SENATE BILL REPORT
SSB 6054

As Passed Senate, April 9, 2003

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: Ways & Means: 3/27/03, 4/1/03 [DPS].
Passed Senate: 4/9/03, 46-0.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6054 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Fairley, Fraser, Hale, Honeyford, Johnson, Parlette, Regala, Roach, Sheahan, B. Sheldon and Winsley.

Staff: Steve Jones (786-7440)

Background: The Industrial Welfare Act, now codified in Chapter 49.12 RCW, was first enacted in 1913 to protect the industrial working conditions of women and children. In 1973, the statute was expanded to cover all industrial workers.

Today, the statute includes a variety of provisions protecting workers, including the regulating of wages and working conditions of minors, legal actions to recover underpayment of wages, wage and employment discrimination based on sex, family and parental leave, and other miscellaneous workplace issues.

The Industrial Welfare Act is administered by the Department of Labor and Industries, which has promulgated a variety of regulations under the act, including rules dealing with payment of wages, employment records, workplace sanitation, and meal and rest periods. The meal and rest period regulations require periodic rest and meal breaks during each work shift.

While the family leave provisions of the Industrial Welfare Act are expressly applicable to employees of the state and its political subdivisions, it is unclear whether the remainder of the act applies to public employees. In state institutions operated by the Department of Corrections (DOC) and the Department of Social and Health Services (DSHS), state employees have collectively bargained to work a straight eight-hour shift, without designated rest and meal breaks, instead of a nine-hour shift that includes designated break times.

Current litigation alleges that "straight eight" work shifts by the institutional staffs of DSHS and DOC violate the Industrial Welfare Act. Among other arguments, plaintiffs in the litigation allege that the act applies to public employers because they are not expressly excluded from the act's coverage. The defendant state agencies respond, among other arguments, that the Industrial Welfare Act was intended by the Legislature to protect only workers in industrial and commercial settings, and that the working conditions for public employees are regulated by other laws, including the state Civil Service Act, the Washington Industrial Safety and Health Act (WISHA), and other statutes.

Summary of Bill: The family leave provisions of the Industrial Welfare Act were intended by the Legislature to be expressly applicable to state agencies and political subdivisions, but the remainder of the act was not intended by the Legislature to be applicable to public employers. The declared purpose of the bill is to clarify the application of the Industrial Welfare Act and, for that reason, the bill is declared to be remedial and retroactive.

However, in the future, public employers will be subject to the Industrial Welfare Act, but public employees may, through the collective bargaining process, waive or supersede the requirements of the act in matters pertaining to hours, wages, and working conditions.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill is a reasonable, balanced, and fair approach to maintain the status quo by validating governmental staffing policies that are overwhelmingly favored by both labor and management and have been an established practice in widespread use since at least 1953. Straight eight work shifts were developed jointly by labor and management to address the unique staffing needs in state institutional settings. The 4,000 security personnel employed in the state correctional system widely support this practice. State and local agencies and their employees have long been advised that these collectively bargained practices were valid under state law. If the collective bargaining agreements are invalidated, the state faces a potential past liability of $229 million and significantly increased staffing costs in the future. Cities and counties also face significant legal liabilities and increased staffing costs for police, sheriffs, and jail staff.

On a remedial and retroactive basis, the bill clarifies legislative intent and allows collective bargaining to continue to occur in an area that is in everyone's best interests. The bill cures an ambiguity in the Industrial Welfare Act and preserves the collective bargaining rights of both labor and management.

Testimony Against: This bill is an attempt by the Office of Financial Management to legislate the state out of a lawsuit and is an abuse of the legislative process. The state has been unlawfully depriving public employees of their legitimate wages. The state budget shouldn't be balanced on the backs of prison guards and other workers in the state institutions, who work very hectic and demanding jobs with no breaks for meals or rest.

Testified: Wolfgang Opitz, Office of Financial Management (pro); Gary Moore, Governor's Office of Labor Relations (pro); Mike Ryherd, Joint Council of Teamsters (pro); Lynn Maier, Washington Public Employees Assoc. (pro); Greg Devereaux, Washington Federation of State Employees (pro); Bill Vogler, Washington State Assoc. of Counties (pro); Jim Justin, Assoc. of Washington Cities (pro); Valerie Zeeck, attorney (con).

House Amendment(s): The House amendment makes technical and clarifying amendments to ensure that public-sector employees may continue to collectively bargain over the issue of meal and rest periods.