

1 2374-S AMH .... H5158.1

2 **SHB 2374 - H AMD 266 FAILED 02-12-96**

3 By Representative Cole

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5 On page 1, line 19, after "district" insert ", after having refused  
6 an offer from the employer school district of binding arbitration"

7 On page 8, after line 4, insert the following:

8 "NEW SECTION. **Sec. 8.** A new section is added to chapter 41.59 RCW  
9 to read as follows:

10 The intent and purpose of sections 8 through 15 of this act are to  
11 recognize that there exists a public policy in the state of Washington  
12 against strikes by educational employees as a means of settling their  
13 labor disputes; that the uninterrupted and dedicated service of these  
14 employees is vital to the welfare and public safety of the state of  
15 Washington; that to promote such dedicated and uninterrupted public  
16 service there should exist an effective and adequate alternative means  
17 of settling disputes.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 41.59 RCW  
19 to read as follows:

20 Negotiations between an employer and the bargaining representative  
21 in a unit of educational employees shall be commenced at least five  
22 months before the date on which school districts are required to submit  
23 copies of their budgets to their educational service districts. If no  
24 agreement has been reached sixty days after the commencement of such  
25 negotiations then, at any time thereafter, either party may declare  
26 that an impasse exists and may submit the dispute to the commission for  
27 mediation, with or without the concurrence of the other party. The  
28 commission shall appoint a mediator, who shall forthwith meet with the  
29 representatives of the parties, either jointly or separately, and shall  
30 take such other steps as he or she may deem appropriate in order to  
31 persuade the parties to resolve their differences and effect an  
32 agreement: PROVIDED, That a mediator does not have a power of  
33 compulsion.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 41.59 RCW  
2 to read as follows:

3        If an agreement has not been reached following a reasonable period  
4 of negotiations and mediation, and the executive director of the  
5 commission, upon the recommendation of the assigned mediator, finds  
6 that the parties remain at impasse, then an interest arbitration panel  
7 shall be created to resolve the dispute. The issues for determination  
8 by the arbitration panel shall be limited to the issues certified by  
9 the executive director. Within seven days following the issuance of  
10 the determination of the executive director, each party shall name one  
11 person to serve as its arbitrator on the arbitration panel. The two  
12 members so appointed shall meet within seven days following the  
13 appointment of the later appointed member to attempt to choose a third  
14 member to act as the neutral chairman of the arbitration panel. Upon  
15 the failure of the arbitrators to select a neutral chairman within  
16 seven days, the two appointed members shall use one of the two  
17 following options in the appointment of the third member, who shall act  
18 as chairman of the panel: (1) By mutual consent, the two appointed  
19 members may jointly request the commission, and the commission shall  
20 appoint a third member within two days of such request. Costs of each  
21 party's appointee shall be borne by each party respectively; other  
22 costs of the arbitration proceedings shall be borne by the commission;  
23 or (2) either party may apply to the commission, the federal mediation  
24 and conciliation service, or the American Arbitration Association to  
25 provide a list of five qualified arbitrators from which the neutral  
26 chairman shall be chosen. Each party shall pay the fees and expenses  
27 of its arbitrator, and the fees and expenses of the neutral chairman  
28 shall be shared equally between the parties.

29        The arbitration panel so constituted shall promptly establish a  
30 date, time, and place for a hearing and shall provide reasonable notice  
31 thereof to the parties to the dispute. A hearing, which shall be  
32 informal, shall be held, and each party shall have the opportunity to  
33 present evidence and make argument. No member of the arbitration panel  
34 may present the case for a party to the proceedings. The rules of  
35 evidence prevailing in judicial proceedings may be considered, but are  
36 not binding, and any oral testimony or documentary evidence or other  
37 data deemed relevant by the chairman of the arbitration panel may be  
38 received in evidence. A recording of the proceedings shall be taken.  
39 The arbitration panel has the power to administer oaths, require the

1 attendance of witnesses, and require the production of such books,  
2 papers, contracts, agreements, and documents as may be deemed by the  
3 panel to be material to a just determination of the issues in dispute.  
4 If any person refuses to obey a subpoena issued by the arbitration  
5 panel, or refuses to be sworn or to make an affirmation to testify, or  
6 any witness, party, or attorney for a party is guilty of any contempt  
7 while in attendance at any hearing held hereunder, the arbitration  
8 panel may invoke the jurisdiction of the superior court in the county  
9 where the labor dispute exists, and the court has jurisdiction to issue  
10 an appropriate order. Any failure to obey the order may be punished by  
11 the court as a contempt thereof. The hearing conducted by the  
12 arbitration panel shall be concluded within twenty-five days following  
13 the selection or designation of the neutral chairman of the arbitration  
14 panel, unless the parties agree to a longer period.

15 The neutral chairman shall consult with the other members of the  
16 arbitration panel, and, within thirty days following the conclusion of  
17 the hearing, the neutral chairman shall make written findings of fact  
18 and a written determination of the issues in dispute, based on the  
19 evidence presented. A copy thereof shall be served on the commission,  
20 on each of the other members of the arbitration panel, and on each of  
21 the parties to the dispute. That determination shall be final and  
22 binding upon both parties, subject to review by the superior court upon  
23 the application of either party within thirty days of its receipt  
24 solely upon the question of whether the decision of the panel was  
25 arbitrary or capricious.

26 NEW SECTION. Sec. 11. A new section is added to chapter 41.59 RCW  
27 to read as follows:

28 An interest arbitration panel created pursuant to section 10 of  
29 this act, in the performance of its duties under this chapter,  
30 exercises a state function and is, for the purposes of this chapter, a  
31 state agency. Chapter 34.05 RCW does not apply to proceedings before  
32 an interest arbitration panel under this chapter.

33 NEW SECTION. Sec. 12. A new section is added to chapter 41.59 RCW  
34 to read as follows:

35 During the pendency of the proceedings before the arbitration  
36 panel, existing wages, hours and other conditions of employment shall  
37 not be changed by action of either party without the consent of the

1 other but a party may so consent without prejudice to his rights or  
2 position under sections 8 through 15 of this act.

3 NEW SECTION. **Sec. 13.** A new section is added to chapter 41.59 RCW  
4 to read as follows:

5 If the representative of either or both the educational employees  
6 and the employer refuse to submit to the procedures set forth in  
7 sections 9 and 10 of this act, the parties, or the commission on its  
8 own motion, may invoke the jurisdiction of the superior court for the  
9 county in which the labor dispute exists and such court shall have  
10 jurisdiction to issue an appropriate order. A failure to obey such  
11 order may be punished by the court as a contempt thereof. A decision  
12 of the arbitration panel shall be final and binding on the parties, and  
13 may be enforced at the instance of either party, the arbitration panel  
14 or the commission in the superior court for the county where the  
15 dispute arose.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 41.59 RCW  
17 to read as follows:

18 The right of educational employees to engage in any strike, work  
19 slowdown, or stoppage is not granted. Both parties to any dispute  
20 shall submit to the procedures set forth in sections 9 and 10 of this  
21 act without resort to a strike or lockout. An organization recognized  
22 as the bargaining representative that willfully disobeys a lawful order  
23 of enforcement by a superior court pursuant to section 13 of this act  
24 and this section, or willfully offers resistance to such order, whether  
25 by strike or otherwise, is in contempt of court as provided in chapter  
26 7.21 RCW. An employer that willfully disobeys a lawful order of  
27 enforcement by a superior court pursuant to section 13 of this act or  
28 willfully offers resistance to such order is in contempt of court as  
29 provided in chapter 7.21 RCW.

30 NEW SECTION. **Sec. 15.** A new section is added to chapter 41.59 RCW  
31 to read as follows:

32 (1) In making its determination, the arbitration panel shall be  
33 mindful of the legislative purpose enumerated in section 8 of this act  
34 and as additional standards or guidelines to aid it in reaching a  
35 decision, shall take into consideration the following factors:

36 (a) The constitutional and statutory authority of the employer;

- 1 (b) Stipulations of the parties;  
2 (c) The average consumer prices for goods and services, commonly  
3 known as the cost of living;  
4 (d) At-risk student populations or students with special needs;  
5 (e) The financial capability of the school district;  
6 (f) Changes in any of the foregoing circumstances during the  
7 pendency of the proceedings; and  
8 (g) Such other factors, not confined to the foregoing, which are  
9 normally or traditionally taken into consideration in the determination  
10 of wages, hours, and conditions of employment.

11 (2) Nothing in this section shall be construed to prohibit an  
12 employer and an exclusive bargaining representative from agreeing to  
13 substitute, at their own expense, their own procedure for resolving  
14 impasses in collective bargaining for that provided in this section or  
15 from agreeing to utilize for the purposes of this section any other  
16 governmental or other agency or person in lieu of the commission.

17 NEW SECTION. **Sec. 16.** RCW 41.59.120 and 1975 1st ex.s. c 288 s 13  
18 are each repealed."

19 Renumber the sections consecutively and correct the title and any  
20 internal references accordingly.

21 On page 8, line 5, after "1 through 5" insert "and 8 through 16"

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