means any unfair labor practice listed in RCW 28B.52.073.

(6) ((~~"Union security provision" means a provision in a collective bargaining agreement under which some or all employees in the bargaining unit may be required, as a condition of continued employment on or after the thirtieth day following the beginning of such employment or the effective date of the provision, whichever is later, to become a member of the exclusive bargaining representative or pay an agency fee equal to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative.~~

~~(7)~~)) "Exclusive bargaining representative" means any employee organization which has:

(a) Been certified or recognized under this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Before July 26, 1987, been certified or recognized under a predecessor statute as the representative of the employees in a bargaining unit which continues to be appropriate under this chapter.

((~~(8)~~)) (7) "Collective bargaining" and "bargaining" mean the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times to bargain in good faith in an effort to reach agreement with respect to wages, hours, and other terms and conditions of employment, such as procedures related to nonretention, dismissal, denial of tenure, and reduction in force. Prior law, practice, or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which items are mandatory subjects for bargaining.

**Sec.**  RCW 28B.52.030 and 1991 c 238 s 147 are each amended to read as follows:

Representatives of an employee organization, which organization shall by secret ballot have won a majority in an election to represent the academic employees within its college district, shall have the right to bargain ((~~as defined in RCW 28B.52.020(8)~~)).

**Sec.**  RCW 28B.52.025 and 1987 c 314 s 5 are each amended to read as follows:

Employees have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and also have the right to refrain from any or all of these activities ((~~except to the extent that employees may be required to make payments to an exclusive bargaining representative or charitable organization under a union security provision authorized in this chapter~~)).

NEW SECTION. **Sec.**  A new section is added to chapter 28B.52 RCW to read as follows:

(1)(a) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(b) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(c) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(2)(a) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(b) After the employer receives an employee's deduction authorization revocation, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

**Sec.**  RCW 28B.52.045 and 2018 c 247 s 1 are each amended to read as follows:

(1)((~~(a) A collective bargaining agreement may include union security provisions, but not a closed shop.~~

~~(b)~~)) Upon ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

((~~(c)~~)) (2) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((~~:~~

~~(i) Includes a union security provision authorized under (a) of this subsection, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(ii)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (c)(i) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

((~~(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the employee and the employee organization to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payments have been made. If the employee and the employee organization do not reach agreement on such matter, the commission shall designate the charitable organization.~~))

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

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

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 41.56 RCW to read as follows:

(1) Except as provided under subsection (2) of this section, if only one employee organization is seeking certification as the exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees. The commission may adopt rules to implement this section.

(2) This section does not apply to those employees under RCW 41.56.026, 41.56.028, 41.56.029, and 41.56.510.

**Sec.**  RCW 41.56.110 and 2018 c 247 s 2 are each amended to read as follows:

(1) Upon the ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer shall deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2)(a) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(b) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(c) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(3)(a) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(b) After the employer receives an employee's deduction authorization revocation, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

(4) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((~~:~~

~~(a) Includes a union security provision authorized under RCW 41.56.122, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(b)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (a) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

**Sec.**  RCW 41.56.113 and 2018 c 278 s 29 are each amended to read as follows:

(1) This subsection (1) applies only if the state makes the payments directly to a provider.

(a) Upon the ((~~written~~)) authorization of an individual provider who contracts with the department of social and health services, a family child care provider, an adult family home provider, or a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to (c) of this subsection, deduct from the payments to an individual provider who contracts with the department of social and health services, a family child care provider, an adult family home provider, or a language access provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(b)(i) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(ii) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(iii) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(iv) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(v) After the employer receives an employee's deduction authorization revocation, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

(vi) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers who contract with the department of social and health services, family child care providers, adult family home providers, or language access providers enter into a collective bargaining agreement that((~~:~~

~~(i) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to (c) of this subsection, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(ii)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (b)(i) of this subsection~~)), the state, as payor, but not as the employer, shall, subject to (c) of this subsection, make such deductions upon ((~~written~~)) authorization of the individual provider, family child care provider, adult family home provider, or language access provider.

(c)(i) The initial additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, and language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(ii) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, 41.56.028, 41.56.029, or 41.56.510, as applicable, the ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, adult family home providers, or language access providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

((~~(d) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants.~~))

(2) This subsection (2) applies only if the state does not make the payments directly to a language access provider. ((~~(a)~~)) Upon the ((~~written~~)) authorization of a language access provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state shall require through its contracts with third parties that:

((~~(i)~~)) (a) The monthly amount of dues as certified by the secretary of the exclusive bargaining representative be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and

((~~(ii)~~)) (b) A record showing that dues have been deducted as specified in (a)((~~(i)~~)) of this subsection be provided to the state.

((~~(b) If the governor and the exclusive bargaining representative of the bargaining unit of language access providers enter into a collective bargaining agreement that includes a union security provision authorized in RCW 41.56.122, the state shall enforce the agreement by requiring through its contracts with third parties that:~~

~~(i) The monthly amount of dues required for membership in the exclusive bargaining representative as certified by the secretary of the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues, be deducted from the payments to the language access provider and transmitted to the treasurer of the exclusive bargaining representative; and~~

~~(ii) A record showing that dues or fees have been deducted as specified in (a)(i) of this subsection be provided to the state.~~))

(3) This subsection (3) applies only to individual providers who contract with the department of social and health services. ((~~If the governor and the exclusive bargaining representative of a bargaining unit of individual providers enter into a collective bargaining agreement that meets the requirements in subsection (1)(b)(i) or (ii) of this section, and the state as payor, but not as the employer, contracts with a third-party entity to perform its obligations as set forth in those subsections, and that third-party contracts with the exclusive bargaining representative to perform voluntary deductions for individual providers, the exclusive bargaining representative may direct the third-party to make the deductions required by the collective bargaining agreement, at the expense of the exclusive bargaining representative, so long as such deductions by the exclusive bargaining representative do not conflict with any federal or state law.~~)) The exclusive bargaining representative of individual providers may designate a third-party entity to act as the individual provider's agent in receiving payments from the state to the individual provider, so long as the individual provider has entered into an agency agreement with a third-party entity for the purposes of deducting and remitting voluntary payments to the exclusive bargaining representative. A third-party entity that receives such payments is responsible for making and remitting deductions authorized by the individual provider. The costs of such deductions must be paid by the exclusive bargaining representative.

**Sec.**  RCW 41.56.122 and 1975 1st ex.s. c 296 s 22 are each amended to read as follows:

A collective bargaining agreement may((~~:~~

~~(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.~~

~~(2)~~)) provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

**Sec.**  RCW 41.59.060 and 2018 c 247 s 3 are each amended to read as follows:

(1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities ((~~except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter~~)).

(2)(a) Upon ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(c) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(f) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction effective on the first payroll after receipt of the confirmation.

(3) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((~~:~~

~~(i) Includes a union security provision authorized under RCW 41.59.100, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(ii)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (b)(i) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

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

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

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

(2) If there is a valid collective bargaining agreement in effect, no question concerning representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement: PROVIDED, That in the event a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for more than three years, then a question concerning representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date or any subsequent anniversary date of the agreement; and if the exclusive bargaining representative is removed as the result of such procedure, the collective bargaining agreement shall be deemed to be terminated as of the date of the certification or the anniversary date following the filing of the petition, whichever is later.

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

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

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

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

(a) If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may((~~, upon the concurrence of the employer and the employee organization,~~)) determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees; or

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

(c) The commission may adopt rules to implement this subsection (6).

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

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

**Sec.**  RCW 41.76.045 and 2018 c 247 s 4 are each amended to read as follows:

(1)(a) ((~~A collective bargaining agreement may include union security provisions, but not a closed shop.~~

~~(b)~~)) Upon ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

((~~(c)~~)) (b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(c) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(f) After the employer receives an employee's deduction authorization, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

(2) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((~~:~~

~~(i) Includes a union security provision authorized under (a) of this subsection, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(ii)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (c)(i) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

((~~(2) A faculty member who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such faculty member is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the faculty member and the employee organization to which such faculty member would otherwise pay the dues and fees. The faculty member shall furnish written proof that such payments have been made. If the faculty member and the employee organization do not reach agreement on such matter, the dispute shall be submitted to the commission for determination.~~))

**Sec.**  RCW 41.80.050 and 2002 c 354 s 306 are each amended to read as follows:

Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities ((~~except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter~~)).

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

If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees. The commission may adopt rules to implement this section.

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

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and cross-check procedures, and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections and cross-check procedures. The commission shall adopt rules that provide for at least the following:

(a) Secret balloting;

(b) Consulting with employee organizations;

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

(d) Absentee voting;

(e) Procedures for the greatest possible participation in voting;

(f) Campaigning on the employer's property during working hours; and

(g) Election observers.

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

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

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

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

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

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

**Sec.**  RCW 41.80.100 and 2018 c 247 s 5 are each amended to read as follows:

(1) ((~~A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.~~

~~(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.~~

~~(3)(a)~~)) Upon ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

((~~(b)~~)) (2)(a) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((~~:~~

~~(i) Includes a union security provision authorized under subsection (1) of this section, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(ii)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (b)(i) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

((~~(4) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits.~~)) (b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(c) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(f) After the employer receives an employee's deduction authorization revocation, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

(g) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

**Sec.**  RCW 47.64.090 and 2011 1st sp.s. c 16 s 25 are each amended to read as follows:

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

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

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

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

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees.

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

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the national labor relations act, as applicable;

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

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

(4) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service.

**Sec.**  RCW 47.64.160 and 1983 c 15 s 7 are each amended to read as follows:

(1) A collective bargaining agreement may include ((~~union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to,~~)) a provision for members of the bargaining unit to authorize the deduction of membership dues from their salary, and the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership ((~~in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions shall safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization~~)). An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(2)(a) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(b) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(c) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(d) After the employer receives an employee's deduction authorization revocation, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

NEW SECTION. **Sec.**  A new section is added to chapter 49.39 RCW to read as follows:

If only one employee organization is seeking certification as exclusive bargaining representative of a bargaining unit for which there is no incumbent exclusive bargaining representative, the commission may determine the question concerning representation by conducting a cross-check comparing the employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees. The commission may adopt rules to implement this section.

**Sec.**  RCW 49.39.080 and 2018 c 247 s 6 are each amended to read as follows:

(1) Upon the ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(2)(a) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the employer. If the employer receives an authorization of deductions, the employer shall as soon as practicable forward a copy to the exclusive bargaining representative.

(b) Upon receiving the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(c) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(d) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the employer.

(e) After the employer receives an employee's deduction authorization revocation, the employer shall end the deduction effective on the first payroll after receipt of the revocation.

(3) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((~~:~~

~~(a) Includes a union security provision authorized under RCW 49.39.090, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(b)~~)) includes requirements for deductions of other payments ((~~other than the deduction under (a) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

**Sec.**  RCW 49.39.090 and 2010 c 6 s 10 are each amended to read as follows:

A collective bargaining agreement may((~~:~~

~~(1) Contain union security provisions. However, nothing in this section authorizes a closed shop provision. Agreements involving union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which the symphony musician is a member. The symphony musician must pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the symphony musician affected and the bargaining representative to which the symphony musician would otherwise pay the dues and initiation fee. The symphony musician must furnish written proof that the payment has been made. If the symphony musician and the bargaining representative do not reach agreement on this matter, the commission must designate the charitable organization;~~

~~(2)~~)) provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

**Sec.**  RCW 53.18.050 and 1967 c 101 s 5 are each amended to read as follows:

A labor agreement signed by a port district may contain:

(1) Provisions that the employee organization chosen by a majority of the employees in a grouping or unit will be recognized as the representative of all employees in the classification included in such grouping or unit;

(2) Maintenance of membership provisions including dues ((~~check-off~~)) cross-check arrangements as provided in section 8 of this act; and

(3) Provisions providing for binding arbitration, the expenses being equally borne by the parties, in matters of contract interpretation and the settlement of jurisdictional disputes.

NEW SECTION. **Sec.**  A new section is added to chapter 4.24 RCW to read as follows:

Public employers and an employee organization, or any of their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving, or retaining membership dues from public employees under sections 5, 8, 16, and 21 of this act and RCW 28B.52.045, 41.56.060, 41.56.110, 41.56.113, 41.56.122, 41.59.060, 41.76.020, 41.76.045, 41.80.050, 41.80.080, 41.80.100, 47.64.090, 47.64.160, 49.39.080, 49.39.090, and 53.18.050; current or former public employees do not have standing to pursue these claims or actions.

NEW SECTION. **Sec.**  RCW 41.59.100 (Union security provisions—Scope—Agency shop provision, collection of dues or fees) and 1975 1st ex.s. c 288 s 11 are each repealed.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

**SSB 5623** - S AMD **225**

By Senator Ericksen

**NOT CONSIDERED 12/23/2019**

On page 1, line 4 of the title, after "fees;" strike the remainder of the title and insert "amending RCW 28B.52.020, 28B.52.030, 28B.52.025, 28B.52.045, 41.56.060, 41.56.110, 41.56.113, 41.56.122, 41.59.060, 41.76.020, 41.76.045, 41.80.050, 41.80.080, 41.80.100, 47.64.090, 47.64.160, 49.39.080, 49.39.090, and 53.18.050; adding new sections to chapter 4.24 RCW; adding a new section to chapter 28B.52 RCW; adding a new section to chapter 41.56 RCW; adding a new section to chapter 41.80 RCW; adding a new section to chapter 49.39 RCW; and repealing RCW 41.59.100."

EFFECT: Requires dues deduction authorizations and revocations to be made to the employer rather than the exclusive bargaining representative.