

HOUSE BILL REPORT

SHB 1268

As Amended by the Senate

Title: An act relating to personnel.

Brief Description: Enacting the civil service reform act of 2002.

Sponsors: By House Committee on State Government (originally sponsored by Representatives Romero, Campbell, Conway, Kenney, Kessler, Hurst, Keiser, Simpson, Ogden, Lovick, McIntire, Ruderman, O'Brien, Schual-Berke, Poulsen, Kagi, Cody, Edmonds, Wood and Haigh; by request of Governor Locke).

Brief History:

Committee Activity:

State Government: 1/22/02, 1/24/02 [DPS];

Appropriations: 2/7/02, 2/9/02 [DPS(SG)].

Floor Activity:

Passed House: 2/13/02, 54-43.

Senate Amended.

Passed Senate: 3/8/02, 29-19.

Brief Summary of Substitute Bill

- Restructures the state civil service system, transferring rule-making authority from the Washington Personnel Resources Board to the Department of Personnel, transferring appeal authority from the Personnel Appeals Board to the Washington Personnel Resources Board, and abolishing the Personnel Appeals Board.
- Allows agencies and institutions of higher education to contract out for services, including services traditionally and historically provided by state employees.
- Expands the scope of collective bargaining for state employees to include wages, hours, and other terms and conditions of employment.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Romero, Chair; Miloscia, Vice Chair; McDermott and Upthegrove.

Minority Report: Do not pass. Signed by 3 members: Representatives McMorris, Ranking Minority Member; Schindler and Schmidt.

Staff: Catherine Blinn (786-7114).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on State Government be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Alexander, Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Ruderman, Schual-Berke and Tokuda.

Minority Report: Do not pass. Signed by 10 members: Representatives Sehlin, Ranking Minority Member; Boldt, Buck, Clements, Cox, Lisk, Mastin, Pearson, Pflug and Talcott.

Staff: Kristen Fraser (786-7148).

Background:

I. Civil Service:

The Washington Personnel Resources Board (WPRB) is responsible for passing civil service rules regarding:

- Classification of all state positions;
- Exams;
- Certification of names for vacancies from the seven people that have the highest score on the eligibility list (the "Rule of 7");
- Suspensions, demotions, dismissals, transfers, hours of work, sick leave, vacation; and
- Layoff criteria - layoffs must be by seniority.

Employees of institutions of higher education may "opt out" of the civil service rules and instead have their employment governed exclusively by a collective bargaining agreement.

The Department of Personnel (DOP) is responsible for administering the civil service system. The DOP must conduct periodic salary and fringe benefit surveys. The surveys are subject to certain deadlines and the DOP must furnish specific supporting documents along with the surveys.

The Personnel Appeals Board (PAB) has the jurisdiction to decide appeals in most personnel actions, including dismissals, demotions, allocation of positions, and violations of civil service rules.

II. Contracting Out:

Because of a 1978 decision of the Washington State Supreme Court, agencies and institutions of higher education may not contract out for services regularly and historically provided by classified state employees. The Legislature responded the following year by clarifying that agencies and institutions of higher education may purchase services by contract if the services were regularly purchased by contract prior to 1979. However, a contract may not be executed or renewed if it would have the effect of terminating classified state employees.

III. Collective Bargaining:

Collective bargaining for classified state employees is governed by the WPRB rules and administered by the DOP. Classified state employees have the right to bargain over grievance procedures and over personnel matters over which the agency or institution may lawfully exercise discretion. Agencies and institutions of higher education may not exercise discretion over subjects covered by statute or by the WPRB rules, including recruitment, hiring, discipline, sick leave, vacations, and wages.

Bargaining units are determined by the WPRB rules. Supervisors and non-supervisors may be in the same unit. The WPRB conducts elections and certifies exclusive bargaining representatives. The Washington Management Service (WMS) is governed under the DOP rules separate from the rules governing other classified employees.

Bargaining units bargain with their employing agency or institution of higher education. The civil service law does not grant classified state employees the right to strike. The DOP mediates disputes and the WPRB conducts impasse arbitration. Employees in a bargaining unit may be required to pay periodic dues if a majority of the employees in the bargaining unit vote for union security.

Summary of Substitute Bill:

I. Civil Service:

Effective July 1, 2004, the authority to adopt civil service rules, including rules pertaining to job classifications and layoff criteria, are transferred from the WPRB to the DOP. Certain rules, including rules pertaining to discipline, leave, and hours of work, may be superseded by collective bargaining agreements. The "Rule of 7" and layoffs by seniority are no longer required. Institutions of higher education may locally administer the rules adopted by the DOP.

The WPRB must review the current classification system and adopt new classifications by March 15, 2004. The DOP must begin to implement the new classification system by January 1, 2005. Employees of institutions of higher education may not "opt out" of the

civil service rules after July 1, 2003, and the "opt out" provisions are repealed July 1, 2005.

The specific requirements for salary and fringe benefit surveys are removed. However, the DOP must still conduct the surveys. Personnel appeals filed after June 30, 2005, shall be to the WPRB because on July 1, 2006, the PAB is abolished, and its powers, duties, and functions are transferred to the WPRB.

II. Contracting Out:

A state agency or institution of higher education may contract out for services, including services traditionally and historically provided by state employees, if:

- The contract contains performance measures;
- Classified employees are allowed to provide alternative solutions to purchasing the services by contract, and, in the event those solutions are not approved, bid for the contract using competitive bidding procedures;
- The contract contains provisions requiring the contracting entity to consider employing displaced classified employees;
- The agency or institution has established contract monitoring and termination procedures; and
- The agency or institution has shown that the contract would lead to savings or efficiencies, taking into account the possibility of improper performance.

The following competitive bidding procedures are specified:

- The agency or institution must inform the affected classified employees 90 days prior to sending out bids for contracts; the employees then have 60 days to offer alternatives to purchasing the services by contract;
- Employees must inform the agency or institution if they intend to submit a bid;
- The DOP and the Department of General Administration (GA) must provide training in the bidding process and in bid preparation;
- The GA must establish procedures to ensure that bids are submitted and evaluated fairly, and that there exists a competitive market for the service;
- The employees' bid must contain the full cost of providing the service; and
- The agency or institution may contract with the GA to perform the bidding process.

If employees decide to compete for the contract, they must form an employee business unit to submit the bid. An employee business unit is defined as a group of employees who performs services to be contracted, and who submits a competitive bid for the performance of those services. The Joint Legislative Audit and Review Committee must conduct a performance audit to evaluate the effectiveness of contracting out by January 1, 2007.

III. Collective Bargaining:

Effective July 1, 2004, collective bargaining will be administered by the Public Employment Relations Commission (PERC). The PERC must determine representation issues, determine appropriate bargaining units, administer elections for exclusive bargaining representatives, process and adjudicate disputes that arise from the elections, and certify exclusive bargaining representatives. For purposes of negotiating collective bargaining agreements, the agency employer is represented by the Governor, except for institutions of higher education, which may be represented by either their governing boards or the Governor. Existing bargaining units and exclusive bargaining representatives are "grandfathered." Members of the WMS may not be included in a collective bargaining unit.

If an exclusive bargaining representative represents more than one bargaining unit, it must negotiate one master collective bargaining agreement covering all of the bargaining units it represents. Except for higher education employees, exclusive bargaining representatives representing fewer than 500 employees must bargain in one coalition. The coalition must bargain for a master collective bargaining agreement covering all employees represented. If the parties fail to reach an agreement during negotiations, either party may initiate mediation. If no agreement is reached within 100 days of the expiration of the previous agreement, the PERC must appoint an independent fact-finder.

When negotiating collective bargaining agreements, the Governor must consult with the new Joint Select Committee on Employee Relations. Once an agreement is reached, the Governor must submit a funding request to the Legislature, which the Legislature must accept or reject as a whole. If a significant revenue shortfall occurs, modifications to the agreements must be negotiated. The terms of an expired collective bargaining agreement remain in effect until a new agreement is negotiated, not to exceed one year. After one year, the employer may unilaterally implement according to law.

The matters subject to bargaining include wages, hours, and terms and conditions of employment. Employers are not required to, but may, bargain over health care benefits or other employee insurance benefits, any retirement system or retirement benefits, and certain civil service rules regarding examinations, appointments, job classifications and affirmative action. Bargaining over management rights is prohibited. Bargaining over health care dollar amounts must be conducted in one statewide coalition. Except for institutions of higher education, this is also true for the number of names to be certified for vacancies and promotional preferences.

A provision of a collective bargaining agreement that conflicts with a statute is invalid and unenforceable. However, if a provision of a collective bargaining agreement conflicts with an executive order, administrative rule or agency policy relating to wages, hours and terms, and conditions of employment, the collective bargaining agreement prevails. Collective bargaining that affects the state's right to contract out for services is not prohibited. The right to strike is not granted.

Collective bargaining agreements may contain a union security provision requiring employees to pay agency shop fees as a condition of employment. Employees who assert the right of non-association based on religious beliefs may pay the fee to the employee organization for a program within the organization that is in harmony with the employee's conscience.

EFFECT OF SENATE AMENDMENT(S):

- Amendment 839 (Jone 1) clarifies the burden of proof imposed on state agencies that purchase services by contract. Agencies must "determine" that the contract will result in efficiencies or savings, rather than "demonstrate" that the contract will result in efficiencies or savings.
- Amendment 828 (Jone 2) clarifies that contracting out that was authorized by law prior to the effective date of the bill, including contracts and agreements between public entities, is not subject to the contracting out restrictions included in the bill.
- Amendment 827 (Jone 3) clarifies that contracting out that is expressly mandated by the Legislature is not subject to the contracting out restrictions included in the bill.
- Amendment 832 (Jone 4) provides that the eight-member Joint Committee on Employment Relations must include the chair and ranking minority members of the House Appropriations Committee and the Senate Ways & Means Committee.
- Amendment 831 (Jone 7) limits the duration of collective bargaining agreements to the two-year fiscal biennium.
- Amendment 934 (Jone 8) provides that retirement benefits are not subject to collective bargaining.
- Amendment 836 (Jone 11) reduces from 1% to 0.1% the maximum amount that may be charged against the state salary base to fund the cost of state labor relations services (collective bargaining). The fiscal impact of the change is reduced from a maximum biennial amount of approximately \$40 million to \$4 million.
- Amendment 819 (Jone 12) authorizes the Governor or the Legislature to declare a significant revenue shortfall for purposes of re-opening a collective bargaining agreement. The bill is currently silent regarding who has authority to declare that a significant revenue shortfall has occurred.
- Amendment 829 (Jone 13) applies the provision that requires higher education collective bargaining agreements to be submitted to the Office of Financial Management by October 1 to other state agencies. The amendment also requires funding requests for collective bargaining agreements to be submitted as part of the Governor's budget request under the Budget & Accounting Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Testimony For: (State Government) This is a Governor's request bill. Contracting out and civil service reforms are long overdue. Seniority has been a primary focus with regards to layoffs. Current law limits consideration of applicants for vacancies to seven people. Current law allows managers and employees to be in the same bargaining unit, which can cause conflict. Changes need to be made to the current job classification system, which includes approximately 2,700 job classifications. The classifications should be more efficient and consistent. Washington has some of the most restrictive contracting out laws in the nation. The bill has a unique approach to contracting out that attempts to accommodate business and labor. The managed competition provisions can involve innovative compensation packages that are currently prohibited. The fair bidding provisions are important to both business and labor, and include an appeal process. To not allow bargaining over the state's ability to contract out would deviate from the standard. The bill does not depart from the Legislature's role as the budget-maker. Collective bargaining currently exists, but agency directors can only negotiate those subjects over which they can exercise discretion. Because so much is currently set in statute and merit system rules, the parties are only left with the option of bargaining managerial prerogatives, which is not appropriate. The bill would allow agencies to negotiate economic conditions. Most states don't involve the Legislature in negotiations, which occurs with the new Joint Select Committee on Employee Relations. State employees know the work the best.

Testimony For: (Appropriations) This bill is true reform of the civil service system and moves Washington's civil service system into the next century. It permits true collective bargaining while protecting management rights. Washington's prohibition on contracting out is among the most restrictive in the nation, and the changes in this bill to permit competitive contracting will result in creative solutions. By permitting collective bargaining over economic issues, Washington joins 26 other states. The bill considers fiscal issues facing the Legislature; like Wisconsin's law, on which this bill is modeled, this bill creates a legislative committee to advise the Governor. The existing civil service rules are confusing and constricting: the "Rule of 7" is too constraining; there are too many classifications; seniority shouldn't be the sole factor; and managers shouldn't be in the same collective bargaining unit as those they supervise.

Bargaining over contracting out is a common feature in public and private collective bargaining. To have an effective competitive contracting process, the state must have collective bargaining. This is a real change to contracting out, and it has been negotiated with business. Since the intent of collective bargaining is to allow the parties to come to an agreement, more things should be on the table.

State employees perform tough and dangerous jobs, and morale suffers when the state doesn't trust its employees enough to bargain with them over their future. It's hard to work in an environment where major issues simply can't be bargained. Other public jurisdictions bargain successfully with their employees, and state employees should have the same rights. The bill sets up a fair process for contracting out, and in many cases the

state employees will be able to beat private sector bids. Taxpayers and those served by state employees will benefit.

Testimony Against: (State Government) The National Federation of Independent Business is opposed to the bill because it will not help to solve the budget problems and puts control in the Governor's office rather than the Legislature. Contracting out should not be negotiated away. The Association of Washington Business is opposed to the bill and concerned about the contracting out provisions. Washington has some of the highest unemployment insurance rates in the nation, and state agencies provide poor services. There is currently no competition. If real collective bargaining is desired, allow managers to really be able to bargain. The Washington State Farm Bureau is opposed to the bill because it shifts power from elected officials to unresponsive agencies. Approximately three to four billion dollars will be eligible for negotiation, and the Legislature will only have the ability to accept or reject the agreement as a whole. The Legislature's hands will be tied if revenues significantly decline while the state is committed to the terms of a contract.

Testimony Against: (Appropriations) A contracting out law that can be bargained away isn't really contracting out at all. The difference between the public and private sectors is that private businesses fail if they can't follow through on their promises. In the public sector, service may actually get worse after the agency promises improvements. This bill will worsen, not improve, the state's fiscal crisis.

This bill represents a major shift in power from the Legislature to the Governor. In effect, the Legislature has shifted control of \$4 billion to the Governor and labor. The Legislature will be faced with an agreement negotiated through closed-door process and will have to vote up or down on the agreement as a whole. The Legislature should seek more control, not less, over the compensation process.

Only a statute can trump the collective bargaining agreement--this is too much latitude. This bill will cause overall salaries to increase, making it difficult for the private sector to compete. The failure to prohibit strikes makes them likely.

Testified: (State Government) (In support) Fred Hellberg, Office of Financial Management; Eugene Matt, Department of Personnel; Gary Moore, Department of Labor and Industries; Greg Devereaux, Washington Federation of State Employees; Ellie Menzies, Service Employees International Union; and Eugene St. John, Washington Public Employees Association.

(Opposed) Mark Johnson, National Federation of Independent Business; Gary Smith, Independent Business Association; Clifton Finch, Association of Washington Business; and Dan Fazio, Washington State Farm Bureau.

(With concerns) Paul Guppy, Washington Policy Center.

Testified: (Appropriations) (In support) Fred Kiga, Governor's Office; Gary Moore, Department of Labor and Industries; Gene Matt, Department of Personnel; Greg Devereaux and Amy Murphy, Washington Federation of State Employees; Ellie Menzies, State Employees International Union; and Eugene St. John, Washington Public Employees Association.

(With concerns) Rowland Thompson, Allied Daily Newspapers.

(Opposed) Clifton Finch, Association of Washington Business; Mark Johnson, National Federation of Independent Business; Paul Guppy, Washington Policy Center; and Dan Fazio, Washington State Farm Bureau.