
SUBSTITUTE SENATE BILL 5406

State of Washington

62nd Legislature

2011 Regular Session

By Senate Transportation (originally sponsored by Senators Haugen, Sheldon, Hobbs, Prentice, and Shin)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to providing tools for improving and measuring the
2 performance of state ferry system management; amending RCW 47.64.120,
3 47.64.011, 47.64.150, and 41.58.060; reenacting and amending RCW
4 47.64.090 and 41.06.070; adding new sections to chapter 47.64 RCW;
5 creating new sections; repealing RCW 47.64.080 and 47.64.280; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the Washington
9 state ferry system has been plagued with declining ridership, increased
10 operating costs, and poor on-time performance during peak periods. The
11 legislature intends to give the Washington state ferry system
12 management the tools to change that and, furthermore, intends to hold
13 management accountable to do so.

14 **Sec. 2.** RCW 47.64.120 and 2010 c 283 s 10 are each amended to read
15 as follows:

16 (1) Except as otherwise provided in this chapter, the employer and
17 ferry system employee organizations, through their collective
18 bargaining representatives, shall meet at reasonable times to negotiate

1 in good faith with respect to wages, hours, (~~working conditions,~~) and
2 insurance, and other matters mutually agreed upon. Employer funded
3 retirement benefits shall be provided under the public employees'
4 retirement system under chapter 41.40 RCW and shall not be included in
5 the scope of collective bargaining. Except as provided under RCW
6 47.64.270, the employer is not required to bargain over health care
7 benefits. Any retirement system or retirement benefits shall not be
8 subject to collective bargaining.

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

23 (3) The employer shall make decisions regarding working conditions
24 to best suit the operational needs of the state and may not bargain its
25 own decision or the effects of a decision for any working condition
26 other than shift bidding, scheduling leave time, and grievance
27 procedures, provided that the grievance procedures do not expand the
28 scope of grievances beyond the interpretation and application of terms
29 permissible under this chapter. The employer shall not bargain over
30 rights of management which, in addition to all powers, duties, and
31 rights established by constitutional provision or statute, must
32 include, but not be limited to, the following:

- 33 (a) Assigning employees to work stations, vessels, or terminals;
- 34 (b) Directing promotions;
- 35 (c) Directing who will be laid off in the event of a layoff action,
36 bumping rights, or layoff options;
- 37 (d) Directing staffing levels;
- 38 (e) Providing for training; and

1 (f) Directing the use of part-time shifts.

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

6 (5) Except as otherwise provided in this chapter, if a conflict
7 exists between an executive order, administrative rule, or agency
8 policy relating to wages((7)) or hours((7, ~~and terms and conditions of~~
9 ~~employment~~)) and a collective bargaining agreement negotiated under
10 this chapter, the collective bargaining agreement shall prevail. A
11 provision of a collective bargaining agreement that conflicts with the
12 terms of a statute is invalid and unenforceable.

13 (6) This act is null and void if not enacted in its entirety.

14 NEW SECTION. Sec. 3. A new section is added to chapter 47.64 RCW
15 to read as follows:

16 (1) Effective January 1, 2012, all captains of Washington state
17 ferry vessels are considered management and are subject to RCW
18 41.06.500 and may not be included in a collective bargaining unit.
19 Salary increases for captains must be directly related to the
20 performance of their responsibilities.

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

25 (a) Ensuring the safe navigation of the vessel and its crew and
26 passengers;

27 (b) Following all applicable federal, state, and agency policies
28 and regulations;

29 (c) Supervising crew in performance, operations, training,
30 security, and environmental protection; and

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

33 (i) Vessel arrivals and departures;

34 (ii) Schedule adherence;

35 (iii) Customer service;

36 (iv) Cost containment; and

37 (v) Fuel efficiency.

1 (3) Effective January 1, 2013, all deck officers, chief engineers,
2 and terminal supervisors of Washington state ferry vessels are
3 considered management and are subject to RCW 41.06.500 and may not be
4 included in a collective bargaining unit. Salary increases for deck
5 officers, chief engineers, and terminal supervisors must be directly
6 related to the performance of their responsibilities.

7 (4) The deck officer, also known as a first mate, chief officer, or
8 first officer, is the second in command of a vessel and directly
9 assists and supports the captain in conducting operations. The deck
10 officer's duties include, but are not limited to:

11 (a) Directly supervising the crew in navigation, cleaning,
12 training, and discipline matters;

13 (b) Supervising the loading and unloading of passengers and
14 vehicles;

15 (c) Investigating accidents and safety incidents;

16 (d) Following all applicable federal, state, and agency policies
17 and regulations;

18 (e) Overseeing vessel security procedures; and

19 (f) Preparing and training to assume command.

20 (5) The chief engineer, also known as a staff engineer, is the
21 engineering department head and reports directly to the captain. The
22 chief engineer's duties include, but are not limited to:

23 (a) Overseeing all aspects of engineering propulsion, electrical,
24 and machinery components;

25 (b) Ensuring safe and efficient engineering plant operations;

26 (c) Advising the captain of factors affecting the vessel's
27 operation from an engineering perspective;

28 (d) Supervising the conduct of engineering watchstanders and
29 directing work and maintenance routines;

30 (e) Following federal, state, and agency policies and regulations;
31 and

32 (f) Overseeing all fueling to ensure efficient and environmentally
33 safe operations.

34 (6) The terminal supervisor must be assigned to a specific ferry
35 terminal and is the ultimate authority and has responsibility for the
36 entire operations at that ferry terminal. The terminal supervisor's
37 duties include, but are not limited to:

38 (a) Overseeing all aspects of dock-side terminal operations;

1 (b) Coordinating with the captain in arrival and departure
2 procedures;

3 (c) Supervising the conduct of ticket sellers and traffic and
4 loading attendants and directing selling, loading, and traffic work and
5 routines; and

6 (d) Following federal, state, and agency policies and regulations.

7 (7) With each biennial budget submittal, the department shall
8 include recommendations for distributing any appropriations the
9 legislature may provide for incentive pay for vessel captains, deck
10 officers, chief engineers, or terminal supervisors.

11 (8) Any employee who is a captain, deck officer, chief engineer, or
12 terminal supervisor may not belong to a collective bargaining unit
13 covered under this chapter for twelve months following their status as
14 a captain, deck officer, chief engineer, or terminal supervisor.

15 (9) This act is null and void if not enacted in its entirety.

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

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

21 This act is null and void if not enacted in its entirety.

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

24 Beginning in 2012, and at least once every three years thereafter,
25 the department shall apply to the Washington state quality award, or
26 similar organization, for an independent assessment of its quality
27 management, accountability, and performance system. The assessment
28 must evaluate the effectiveness of all elements of the department's
29 management, accountability, and performance system, including
30 leadership, strategic planning, customer focus, analysis and
31 information, employee performance management, and process improvement.
32 The purpose of the assessment is to recognize best practice and
33 identify improvement opportunities.

34 This act is null and void if not enacted in its entirety.

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

3 (1) Using state fiscal year 2010 as a basis, Washington state ferry
4 system management shall strive to meet the following targets by June
5 30, 2013:

6 (a) No decline in ridership;

7 (b) A ten percent reduction in operating costs per service hour;
8 and

9 (c) A twenty-five percent improvement in peak direction on-time
10 performance. On-time is defined as within one minute of the scheduled
11 time.

12 (2) The department shall, on a quarterly basis, report Washington
13 state ferry system management's performance as it relates to the
14 targets in subsection (1) of this section (a) to the transportation
15 committees of the legislature, (b) on its vessels, (c) at all ferry
16 terminals, and (d) on the department's web site.

17 (3) The joint legislative audit and review committee shall
18 determine whether Washington state ferry system management has met the
19 targets in subsection (1) of this section and report its findings to
20 the transportation committees of the legislature by September 1, 2013.

21 (4) If the joint legislative audit and review committee determines
22 that Washington state ferry system management has not met the targets
23 set in subsection (1) of this section:

24 (a) That information must be used by the governor to evaluate the
25 performance of the secretary of transportation;

26 (b) That information must be used by the secretary of
27 transportation to evaluate the performance of the assistant secretary
28 for the Washington state ferries; and

29 (c) The governor, with the consensus of the chairs and ranking
30 minorities of the transportation committees of the legislature, shall
31 appoint an independent inspector general who may institute changes at
32 the Washington state ferries that will result in the attainment of the
33 targets in subsection (1) of this section.

34 (5) This act is null and void if not enacted in its entirety.

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

1 The report required in RCW 47.01.071(5) and 47.04.280 must include
2 performance measures that include, at a minimum, the following
3 performance criteria:

4 (1) Level of service criteria, including ridership growth;

5 (2) On-time performance weighted by the number of passengers,
6 reservation system implementation, and customer satisfaction as
7 determined by the survey required in RCW 47.60.286;

8 (3) Cost efficiency criteria to include: Percentage of auto
9 capacity used; percentage of sailings in which auto capacity is sold
10 out or one hundred percent reserved; fuel and deck labor costs per auto
11 carried; reductions in vessel out-of-service time; and project
12 management, design, and construction management costs as a percentage
13 of total capital projects costs; and

14 (4) Safety performance as measured by passenger injuries and crew
15 lost time injuries per unit measure of total passengers and crew
16 carried aboard vessels.

17 This act is null and void if not enacted in its entirety.

18 **Sec. 8.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read
19 as follows:

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

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

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

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

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

30 (5) "Ferry employee" means any employee of the marine
31 transportation division of the department of transportation who is a
32 member of a collective bargaining unit represented by a ferry employee
33 organization and does not include an exempt employee pursuant to RCW
34 41.06.079.

35 (6) "Ferry employee organization" means any labor organization
36 recognized to represent a collective bargaining unit of ferry
37 employees.

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

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

9 (9) "Strike or work stoppage" means a ferry employee's refusal, in
10 concerted action with others, to report to duty, or his or her willful
11 absence from his or her position, or his or her stoppage or slowdown of
12 work, or his or her abstinence in whole or in part from the full,
13 faithful, and proper performance of the duties of employment, for the
14 purpose of inducing, influencing, or coercing a change in conditions,
15 compensation, rights, privileges, or obligations of his, her, or any
16 other ferry employee's employment. A refusal, in good faith, to work
17 under conditions which pose an endangerment to the health and safety of
18 ferry employees or the public, as determined by the master of the
19 vessel, shall not be considered a strike for the purposes of this
20 chapter.

21 This act is null and void if not enacted in its entirety.

22 **Sec. 9.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are
23 each reenacted and amended to read as follows:

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

36 (2) If a public transportation benefit area meeting the
37 requirements of RCW 36.57A.200 has voter approval to operate passenger-

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

10 (a) The terms of those collective bargaining agreements that it or
11 its subcontractors negotiate with the exclusive bargaining
12 representatives of its or its subcontractors' employees under chapter
13 41.56 RCW or the National Labor Relations Act, as applicable;

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

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

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

36 (a) The terms of those collective bargaining agreements that it or
37 its subcontractors negotiate with the exclusive bargaining

1 representatives of its or its subcontractors' employees under chapter
2 41.56 RCW or the National Labor Relations Act, as applicable;

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

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

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

24 (5) This act is null and void if not enacted in its entirety.

25 **Sec. 10.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read
26 as follows:

27 An agreement with a ferry employee organization that is the
28 exclusive representative of ferry employees in an appropriate unit may
29 provide procedures for the consideration of ferry employee grievances
30 and of disputes over the interpretation and application of agreements.
31 Negotiated procedures may provide for binding arbitration of ferry
32 employee grievances and of disputes over the interpretation and
33 application of existing agreements. An arbitrator's decision on a
34 grievance shall not change or amend the terms, conditions, or
35 applications of the collective bargaining agreement. The procedures
36 shall provide for the invoking of arbitration only with the approval of

1 the employee organization. The costs of arbitrators shall be shared
2 equally by the parties.

3 Ferry system employees shall follow (~~either~~) the grievance
4 procedures provided in a collective bargaining agreement, or if (~~no~~)
5 such procedures are (~~so~~) not provided, shall submit the grievances to
6 the (~~marine employees'~~) commission (~~as provided in RCW 47.64.280~~).

7 This act is null and void if not enacted in its entirety.

8 **Sec. 11.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read
9 as follows:

10 For any matter concerning the state ferry system and employee
11 relations, collective bargaining, or labor disputes or stoppages, the
12 provisions of chapter 47.64 RCW and this chapter shall govern.
13 However, if a conflict exists between the provisions of chapter 47.64
14 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

15 This act is null and void if not enacted in its entirety.

16 **Sec. 12.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and
17 2010 c 1 s 1 are each reenacted and amended to read as follows:

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

19 (a) The members of the legislature or to any employee of, or
20 position in, the legislative branch of the state government including
21 members, officers, and employees of the legislative council, joint
22 legislative audit and review committee, statute law committee, and any
23 interim committee of the legislature;

24 (b) The justices of the supreme court, judges of the court of
25 appeals, judges of the superior courts or of the inferior courts, or to
26 any employee of, or position in the judicial branch of state
27 government;

28 (c) Officers, academic personnel, and employees of technical
29 colleges;

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

31 (e) Elective officers of the state;

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

33 (g) In the departments of employment security and social and health
34 services, the director and the director's confidential secretary; in
35 all other departments, the executive head of which is an individual

1 appointed by the governor, the director, his or her confidential
2 secretary, and his or her statutory assistant directors;

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

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

7 (ii) If the members of the board, commission, or committee serve on
8 a part-time basis and there is a statutory executive officer: The
9 secretary of the board, commission, or committee; the chief executive
10 officer of the board, commission, or committee; and the confidential
11 secretary of the chief executive officer of the board, commission, or
12 committee;

13 (iii) If the members of the board, commission, or committee serve
14 on a full-time basis: The chief executive officer or administrative
15 officer as designated by the board, commission, or committee; and a
16 confidential secretary to the chair of the board, commission, or
17 committee;

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

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

23 (j) Assistant attorneys general;

24 (k) Commissioned and enlisted personnel in the military service of
25 the state;

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

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

31 (n) Officers and employees of the Washington state fruit
32 commission;

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

34 (p) Officers and employees of the Washington state dairy products
35 commission;

36 (q) Officers and employees of the Washington tree fruit research
37 commission;

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

1 (s) Officers and employees of the Washington grain commission;
2 (t) Officers and employees of any commission formed under chapter
3 15.66 RCW;
4 (u) Officers and employees of agricultural commissions formed under
5 chapter 15.65 RCW;
6 (v) Officers and employees of the nonprofit corporation formed
7 under chapter 67.40 RCW;
8 (w) Executive assistants for personnel administration and labor
9 relations in all state agencies employing such executive assistants
10 including but not limited to all departments, offices, commissions,
11 committees, boards, or other bodies subject to the provisions of this
12 chapter and this subsection shall prevail over any provision of law
13 inconsistent herewith unless specific exception is made in such law;
14 (x) In each agency with fifty or more employees: Deputy agency
15 heads, assistant directors or division directors, and not more than
16 three principal policy assistants who report directly to the agency
17 head or deputy agency heads;
18 (y) ~~((All employees of the marine employees' commission;~~
19 ~~(z))~~ Staff employed by the department of commerce to administer
20 energy policy functions;
21 ~~((+aa))~~ (z) The manager of the energy facility site evaluation
22 council;
23 ~~((+bb))~~ (aa) A maximum of ten staff employed by the department of
24 commerce to administer innovation and policy functions, including the
25 three principal policy assistants exempted under (x) of this
26 subsection;
27 ~~((+cc))~~ (bb) Staff employed by Washington State University to
28 administer energy education, applied research, and technology transfer
29 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).
30 (2) The following classifications, positions, and employees of
31 institutions of higher education and related boards are hereby exempted
32 from coverage of this chapter:
33 (a) Members of the governing board of each institution of higher
34 education and related boards, all presidents, vice presidents, and
35 their confidential secretaries, administrative, and personal
36 assistants; deans, directors, and chairs; academic personnel; and
37 executive heads of major administrative or academic divisions employed
38 by institutions of higher education; principal assistants to executive

1 heads of major administrative or academic divisions; other managerial
2 or professional employees in an institution or related board having
3 substantial responsibility for directing or controlling program
4 operations and accountable for allocation of resources and program
5 results, or for the formulation of institutional policy, or for
6 carrying out personnel administration or labor relations functions,
7 legislative relations, public information, development, senior computer
8 systems and network programming, or internal audits and investigations;
9 and any employee of a community college district whose place of work is
10 one which is physically located outside the state of Washington and who
11 is employed pursuant to RCW 28B.50.092 and assigned to an educational
12 program operating outside of the state of Washington;

13 (b) The governing board of each institution, and related boards,
14 may also exempt from this chapter classifications involving research
15 activities, counseling of students, extension or continuing education
16 activities, graphic arts or publications activities requiring
17 prescribed academic preparation or special training as determined by
18 the board: PROVIDED, That no nonacademic employee engaged in office,
19 clerical, maintenance, or food and trade services may be exempted by
20 the board under this provision;

21 (c) Printing craft employees in the department of printing at the
22 University of Washington.

23 (3) In addition to the exemptions specifically provided by this
24 chapter, the director of personnel may provide for further exemptions
25 pursuant to the following procedures. The governor or other
26 appropriate elected official may submit requests for exemption to the
27 director of personnel stating the reasons for requesting such
28 exemptions. The director of personnel shall hold a public hearing,
29 after proper notice, on requests submitted pursuant to this subsection.
30 If the director determines that the position for which exemption is
31 requested is one involving substantial responsibility for the
32 formulation of basic agency or executive policy or one involving
33 directing and controlling program operations of an agency or a major
34 administrative division thereof, the director of personnel shall grant
35 the request and such determination shall be final as to any decision
36 made before July 1, 1993. The total number of additional exemptions
37 permitted under this subsection shall not exceed one percent of the
38 number of employees in the classified service not including employees

1 of institutions of higher education and related boards for those
2 agencies not directly under the authority of any elected public
3 official other than the governor, and shall not exceed a total of
4 twenty-five for all agencies under the authority of elected public
5 officials other than the governor.

6 The salary and fringe benefits of all positions presently or
7 hereafter exempted except for the chief executive officer of each
8 agency, full-time members of boards and commissions, administrative
9 assistants and confidential secretaries in the immediate office of an
10 elected state official, and the personnel listed in subsections (1)(j)
11 through (v) (~~and (y)~~) and (2) of this section, shall be determined by
12 the director of personnel. Changes to the classification plan
13 affecting exempt salaries must meet the same provisions for classified
14 salary increases resulting from adjustments to the classification plan
15 as outlined in RCW 41.06.152.

16 From February 18, 2009, through June 30, 2011, a salary or wage
17 increase shall not be granted to any position exempt from
18 classification under this chapter, except that a salary or wage
19 increase may be granted to employees pursuant to collective bargaining
20 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,
21 or negotiated by the nonprofit corporation formed under chapter 67.40
22 RCW, and except that increases may be granted for positions for which
23 the employer has demonstrated difficulty retaining qualified employees
24 if the following conditions are met:

- 25 (a) The salary increase can be paid within existing resources; and
- 26 (b) The salary increase will not adversely impact the provision of
27 client services.

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

34 Any person holding a classified position subject to the provisions
35 of this chapter shall, when and if such position is subsequently
36 exempted from the application of this chapter, be afforded the
37 following rights: If such person previously held permanent status in

1 another classified position, such person shall have a right of
2 reversion to the highest class of position previously held, or to a
3 position of similar nature and salary.

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

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

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

16 (4) This act is null and void if not enacted in its entirety.

17 NEW SECTION. **Sec. 13.** (1) The marine employees' commission is
18 hereby abolished and its powers, duties, and functions are hereby
19 transferred to the public employment relations commission.

20 (2)(a) All reports, documents, surveys, books, records, files,
21 papers, or written material in the possession of the marine employees'
22 commission shall be delivered to the custody of the public employment
23 relations commission. All cabinets, furniture, office equipment, motor
24 vehicles, and other tangible property employed by the marine employees'
25 commission shall be made available to the public employment relations
26 commission. All funds, credits, or other assets held by the marine
27 employees' commission shall be assigned to the public employment
28 relations commission.

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

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

1 (3) All rules and all pending business before the marine employees'
2 commission shall be continued and acted upon by the public employment
3 relations commission. All existing contracts and obligations shall
4 remain in full force and shall be performed by the public employment
5 relations commission.

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

9 (5) If apportionments of budgeted funds are required because of the
10 transfers directed by this section, the director of financial
11 management shall certify the apportionments to the agencies affected,
12 the state auditor, and the state treasurer. Each of these shall make
13 the appropriate transfer and adjustments in funds and appropriation
14 accounts and equipment records in accordance with the certification.

15 (6) This act is null and void if not enacted in its entirety.

16 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
17 each repealed:

18 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &
19 1961 c 13 s 47.64.080; and

20 (2) RCW 47.64.280 (Marine employees' commission) and 2010 c 283 s
21 14, 2006 c 164 s 18, 1984 c 287 s 95, & 1983 c 15 s 19.

22 This act is null and void if not enacted in its entirety.

23 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 immediately.

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