
SUBSTITUTE SENATE BILL 6794

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Haugen, Esser, Jacobsen, Mulliken and Spanel; by request of Department of Transportation)

READ FIRST TIME 02/07/06.

1 AN ACT Relating to collective bargaining by state ferry employees;
2 amending RCW 47.64.011, 47.64.120, 47.64.130, 47.64.140, 47.64.170,
3 47.64.200, 47.64.210, 47.64.220, 47.64.220, 47.64.230, 47.64.270, and
4 47.64.280; adding new sections to chapter 47.64 RCW; creating a new
5 section; repealing RCW 47.64.180, 47.64.190, and 47.64.240; providing
6 an effective date; providing an expiration date; and declaring an
7 emergency.

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

9 **Sec. 1.** RCW 47.64.011 and 1983 c 15 s 2 are each amended to read
10 as follows:

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

13 (1) (~~"Arbitration" means the procedure whereby the parties~~
14 ~~involved in an impasse submit their differences to a third party for a~~
15 ~~final and binding decision or as provided in this chapter.~~

16 (2) ~~"Arbitrator" means either a single arbitrator or a panel of~~
17 ~~three arbitrators as provided in RCW 47.64.240.~~

18 (3)) "Collective bargaining representative" means the persons

1 designated by the (~~secretary of transportation~~) governor and employee
2 organizations to be the exclusive representatives during collective
3 bargaining negotiations.

4 (~~(4)~~) (2) "Commission" means the marine employees' commission
5 created in RCW 47.64.280.

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

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

9 (5) "Ferry employee" means any employee of the marine
10 transportation division of the department of transportation who is a
11 member of a collective bargaining unit represented by a ferry employee
12 organization and does not include an exempt employee pursuant to RCW
13 41.06.079.

14 (6) "Ferry employee organization" means any labor organization
15 recognized to represent a collective bargaining unit of ferry
16 employees.

17 (~~(7) ("Ferry system management" means those management personnel of~~
18 ~~the marine transportation division of the department of transportation~~
19 ~~who have been vested with the day to day management responsibilities of~~
20 ~~the Washington state ferry system by the transportation commission and~~
21 ~~who are not members of a collective bargaining unit represented by a~~
22 ~~ferry employee organization.~~

23 ~~(8)~~) "Lockout" means the refusal of (~~ferry system management~~)
24 the employer to furnish work to ferry employees in an effort to get
25 ferry employee organizations to make concessions during collective
26 bargaining, grievance, or other labor relation negotiations.
27 Curtailment of employment of ferry employees due to lack of work
28 resulting from a strike or work stoppage(~~(, as defined in subsection~~
29 ~~(11) of this section,~~) shall not be considered a lockout.

30 (~~(9) "Marine employees' commission" means the commission created~~
31 ~~in RCW 47.64.280.~~

32 ~~(10)~~) (8) "Office of financial management" means the office as
33 created in RCW 43.41.050.

34 (~~(11)~~) (9) "Strike or work stoppage" means a ferry employee's
35 refusal, in concerted action with others, to report to duty, or his or
36 her willful absence from his or her position, or his or her stoppage or
37 slowdown of work, or his or her abstinence in whole or in part from the
38 full, faithful, and proper performance of the duties of employment, for

1 the purpose of inducing, influencing, or coercing a change in
2 conditions, compensation, rights, privileges, or obligations of his,
3 her, or any other ferry employee's employment. A refusal, in good
4 faith, to work under conditions which pose an endangerment to the
5 health and safety of ferry employees or the public, as determined by
6 the master of the vessel, shall not be considered a strike for the
7 purposes of this chapter.

8 ~~((12) "Transportation commission" means the commission as defined
9 in RCW 47.01.021.))~~

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

12 (1) For the purpose of negotiating collective bargaining agreements
13 under this chapter, the employer shall be represented by the governor
14 or governor's designee.

15 (2) Two or more ferry employee organizations may, upon agreement of
16 the parties, negotiate, as a coalition with the employer representative
17 as designated in subsection (1) of this section, a multiunion
18 collective bargaining agreement on behalf of all the employees in ferry
19 employee organization bargaining units that the exclusive bargaining
20 representatives represent. The coalition shall bargain for a
21 multiunion collective bargaining agreement covering all of the
22 employees represented by the coalition. The governor's designee and
23 the exclusive bargaining representative or representatives are
24 authorized to enter into supplemental bargaining of bargaining unit-
25 specific issues for inclusion in or as an addendum to the multiunion
26 collective bargaining agreement, subject to the parties' agreement
27 regarding the issues and procedures for supplemental bargaining.
28 Nothing in this section impairs the right of each ferry employee
29 organization to negotiate a collective bargaining agreement exclusive
30 to the bargaining unit it represents.

31 **Sec. 3.** RCW 47.64.120 and 1997 c 436 s 1 are each amended to read
32 as follows:

33 (1) ~~((Ferry system management))~~ The employer and ferry system
34 employee organizations, through their collective bargaining
35 representatives, shall meet at reasonable times, to negotiate in good
36 faith with respect to wages, hours, working conditions, insurance, and

1 health care benefits as limited by RCW 47.64.270, and other matters
2 mutually agreed upon. Employer funded retirement benefits shall be
3 provided under the public employees retirement system under chapter
4 41.40 RCW and shall not be included in the scope of collective
5 bargaining.

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

20 (3) Except as otherwise provided in this chapter, if a conflict
21 exists between an executive order, administrative rule, or agency
22 policy relating to wages, hours, and terms and conditions of employment
23 and a collective bargaining agreement negotiated under this chapter,
24 the collective bargaining agreement shall prevail. A provision of a
25 collective bargaining agreement that conflicts with the terms of a
26 statute is invalid and unenforceable.

27 **Sec. 4.** RCW 47.64.130 and 1983 c 15 s 4 are each amended to read
28 as follows:

29 (1) It is an unfair labor practice for ((~~ferry system management~~))
30 the employer or its representatives:

31 (a) To interfere with, restrain, or coerce employees in the
32 exercise of the rights guaranteed by this chapter;

33 (b) To dominate or interfere with the formation or administration
34 of any employee organization or contribute financial or other support
35 to it(~~(: PROVIDED, That)~~). However, subject to rules made by the
36 commission pursuant to RCW 47.64.280, an employer shall not be

1 prohibited from permitting employees to confer with it or its
2 representatives or agents during working hours without loss of time or
3 pay;

4 (c) To encourage or discourage membership in any employee
5 organization by discrimination in regard to hiring, tenure of
6 employment, or any term or condition of employment, but nothing
7 contained in this subsection prevents an employer from requiring, as a
8 condition of continued employment, payment of periodic dues and fees
9 uniformly required to an exclusive bargaining representative pursuant
10 to RCW 47.64.160(~~(:—PROVIDED, That)~~). However, nothing prohibits
11 (~~(ferry system management)~~) the employer from agreeing to obtain
12 employees by referral from a lawful hiring hall operated by or
13 participated in by a labor organization;

14 (d) To discharge or otherwise discriminate against an employee
15 because he has filed charges or given testimony under this chapter;

16 (e) To refuse to bargain collectively with the representatives of
17 its employees.

18 (2) It is an unfair labor practice for an employee organization:

19 (a) To restrain or coerce (i) employees in the exercise of the
20 rights guaranteed by this chapter(~~(:—PROVIDED, That this paragraph)~~).
21 However, this subsection does not impair the right of an employee
22 organization to prescribe its own rules with respect to the acquisition
23 or retention of membership therein, or (ii) an employer in the
24 selection of his representatives for the purposes of collective
25 bargaining or the adjustment of grievances;

26 (b) To cause or attempt to cause an employer to discriminate
27 against an employee in violation of subsection (1)(c) of this section;

28 (c) To refuse to bargain collectively with an employer(~~(, when it~~
29 ~~is the representative of its employees subject to RCW 47.64.170)~~).

30 (3) The expression of any view, argument, or opinion, or the
31 dissemination thereof to the public, whether in written, printed,
32 graphic, or visual form, shall not constitute or be evidence of an
33 unfair labor practice under any of the provisions of this chapter, if
34 the expression contains no threat of reprisal or force or promise of
35 benefit.

36 **Sec. 5.** RCW 47.64.140 and 1989 c 373 s 25 are each amended to read
37 as follows:

1 (1) It is unlawful for any ferry system employee or any employee
2 organization, directly or indirectly, to induce, instigate, encourage,
3 authorize, ratify, or participate in a strike or work stoppage against
4 the ferry system.

5 (2) It is unlawful for (~~ferry system management~~) the employer to
6 authorize, consent to, or condone a strike or work stoppage; or to
7 conduct a lockout; or to pay or agree to pay any ferry system employee
8 for any day in which the employee participates in a strike or work
9 stoppage; or to pay or agree to pay any increase in compensation or
10 benefits to any ferry system employee in response to or as a result of
11 any strike or work stoppage or any act that violates subsection (1) of
12 this section. It is unlawful for any official, director, or
13 representative of the ferry system to authorize, ratify, or participate
14 in any violation of this subsection. Nothing in this subsection
15 prevents new or renewed bargaining and agreement within the scope of
16 negotiations as defined by this chapter, at any time. No collective
17 bargaining agreement provision regarding suspension or modification of
18 any court-ordered penalty provided in this section is binding on the
19 courts.

20 (3) In the event of any violation or imminently threatened
21 violation of subsection (1) or (2) of this section, any citizen
22 domiciled within the jurisdictional boundaries of the state may
23 petition the superior court for Thurston county for an injunction
24 restraining the violation or imminently threatened violation. Rules of
25 civil procedure regarding injunctions apply to the action. However,
26 the court shall grant a temporary injunction if it appears to the court
27 that a violation has occurred or is imminently threatened; the
28 plaintiff need not show that the violation or threatened violation
29 would greatly or irreparably injure him or her; and no bond may be
30 required of the plaintiff unless the court determines that a bond is
31 necessary in the public interest. Failure to comply with any temporary
32 or permanent injunction granted under this section is a contempt of
33 court as provided in chapter 7.21 RCW. The court may impose a penalty
34 of up to ten thousand dollars for an employee organization or the ferry
35 system, for each day during which the failure to comply continues. The
36 sanctions for a ferry employee found to be in contempt shall be as
37 provided in chapter 7.21 RCW. An individual or an employee

1 organization which makes an active good faith effort to comply fully
2 with the injunction shall not be deemed to be in contempt.

3 (4) The right of ferry system employees to engage in strike or work
4 slowdown or stoppage is not granted and nothing in this chapter may be
5 construed to grant such a right.

6 (5) Each of the remedies and penalties provided by this section is
7 separate and several, and is in addition to any other legal or
8 equitable remedy or penalty.

9 (6) In addition to the remedies and penalties provided by this
10 section the successful litigant is entitled to recover reasonable
11 attorney fees and costs incurred in the litigation.

12 (7) Notwithstanding the provisions of chapter 88.04 RCW and chapter
13 88.08 RCW, the department of transportation shall (~~(promulgate)~~) adopt
14 rules (~~(and regulations)~~) allowing vessels, as defined in RCW
15 (~~(88.04.300)~~) 88.04.015, as well as other watercraft, to engage in
16 emergency passenger service on the waters of Puget Sound in the event
17 ferry employees engage in a work slowdown or stoppage. Such emergency
18 rules (~~(and regulations)~~) shall allow emergency passenger service on
19 the waters of Puget Sound within seventy-two hours following a work
20 slowdown or stoppage. Such rules (~~(and regulations)~~) that are
21 (~~(promulgated)~~) adopted shall give due consideration to the needs and
22 the health, safety, and welfare of the people of the state of
23 Washington.

24 **Sec. 6.** RCW 47.64.170 and 1983 c 15 s 8 are each amended to read
25 as follows:

26 (1) Any ferry employee organization certified as the bargaining
27 representative shall be the exclusive representative of all ferry
28 employees in the bargaining unit and shall represent all such employees
29 fairly.

30 (2) A ferry employee organization or organizations and the
31 (~~(secretary of transportation)~~) governor may each designate any
32 individual as its representative to engage in collective bargaining
33 negotiations.

34 (3) Negotiating sessions, including strategy meetings of (~~(ferry~~
35 ~~system management)~~) the employer or employee organizations, mediation,
36 and the deliberative process of arbitrators are exempt from the
37 provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may

1 be open to the public by mutual consent of the parties. (~~Any meeting~~
2 ~~of the transportation commission, during which a collective bargaining~~
3 ~~agreement is subject to ratification, shall be open to the public.~~)

4 (4) Terms of any collective bargaining agreement may be enforced by
5 civil action in Thurston county superior court upon the initiative of
6 either party.

7 (5) Ferry system employees or any employee organization shall not
8 negotiate or attempt to negotiate directly with (~~a member of the~~
9 ~~transportation commission if the commission has~~) anyone other than the
10 person who has been appointed or authorized a bargaining representative
11 for the purpose of bargaining with the ferry employees or their
12 representative(~~, unless the member of the commission is the designated~~
13 ~~bargaining representative of the ferry system~~)).

14 (6)(a) The negotiation of a proposed collective bargaining
15 agreement by representatives of (~~ferry system management~~) the
16 employer and a ferry employee organization shall commence (~~in each~~
17 ~~odd-numbered year immediately following adoption by the legislature and~~
18 ~~approval by the governor of the biennial budget~~) on or about September
19 1st of every odd-numbered year. However, negotiations for the 2007-
20 2009 biennial agreements may commence at any time after the effective
21 date of this section. Negotiations for agreements pertaining to the
22 2009-2011 biennium and all subsequent negotiations must conclude on or
23 about April 1st of the year following the year in which the
24 negotiations commence. If negotiations are not concluded by April 1st,
25 the parties shall be deemed to be at impasse and shall proceed to
26 mediation under RCW 47.64.230 and sections 12 through 14 of this act.

27 (b) For negotiations covering the 2009-2011 biennium and subsequent
28 biennia, the time periods specified in this section, and in RCW
29 47.64.210 and sections 12 through 14 of this act, must ensure
30 conclusion of all agreements on or before September 1st of the even-
31 numbered year next preceding the biennial budget period during which
32 the agreement should take effect. These time periods may only be
33 altered by mutual agreement of the parties in writing. Any such
34 agreement and any impasse procedures agreed to by the parties under RCW
35 47.64.200 must include an agreement regarding the new time periods that
36 will allow final resolution by negotiations or arbitration by September
37 1st of each even-numbered year. Negotiations for the 2007-2009
38 biennium must be concluded on or before October 1, 2006.

1 (7) Until a new collective bargaining agreement is (~~negotiated, or~~
2 ~~until an award is made by the arbitrator~~) in effect, the terms and
3 conditions of the previous collective bargaining agreement shall remain
4 in force. (~~The wage and benefit provisions of any collective~~
5 ~~bargaining agreement, or arbitrator's award in lieu thereof, that is~~
6 ~~concluded after July 1st of an odd-numbered year shall be retroactive~~
7 ~~to July 1st.~~) It is the intent of this section that the collective
8 bargaining agreement or arbitrator's award shall commence on July 1st
9 of each odd-numbered year and shall terminate on June 30th of the next
10 odd-numbered year to coincide with the ensuing biennial budget year, as
11 defined by RCW 43.88.020(7), to the extent practical. It is further
12 the intent of this section that all collective bargaining agreements be
13 concluded by September 1st of the even-numbered year before the
14 commencement of the biennial budget year during which the agreements
15 are to be in effect.

16 (8) (~~Any ferry union contract terminating before July 1, 1983,~~
17 ~~shall, with the agreement of the parties, remain in effect until a~~
18 ~~contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120~~
19 ~~through 47.64.280. The contract may be retroactive to the expiration~~
20 ~~date of the prior contract, and the cost to the department of three~~
21 ~~months retroactive compensation and benefits for this 1983 contract~~
22 ~~negotiation only shall not be included in calculating the limitation~~
23 ~~imposed by RCW 47.64.180. If the parties cannot agree to contract~~
24 ~~extension, any increase agreed to for the three month period shall be~~
25 ~~included in calculating the limit imposed by RCW 47.64.180.~~

26 (9) ~~Any ferry union contract which would terminate after July 1,~~
27 ~~1983, may, by agreement of the parties, be terminated as of July 1,~~
28 ~~1983, and a new contract concluded pursuant to RCW 47.64.006,~~
29 ~~47.64.011, and 47.64.120 through 47.64.280. Any contract terminating~~
30 ~~after July 1, 1983, is subject to this chapter only upon its expiration~~
31 ~~and shall not be renewed for a period beyond July 1, 1985.)~~ (a) The
32 governor shall submit a request either for funds necessary to implement
33 the collective bargaining agreements including, but not limited to, the
34 compensation and fringe benefit provisions or for legislation necessary
35 to implement the agreement, or both. Requests for funds necessary to
36 implement the collective bargaining agreements shall not be submitted
37 to the legislature by the governor unless such requests:

1 (i) Have been submitted to the director of the office of financial
2 management by October 1st before the legislative session at which the
3 requests are to be considered; and

4 (ii) Have been certified by the director of the office of financial
5 management as being feasible financially for the state.

6 (b) The governor shall submit a request either for funds necessary
7 to implement the arbitration awards or for legislation necessary to
8 implement the arbitration awards, or both. Requests for funds
9 necessary to implement the arbitration awards shall not be submitted to
10 the legislature by the governor unless such requests have been
11 submitted to the director of the office of financial management by
12 October 1st before the legislative session at which the requests are to
13 be considered.

14 (c) The legislature shall approve or reject the submission of the
15 request for funds necessary to implement the collective bargaining
16 agreements or arbitration awards as a whole for each agreement or
17 award. The legislature shall not consider a request for funds to
18 implement a collective bargaining agreement or arbitration award unless
19 the request is transmitted to the legislature as part of the governor's
20 budget document submitted under RCW 43.88.030 and 43.88.060. If the
21 legislature rejects or fails to act on the submission, either party may
22 reopen all or part of the agreement and award or the exclusive
23 bargaining representative may seek to implement the procedures provided
24 for in RCW 47.64.210 and section 12 of this act.

25 (9) If, after the compensation and fringe benefit provisions of an
26 agreement are approved by the legislature, a significant revenue
27 shortfall occurs resulting in reduced appropriations, as declared by
28 proclamation of the governor or by resolution of the legislature, both
29 parties shall immediately enter into collective bargaining for a
30 mutually agreed upon modification of the agreement.

31 **Sec. 7.** RCW 47.64.200 and 1983 c 15 s 11 are each amended to read
32 as follows:

33 As the first step in the performance of their duty to bargain,
34 ~~((ferry system management))~~ the employer and the employee organization
35 shall endeavor to agree upon impasse procedures. ~~((The agreement shall~~
36 ~~provide for implementation of these impasse procedures not later than~~
37 ~~July 1st in each odd numbered year following enactment of the biennial~~

1 ~~budget.)~~ Unless otherwise agreed to by the employee organization and
2 the employer in their impasse procedures, the arbitrator or panel is
3 limited to selecting the most reasonable offer, in its judgment, of the
4 final offers on each impasse item submitted by the parties. The
5 employee organization and the employer may mutually agree to the
6 impasse procedure under which the arbitrator or panel may issue a
7 decision it deems just and appropriate with respect to each impasse
8 item. If the parties fail to agree upon impasse procedures under this
9 section, the impasse procedures provided in RCW 47.64.210 (~~(through)~~)
10 and 47.64.230 and sections 12 through 14 of this act apply. It is
11 unlawful for either party to refuse to participate in the impasse
12 procedures provided in RCW 47.64.210 (~~(through)~~) and 47.64.230 and
13 sections 12 through 14 of this act.

14 **Sec. 8.** RCW 47.64.210 and 1983 c 15 s 12 are each amended to read
15 as follows:

16 In the absence of an impasse agreement between the parties or the
17 failure of either party to utilize its procedures by (~~August~~) April
18 1st in (~~each odd-numbered year, the marine employees' commission~~
19 shall, upon the request of either party,)) the even-numbered year
20 preceding the biennium, either party may request the commission to
21 appoint an impartial and disinterested person to act as mediator
22 (~~pursuant to RCW 47.64.280~~)). It is the function of the mediator to
23 bring the parties together to effectuate a settlement of the dispute,
24 but the mediator shall not compel the parties to agree.

25 **Sec. 9.** RCW 47.64.220 and 1999 c 256 s 1 are each amended to read
26 as follows:

27 (1) Prior to collective bargaining and for purposes of collective
28 bargaining and arbitration, the (~~marine employees'~~) commission shall
29 conduct a salary survey. The results of the survey shall be published
30 in a report which shall be a public document comparing wages, hours,
31 employee benefits, and conditions of employment of involved ferry
32 employees with those of public and private sector employees in states
33 along the west coast of the United States, including Alaska, and in
34 British Columbia doing directly comparable but not necessarily
35 identical work, giving consideration to factors peculiar to the area
36 and the classifications involved. Such survey report shall be for the

1 purpose of disclosing generally prevailing levels of compensation,
2 benefits, and conditions of employment. It shall be used to guide
3 generally but not to define or limit collective bargaining between the
4 parties. (~~The commission shall make such other findings of fact as
5 the parties may request during bargaining or impasse.~~)

6 (2) (~~Except as provided in subsection (3) of this section,~~)
7 Salary and employee benefit information collected from private
8 employers that identifies a specific employer with the salary and
9 employee benefit rates which that employer pays to its employees is not
10 subject to public disclosure under chapter 42.17 RCW.

11 (~~(3) A person or entity, having reason to believe that the salary
12 survey results are inaccurate, may submit a petition to the state
13 auditor requesting an audit of the data upon which the salary survey
14 results are based. The state auditor shall review and analyze all data
15 collected for the salary survey, including proprietary information, but
16 is prohibited from disclosing the salary survey data to any other
17 person or entity, except by court order.~~)

18 **Sec. 10.** RCW 47.64.220 and 2005 c 274 s 308 are each amended to
19 read as follows:

20 (1) Prior to collective bargaining and for purposes of collective
21 bargaining and arbitration, the (~~marine employees'~~) commission shall
22 conduct a salary survey. The results of the survey shall be published
23 in a report which shall be a public document comparing wages, hours,
24 employee benefits, and conditions of employment of involved ferry
25 employees with those of public and private sector employees in states
26 along the west coast of the United States, including Alaska, and in
27 British Columbia doing directly comparable but not necessarily
28 identical work, giving consideration to factors peculiar to the area
29 and the classifications involved. Such survey report shall be for the
30 purpose of disclosing generally prevailing levels of compensation,
31 benefits, and conditions of employment. It shall be used to guide
32 generally but not to define or limit collective bargaining between the
33 parties. (~~The commission shall make such other findings of fact as
34 the parties may request during bargaining or impasse.~~)

35 (2) (~~Except as provided in subsection (3) of this section,~~)
36 Salary and employee benefit information collected from private

1 employers that identifies a specific employer with the salary and
2 employee benefit rates which that employer pays to its employees is not
3 subject to public disclosure under chapter 42.56 RCW.

4 ~~((3) A person or entity, having reason to believe that the salary
5 survey results are inaccurate, may submit a petition to the state
6 auditor requesting an audit of the data upon which the salary survey
7 results are based. The state auditor shall review and analyze all data
8 collected for the salary survey, including proprietary information, but
9 is prohibited from disclosing the salary survey data to any other
10 person or entity, except by court order.))~~

11 **Sec. 11.** RCW 47.64.230 and 1983 c 15 s 14 are each amended to read
12 as follows:

13 By mutual agreement, the parties may waive mediation ~~((and fact-~~
14 ~~finding, as provided for in RCW 47.64.210 and 47.64.220,))~~ and proceed
15 with binding arbitration as provided for in ~~((RCW 47.64.240))~~ the
16 impasse procedures agreed to under RCW 47.64.200 or in sections 12
17 through 14 of this act, as applicable. The waiver shall be in writing
18 and be signed by the representatives of the parties.

19 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.64 RCW
20 to read as follows:

21 (1) If an agreement has not been reached following a reasonable
22 period of negotiations and, when applicable, mediation, but in either
23 event by April 15th, upon the recommendation of the assigned mediator
24 that the parties remain at impasse, all impasse items shall be
25 submitted to arbitration under this section. The issues for
26 arbitration shall be limited to the issues certified by the commission.

27 (2) The parties may agree to submit the dispute to a single
28 arbitrator, whose authority and duties shall be the same as those of an
29 arbitration panel. If the parties cannot agree on the arbitrator
30 within five working days, the selection shall be made under subsection
31 (3) of this section. The full costs of arbitration under this section
32 shall be shared equally by the parties to the dispute.

33 (3) Within seven days following the issuance of the determination
34 of the commission, each party shall name one person to serve as its
35 arbitrator on the arbitration panel. The two members so appointed
36 shall meet within seven days following the appointment of the later

1 appointed member to attempt to choose a third member to act as the
2 neutral chair of the arbitration panel. Upon the failure of the
3 arbitrators to select a neutral chair within seven days, either party
4 may apply to the federal mediation and conciliation service, or the
5 American arbitration association to provide a list of five qualified
6 arbitrators from which the neutral chair shall be chosen. Each party
7 shall pay the fees and expenses of its arbitrator, and the fees and
8 expenses of the neutral chair shall be shared equally between the
9 parties.

10 (4) In consultation with the parties, the arbitrator or arbitration
11 panel shall promptly establish a date, time, and place for a hearing
12 and shall provide reasonable notice thereof to the parties to the
13 dispute. The parties shall exchange final positions in writing, with
14 copies to the arbitrator or arbitration panel, with respect to every
15 issue to be arbitrated, on a date mutually agreed upon, but in no event
16 later than ten working days before the date set for hearing. A
17 hearing, which shall be informal, shall be held, and each party shall
18 have the opportunity to present evidence and make argument. No member
19 of the arbitration panel may present the case for a party to the
20 proceedings. The rules of evidence prevailing in judicial proceedings
21 may be considered, but are not binding, and any oral testimony or
22 documentary evidence or other data deemed relevant by the chair of the
23 arbitration panel may be received in evidence. A recording of the
24 proceedings shall be taken. The arbitration panel has the power to
25 administer oaths, require the attendance of witnesses, and require the
26 production of such books, papers, contracts, agreements, and documents
27 as may be deemed by the panel to be material to a just determination of
28 the issues in dispute. If any person refuses to obey a subpoena issued
29 by the arbitration panel, or refuses to be sworn or to make an
30 affirmation to testify, or any witness, party, or attorney for a party
31 is guilty of any contempt while in attendance at any hearing held
32 hereunder, the arbitration panel may invoke the jurisdiction of the
33 superior court in the county where the labor dispute exists, and the
34 court has jurisdiction to issue an appropriate order. Any failure to
35 obey the order may be punished by the court as a contempt thereof.

36 (5) The neutral chair shall consult with the other members of the
37 arbitration panel, if a panel has been created. Within thirty days
38 following the conclusion of the hearing, the neutral chair shall make

1 written findings of fact and a written determination of the issues in
2 dispute, based on the evidence presented. A copy thereof shall be
3 served on each of the other members of the arbitration panel, and on
4 each of the parties to the dispute. That determination is final and
5 binding upon both parties, subject to review by the superior court upon
6 the application of either party solely upon the question of whether the
7 decision of the panel was arbitrary or capricious.

8 NEW SECTION. **Sec. 13.** A new section is added to chapter 47.64 RCW
9 to read as follows:

10 An interest arbitration proceeding under section 12 of this act
11 exercises a state function and is, for the purposes of this chapter,
12 functioning as a state agency. Chapter 34.05 RCW does not apply to an
13 interest arbitration proceeding under this chapter.

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

16 (1) The mediator, arbitrator, or arbitration panel may consider
17 only matters that are subject to bargaining under this chapter.

18 (2) The decision of an arbitrator or arbitration panel is not
19 binding on the legislature and, if the legislature does not approve the
20 funds necessary to implement provisions pertaining to compensation and
21 fringe benefit provisions of an arbitrated collective bargaining
22 agreement, is not binding on the state, the department of
23 transportation, or the ferry employee organization.

24 (3) In making its determination, the arbitrator or arbitration
25 panel shall be mindful of the legislative purpose under RCW 47.64.005
26 and 47.64.006 and, as additional standards or guidelines to aid it in
27 reaching a decision, shall take into consideration the following
28 factors:

29 (a) Past collective bargaining contracts between the parties
30 including the bargaining that led up to the contracts;

31 (b) The constitutional and statutory authority of the employer;

32 (c) Stipulations of the parties;

33 (d) The results of the salary survey as required in RCW 47.64.220;

34 (e) Comparison of wages, hours, employee benefits, and conditions
35 of employment of the involved ferry employees with those of public and
36 private sector employees in states along the west coast of the United

1 States, including Alaska, and in British Columbia doing directly
2 comparable but not necessarily identical work, giving consideration to
3 factors peculiar to the area and the classifications involved;

4 (f) Changes in any of the foregoing circumstances during the
5 pendency of the proceedings;

6 (g) The limitations on ferry toll increases and operating subsidies
7 as may be imposed by the legislature; and

8 (h) Other factors that are normally or traditionally taken into
9 consideration in the determination of matters that are subject to
10 bargaining under this chapter.

11 NEW SECTION. **Sec. 15.** A new section is added to chapter 47.64 RCW
12 to read as follows:

13 Collective bargaining under this act may not be for the purposes of
14 making a collective bargaining agreement take effect before July 1,
15 2007. No party may engage in collective bargaining under this act to
16 amend a collective bargaining agreement in effect on the effective date
17 of this section. A collective bargaining agreement or amendment
18 thereto entered into under this act shall not be effective before July
19 1, 2007, and may not have any retroactive effect.

20 NEW SECTION. **Sec. 16.** (1) This act applies prospectively only and
21 not retroactively. It applies to collective bargaining agreements, the
22 negotiations of collective bargaining agreements, mediations,
23 arbitrations, and other actions under this act that arise or are
24 commenced on or after the effective date of this section.

25 (2) This act does not apply to collective bargaining agreements,
26 either in effect or for which the negotiations have begun, or
27 mediations and arbitrations that arose or commenced under this chapter
28 before the effective date of this section. Such collective bargaining
29 agreements and related proceedings must be administered in accordance
30 with the authorities, rules, and procedures that were established under
31 this chapter as it existed before the effective date of this section.
32 The repealers in section 19 of this act do not affect any existing
33 right acquired, or liability or obligation incurred, under the statutes
34 repealed or under any rule or order adopted under those statutes, nor
35 do they affect any proceeding instituted under them.

1 **Sec. 17.** RCW 47.64.270 and 1995 1st sp.s. c 6 s 6 are each amended
2 to read as follows:

3 Absent a collective bargaining agreement to the contrary, the
4 department of transportation shall provide contributions to insurance
5 and health care plans for ferry system employees and dependents, as
6 determined by the state health care authority, under chapter 41.05 RCW;
7 and the (~~ferry system management~~) employer and employee organizations
8 may collectively bargain for other insurance and health care plans, and
9 employer contributions may exceed that of other state agencies as
10 provided in RCW 41.05.050(~~, subject to RCW 47.64.180~~). To the extent
11 that ferry employees by bargaining unit have absorbed the required
12 offset of wage increases by the amount that the employer's contribution
13 for employees' and dependents' insurance and health care plans exceeds
14 that of other state general government employees in the 1985-87 fiscal
15 biennium, employees shall not be required to absorb a further offset
16 except to the extent the differential between employer contributions
17 for those employees and all other state general government employees
18 increases during any subsequent fiscal biennium. If such differential
19 increases in the 1987-89 fiscal biennium or the 1985-87 offset by
20 bargaining unit is insufficient to meet the required deduction, the
21 amount available for compensation shall be reduced by bargaining unit
22 by the amount of such increase or the 1985-87 shortage in the required
23 offset. Compensation shall include all wages and employee benefits.

24 **Sec. 18.** RCW 47.64.280 and 1984 c 287 s 95 are each amended to
25 read as follows:

26 (1) There is created the marine employees' commission. The
27 governor shall appoint the commission with the consent of the senate.
28 The commission shall consist of three members: One member to be
29 appointed from labor, one member from industry, and one member from the
30 public who has significant knowledge of maritime affairs. The public
31 member shall be (~~chairman~~) chair of the commission. One of the
32 original members shall be appointed for a term of three years, one for
33 a term of four years, and one for a term of five years. Their
34 successors shall be appointed for terms of five years each, except that
35 any person chosen to fill a vacancy shall be appointed only for the
36 unexpired term of the member whom he or she succeeds. Commission
37 members are eligible for reappointment. Any member of the commission

1 may be removed by the governor, upon notice and hearing, for neglect of
2 duty or malfeasance in office, but for no other cause. Commission
3 members are not eligible for state retirement under chapter 41.40 RCW
4 by virtue of their service on the commission. Members of the
5 commission shall be compensated in accordance with RCW 43.03.250 and
6 shall receive reimbursement for official travel and other expenses at
7 the same rate and on the same terms as provided for the transportation
8 commission by RCW 47.01.061. The payments shall be made from the Puget
9 Sound ferry operations account.

10 (2) The (~~marine employees~~) commission shall: (a) Adjust all
11 complaints, grievances, and disputes between labor and management
12 arising out of the operation of the ferry system as provided in RCW
13 47.64.150; (b) provide for impasse mediation as required in RCW
14 47.64.210; (c) (~~conduct fact finding and~~) provide salary surveys as
15 required in RCW 47.64.220; and (d) (~~provide for the selection of an~~
16 ~~impartial arbitrator as~~) perform those duties required in (~~RCW~~
17 ~~47.64.240(5)~~) section 12 of this act.

18 (3)(a) In adjudicating all complaints, grievances, and disputes,
19 the party claiming labor disputes shall, in writing, notify the
20 (~~marine employees~~) commission, which shall make careful inquiry into
21 the cause thereof and issue an order advising the ferry employee, or
22 the ferry employee organization representing him or her, and the
23 department of transportation, as to the decision of the commission.

24 (b) The parties are entitled to offer evidence relating to disputes
25 at all hearings conducted by the commission. The orders and awards of
26 the commission are final and binding upon any ferry employee or
27 employees or their representative affected thereby and upon the
28 department.

29 (c) The commission shall adopt rules of procedure under chapter
30 34.05 RCW.

31 (d) The commission has the authority to subpoena any ferry employee
32 or employees, or their representatives, and any member or
33 representative of the department, and any witnesses. The commission
34 may require attendance of witnesses and the production of all pertinent
35 records at any hearings held by the commission. The subpoenas of the
36 commission are enforceable by order of any superior court in the state
37 of Washington for the county within which the proceeding may be

1 pending. The commission may hire staff as necessary, appoint
2 consultants, enter into contracts, and conduct studies as reasonably
3 necessary to carry out this chapter.

4 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 47.64.180 (Agreements and awards limited by appropriation)
7 and 1983 c 15 s 9;

8 (2) RCW 47.64.190 (Marine employees' commission review for
9 compliance with fiscal limitations--Effective date of agreements and
10 arbitration orders) and 1983 c 15 s 10; and

11 (3) RCW 47.64.240 (Binding arbitration) and 1989 c 327 s 3 & 1983
12 c 15 s 15.

13 NEW SECTION. **Sec. 20.** Section 9 of this act expires July 1, 2006.

14 NEW SECTION. **Sec. 21.** Except for section 10 of this act which
15 takes effect July 1, 2006, this act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately.

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