

SENATE BILL REPORT

SB 6224

As Reported by Senate Committee On:
Labor & Commerce, January 23, 2020
Ways & Means, February 11, 2020

Title: An act relating to collective bargaining for administrative law judges.

Brief Description: Concerning collective bargaining for administrative law judges. **[Revised for 1st Substitute:** Concerning collective bargaining for administrative law judges and other employees that are exempt from state civil service.]

Sponsors: Senators Lovelett, Conway, Hunt, Keiser, Kuderer and Stanford.

Brief History:

Committee Activity: Labor & Commerce: 1/20/20, 1/23/20 [DPS-WM, DNP, w/oRec].
Ways & Means: 2/03/20, 2/11/20 [DPS (LBRC), w/oRec, DNP].

Brief Summary of First Substitute Bill

- Grants administrative law judges of the Office of Administrative Hearings collective bargaining rights under the Personnel System Reform Act.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6224 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Saldaña, Stanford, Walsh and Wellman.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Becker, Muzzall and Warnick.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Rivers, Schoesler, Wagoner and Wilson, L..

Staff: Amanda Cecil (786-7460)

Background: The Personnel System Reform Act. The Personnel System Reform Act (PSRA) provides for collective bargaining of wages, hours, and other terms and conditions of employment with classified employees of state agencies and higher education institutions. Employees covered by the PSRA include all state civil service employees except:

- employees covered by the Public Employees' Collective Bargaining Act;
- confidential employees;
- members of the Washington Management Service;
- internal auditors in any agency; and
- any employee of the Public Employment Relations Commission, the Office of Financial Management, or the Office of Risk Management.

The PSRA provides for multi-employer bargaining and coalition bargaining. Representatives of more than one bargaining unit must negotiate one master collective bargaining agreement covering all of the represented employees. Exclusive bargaining representatives representing fewer than 500 employees each must bargain in a coalition, with one master agreement covering all of the employees represented by the coalition.

Administrative Law Judges. The Office of Administrative Hearings (OAH) conducts administrative hearings on behalf of certain state agencies and some local governments. The OAH is under the direction of a chief administrative law judge, appointed by the Governor with consent of the Senate. The chief administrative law judge appoints administrative law judges (ALJs), who usually specialize in certain areas of practice, and may contract with individuals to serve as an ALJ for specified hearings. All employees of the OAH except the chief ALJ and ALJs are subject to state civil service laws and rules.

Summary of Bill (First Substitute): ALJs of OAH are granted collective bargaining rights under the PSRA. The only appropriate bargaining unit is a statewide unit of all ALJs of OAH.

The following ALJs are excluded from the provisions of the bill and do not have collective bargaining rights:

- ALJs in manager positions, including deputy chief ALJs, division chief ALJs, and assistant chief ALJs;

- ALJs serving on a contractual basis;
- confidential employees; and
- any ALJ who reports directly to the chief ALJ.

For the purposes of coalition bargaining, exclusive bargaining representatives of civil service employees and exclusive bargaining representatives of exempt employees, constitute separate coalitions and must negotiate separate master collective bargaining agreements.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Broadens the title of the bill.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Proposed Substitute (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: ALJs are current exempt and excluded from bargaining. Pay increases are subject to appropriation and rare, which leads to trouble recruiting and retaining ALJs. ALJs at OAH are the only ALJs that do not have collective bargaining rights because they do not work for an agency. ALJs at OAH make about 12 to 16 percent less than other ALJs in the state. It takes a long time to train an get proper skills to be a good ALJ. Once people have such skills, they leave for higher paying jobs. The ability to retain ALJs means they will be better at protecting due process.

OTHER: Turnover of ALJs has been an issue and it is important for them to be skilled and well-trained. The bill creates a new bargaining table, which is a departure from current practice. The bill should include measures to protect employees' constitutional rights, such as requiring secret ballot elections, informing them of their right not to pay dues, and requiring the negotiations to be open to the public.

Persons Testifying (Labor & Commerce): PRO: Senator Liz Lovelett, Prime Sponsor; Erika Lim, Washington Federation of State Employees; Bill Dodge, Washington Federation of State Employees; Karl Boettner, Washington Federation of State Employees.

OTHER: Franklin Plaistowe, Office of Financial Management; Loraine Lee, citizen; Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: There are thousands of employees that are exempt from civil service that do not have access to

collective bargaining. The assistant attorneys general are an exception to that. There were concerns about adding exempt employees to the coalition table with classified employees, which is why they are carved out to a separate coalition table of exempt employees. Pay increases have been ad hoc and have only received two increases beyond general wage increases in the last ten years. The current ALJ salaries are below market and this has caused trouble with recruiting and retaining ALJs. It takes two years to get an ALJ up to speed and many of the new ALJs leave before they reach the two year mark. The longer an ALJ does this work they better they get at protecting the people's rights.

OTHER: Making these employees classified would allow them to bargain like employees in similar positions. For example, Industrial Insurance Appeals Judges, which perform similar work, are covered by civil service and bargain as part of the coalition.

If this bill advances it should include three things: ALJ should have the right to vote in a secret ballot election; ALJ's constitutional rights to opt out of the union and not have dues withheld should be protected; ALJ bargaining should be open to public observation.

Persons Testifying (Ways & Means): PRO: Dennis Eagle, Washington Federation of State Employees; Carolyn Pinkett, Administrative Law Judge, Washington Federation of State Employees; Jeff Manson, Administrative Law Judge, Washington Federation of State Employees.

OTHER: Robin Vazquez, Section Chief of Workforce Strategies, Office of Financial Management, State Human Resources; Maxford Nelsen, Freedom Foundation.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.