HOUSE BILL REPORT
SSB 6054

As Reported by House Committee On:
Commerce & Labor
Appropriations

Title: An act relating to clarifying the application of the industrial welfare act to public employers.

Brief Description: Clarifying the application of the industrial welfare act to public employers.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rossi and Fairley; by request of Office of Financial Management).

Brief History:
Committee Activity:
Commerce & Labor: 4/16/03 [DPA];
Appropriations: 4/22/03 [DPA(APP w/o CL)s].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Provides that, before the bill's effective date, the Industrial Welfare Act (IWA) does not apply to the public sector except as expressly provided and that, on and after the bill's effective date, the IWA applies to the public sector only to the extent specified.
- Allows public employees to enter into collective bargaining agreements, labor/management agreements, or other mutually agreed to employment agreements that supersede the IWA's rest and meal break rules.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Crouse and Holmquist.

Staff: Chris Cordes (786-7103).

Background:

Under the Washington Industrial Welfare Act (IWA), it is unlawful for an employer to employ workers under conditions of labor that are detrimental to their health. The Department of Labor and Industries (Department) is authorized to conduct investigations into wages, hours, and conditions of employment and to adopt rules establishing employment standards. Employers may apply for a variance from these rules for good cause.

The Department has adopted various employment standards, including rules dealing with the employment of minors, payment of wages, employment records, and rest and meal periods. The rules governing rest and meal periods require a paid rest period of at least 10 minutes for each four hours of working time. The rules also specify that an employee may not be required to work more than three hours without a rest period. Scheduled rest periods are not required, however, if the nature of the work allows employees to take intermittent rest periods equivalent to the rules' requirements. Employees must be allowed a meal period of at least 30 minutes.

Another provision of the IWA states that the law does not interfere with or diminish the right of employees to bargain collectively with their employers concerning wages or conditions of employment. This provision was at issue in a 2002 case brought by employees covered by a collective bargaining agreement that contained provisions inconsistent with the Department's rule. The Washington Supreme Court concluded that the IWA did not allow a collective bargaining agreement to decrease the frequency of workers' rest periods, especially without compliance with the statutory process for seeking a variance.

The IWA applies generally to "employers" who are persons, firms, corporations, partnerships, business trusts, legal representatives, or other business entities that engage in any business, industry, profession, or activity in Washington. For the purposes of provisions addressing family care and the use of sick leave, required wearing apparel, and parental leave, the IWA expressly states that it applies to the state and political subdivisions of the state. Provisions prohibiting employment discrimination against volunteer fire fighters apply to any person who employs 20 or more full-time employees.

These coverage provisions are at issue in a case for which an appeal to the Washington Court of Appeals has been requested. In this case, state employees worked "straight eight" work shifts. The employees allege that under this shift they work through rest and meal periods without additional compensation, in violation of rules adopted under the IWA. The state argues that the rest and meal period rules under the IWA do not apply to the public sector. The superior court determined that the IWA applies to the state, and review of this question is pending before the appellate court.

Summary of Amended Bill:

Legislative findings are made that the 1988 amendment of the IWA's definition of employer was to ensure that the family care provisions applied to the public sector and that this amendment may be interpreted as creating an ambiguity about the application of other provisions of the IWA to the public sector. The bill's declared purpose is to make retroactive and remedial amendments to clarify the intent and resolve any ambiguity.

Before the bill's effective date, the definition of "employer" under the IWA does not include the public sector, except as expressly provided with respect to provisions addressing family care/sick leave, parental leave, wearing apparel, and job protections for volunteer fire fighters.

On and after the bill's effective date, the definition of "employer" includes the public sector. However, rules adopted under the IWA regarding rest and meal periods as applied to public employees may be superceded by a collective bargaining agreement negotiated under a state collective bargaining law if the terms of the agreement specifically require rest and meal periods and prescribe requirements concerning those rest and meal periods.

Amended Bill Compared to Substitute Bill:

The amendment deletes the limitation that would make the IWA apply to the public sector after the bill's effective date only to the extent that the IWA does not conflict with statutes, ordinances, or rules. It allows public employees to enter into agreements that supercede the IWA only if the agreements are bargained under a state collective bargaining law and only with respect to rest and meal breaks (instead of with respect to all wages, hours, and working conditions). The amendment also includes technical changes to make references in the IWA to "public employer" consistent.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill is intended to address the risk of an award of retroactive salary and benefits of $229.4 million to certain state employees. This amount includes $82.9 million to the Department of Corrections employees, and between $146.4 million and $190 million to the Department of Social Health Services employees. This amount accounts for the three-year statute of limitations. It does not account for any prospective amounts for state employees, or any amounts for local government employees.

This bill would maintain the status quo. It is narrowly crafted to give employers flexibility and employees protection. It is also intended to indemnify the state.

This bill deals with a long-time practice involving state and local institutional employees (e.g., employees at state mental health, developmental disability, and correctional facilities, and at local correctional facilities). State law required these employees to earn overtime for hours worked beyond eight hours in a day, and 40 hours in a week. Because of practical considerations and awkward staffing configurations, especially at transition times, state and local governments and unions negotiated collective bargaining and union-management agreements that allowed these employees to work "straight eights." Employees could eat and take breaks during their "straight eight" shifts, but had to be on site and available to respond in case of emergencies.

The *McGinnis* suit results in a major reversal of this historical understanding between state and local government employers and institutional employees. The superior court granted the plaintiffs' motion for summary judgment and denied the state's motion for reconsideration.

Some believed that the IWA has always covered institutional workers. They also believed that, through collective bargaining, they could negotiate variances from some of the IWA's provisions. The ability to negotiate different terms allowed the parties to seek innovative solutions. Others believed that the IWA did not cover local governments.

There are concerns about any provisions that would authorize local governments to waive the requirements of the IWA by ordinance. There are also concerns about making sure the bill applies not only to employees covered under collective bargaining agreements, but also to other employees.

Testimony Against: None.

Testified: Jim Hedrick and Gary Moore, Office of Financial Management; Mike Ryherd, Joint Council of Teamsters; J. Pat Thompson, Washington State Council of County and City Employees; Greg Devereaux, Washington Federation of State Employees; Lynn Maier, Washington Public Employees Association; Robby Stern, Washington State Labor Council; Bill Vogler, Washington State Association of Counties; and Jim Justin, Association of Washington Cities.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Commerce & Labor. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Conway, Cox, DeBolt, Dunshee, Grant, Hunter, Kagi, Kenney,

Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

Staff: Chris Cordes (786-7103).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

The Appropriations Committee amendment applies the IWA to the public sector on and after the bill's effective date only to the extent that the IWA and rules adopted under the IWA do not conflict with a state statute or rule, and, for local governments, do not conflict with a resolution, ordinance, or rule adopted by the local legislative authority before April 1, 2003. The amendment also permits public employees to enter into collective bargaining agreements, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rest and meal break rules.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The Office of Financial Management requested this bill to foreclose the state's financial risk of about $230 million because of the recent "straight eight" law suit. This amount only covers the retroactive wages that are at issue in that case. The history of this issue started in 1953 when the "eight hour day" was enacted for certain state employees at institutions. The law resulted in a problem for shift changes when two full complements of employees would be present in the worksite. The solution was the "straight eight" shift, which employees liked and have continued to ask for since these shifts were started. All parties assumed that the IWA did not apply. There is very good reason to argue that the public sector was never covered based on the 1988 amendments. The bill is intended to get as close as possible to the status quo for the public sector. The IWA has always applied to the private sector, and another bill before the Legislature this session would address the complications raised for the construction industry in the *Wingert v. Yellow Freight* case. This bill addresses similar concerns in the public sector by immunizing public employers and allowing mutual employment agreements to continue to control rest and meal break arrangements. Some education about these issues for the smaller local jurisdictions will be needed.

Testimony Against: None.

Testified: Jim Hedrick and Gary Moore, Office of Financial Management; Mike

Ryherd, Joint Council of Teamsters; Lynn Maier, Washington Public Employees Association; and Jim Justin, Association of Washington Cities.