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HOUSE BILL 1511

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Clibborn, Armstrong, Angel, Kagi, Smith, Johnson, Van De Wege, Morris, Kristiansen, Schmick, Rodne, Condotta, Ahern, Warnick, and Ladenburg

Read first time 01/24/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to promoting efficiency in the Washington state  
2 ferry system through personnel and administration reforms; amending RCW  
3 47.64.120, 47.64.170, 47.64.011, 47.64.210, 47.64.150, and 41.58.060;  
4 reenacting and amending RCW 47.64.090 and 41.06.070; adding new  
5 sections to chapter 47.64 RCW; creating new sections; repealing RCW  
6 47.64.080, 47.64.200, 47.64.230, 47.64.280, 47.64.300, 47.64.310,  
7 47.64.320, and 47.64.330; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the Washington  
10 state ferry system is a critical component of the state's highway  
11 system. The current system is financially unsustainable and the  
12 legislature intends for this act to provide guidance for efficiently  
13 managing scarce resources. The legislature recognizes that labor is  
14 one of the main cost drivers for operating the system and recent  
15 recommendations from the passenger vessel association confirm a similar  
16 recognition from legislative studies conducted over the years. The  
17 legislature also recognizes the unique skills required of ferry  
18 employees to ensure safe and comfortable operations of the Washington  
19 state ferry system for both themselves and their customers.

1 Furthermore, the legislature finds that ferry system management must  
2 play a strong role in improving the system and controlling costs, and  
3 this act is intended to provide the tools necessary for management to  
4 be held accountable for the performance of the system. It is time to  
5 take on the difficult task of controlling labor costs. This act  
6 intends to reign in abuses that have been brought to light and to give  
7 clear guidance so that the relationship between employees and  
8 management can move from an adversarial one to one where the focus is  
9 on improving efficiencies, customer service, and working cohesively.

10 **Sec. 2.** RCW 47.64.120 and 2010 c 283 s 10 are each amended to read  
11 as follows:

12 (1) Except as otherwise provided in this chapter, the employer and  
13 ferry system employee organizations, through their collective  
14 bargaining representatives, shall meet at reasonable times to negotiate  
15 in good faith with respect to wages, hours, working conditions, and  
16 insurance, and other matters mutually agreed upon. Employer funded  
17 retirement benefits shall be provided under the public employees'  
18 retirement system under chapter 41.40 RCW and shall not be included in  
19 the scope of collective bargaining. Except as provided under RCW  
20 47.64.270, the employer is not required to bargain over health care  
21 benefits. Any retirement system or retirement benefits shall not be  
22 subject to collective bargaining.

23 ~~(2) ((Upon ratification of bargaining agreements, ferry employees~~  
24 ~~are entitled to an amount equivalent to the interest earned on~~  
25 ~~retroactive compensation increases. For purposes of this section, the~~  
26 ~~interest earned on retroactive compensation increases is the same~~  
27 ~~monthly rate of interest that was earned on the amount of the~~  
28 ~~compensation increases while held in the state treasury. The interest~~  
29 ~~will be computed for each employee until the date the retroactive~~  
30 ~~compensation is paid, and must be allocated in accordance with~~  
31 ~~appropriation authority. The interest earned on retroactive~~  
32 ~~compensation is not considered part of the ongoing compensation~~  
33 ~~obligation of the state and is not compensation earnable for the~~  
34 ~~purposes of chapter 41.40 RCW. Negotiations shall also include~~  
35 ~~grievance procedures for resolving any questions arising under the~~  
36 ~~agreement, which shall be embodied in a written agreement and signed by~~  
37 ~~the parties.~~

1       ~~(3)~~) An agreement may not contain provisions that allow the  
2 following at a rate greater than those received by employees covered  
3 for collective bargaining purposes under chapter 41.80 RCW:

4       (a) Overtime, standby, call out, holiday, or any other pay to be  
5 paid at a rate greater than time and one-half base pay;

6       (b) Rounding of regular time, overtime, compensatory time, or any  
7 other time at greater than six minute increments;

8       (c) Compensatory time to be earned at a rate greater than time and  
9 one-half;

10       (d) Exchange time to be earned at a rate greater than straight  
11 time;

12       (e) Entitlement to any type of compensation or penalty for other  
13 than work performed;

14       (f) Annual vacation leave, sick leave, or personal holiday leave  
15 accruals;

16       (g) Accruals of other types of leave not mentioned in this  
17 subsection;

18       (h) Number of compensated holidays;

19       (i) Cash outs of any type of leave or compensatory time;

20       (j) Minimum call back time or pay;

21       (k) A guaranteed minimum shift period;

22       (l) Penalty pay;

23       (m) Travel time pay for commuting to and from work;

24       (n) Free passage on Washington state ferry vessels for employees or  
25 their families unless passage is for an active employee during that  
26 employee's work shift for work purposes;

27       (o) Compensation for meals;

28       (p) Employee selection of work stations, vessels, or terminals;

29       (q) Promotions;

30       (r) Direction on who will be laid off in the event of a layoff  
31 action, bumping rights, or layoff options;

32       (s) Staffing levels;

33       (t) Take-home vehicles; or

34       (u) Training.

35       (3) A collective bargaining agreement may not contain any provision  
36 that extends the term or applicability of items compatible with this  
37 section.

1       (4) Except as otherwise provided in this chapter, if a conflict  
2 exists between an executive order, administrative rule, or agency  
3 policy relating to wages, hours, and terms and conditions of employment  
4 and a collective bargaining agreement negotiated under this chapter,  
5 the collective bargaining agreement shall prevail. A provision of a  
6 collective bargaining agreement that conflicts with the terms of a  
7 statute is invalid and unenforceable.

8       **Sec. 3.** RCW 47.64.170 and 2010 c 283 s 11 are each amended to read  
9 as follows:

10       (1) Any ferry employee organization certified as the bargaining  
11 representative shall be the exclusive representative of all ferry  
12 employees in the bargaining unit and shall represent all such employees  
13 fairly.

14       (2) A ferry employee organization or organizations and the governor  
15 may each designate any individual as its representative to engage in  
16 collective bargaining negotiations.

17       (3) Negotiating sessions, including strategy meetings of the  
18 employer or employee organizations, and mediation(~~(, and the~~  
19 ~~deliberative process of arbitrators)) are exempt from the provisions of~~  
20 chapter 42.30 RCW. (~~Hearings conducted by arbitrators may be open to~~  
21 ~~the public by mutual consent of the parties.))~~

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

25       (5) Ferry system employees or any employee organization shall not  
26 negotiate or attempt to negotiate directly with anyone other than the  
27 person who has been appointed or authorized a bargaining representative  
28 for the purpose of bargaining with the ferry employees or their  
29 representative.

30       (6)(a) (~~Within ten working days after the first Monday in~~  
31 ~~September of every odd numbered year, the parties shall attempt to~~  
32 ~~agree on an interest arbitrator to be used if the parties are not~~  
33 ~~successful in negotiating a comprehensive collective bargaining~~  
34 ~~agreement. If the parties cannot agree on an arbitrator within the~~  
35 ~~ten-day period, either party may request a list of seven arbitrators~~  
36 ~~from the federal mediation and conciliation service. The parties shall~~  
37 ~~select an interest arbitrator using the coin toss/alternate strike~~

1 method within thirty calendar days of receipt of the list. Immediately  
2 upon selecting an interest arbitrator, the parties shall cooperate to  
3 reserve dates with the arbitrator for potential arbitration between  
4 August 1st and September 15th of the following even-numbered year. The  
5 parties shall also prepare a schedule of at least five negotiation  
6 dates for the following year, absent an agreement to the contrary. The  
7 parties shall execute a written agreement before November 1st of each  
8 odd-numbered year setting forth the name of the arbitrator and the  
9 dates reserved for bargaining and arbitration. This subsection (6)(a)  
10 imposes minimum obligations only and is not intended to define or limit  
11 a party's full, good faith bargaining obligation under other sections  
12 of this chapter.

13 (b)) The negotiation of a proposed collective bargaining agreement  
14 by representatives of the employer and a ferry employee organization  
15 shall commence on or about February 1st of every even-numbered year.

16 ((e)) (b) For negotiations covering the 2009-2011 biennium and  
17 subsequent biennia, the time periods specified in this section((7)) and  
18 ((in)) RCW 47.64.210 ((and 47.64.300 through 47.64.320,)) must ensure  
19 conclusion of all agreements on or before October 1st of the even-  
20 numbered year next preceding the biennial budget period during which  
21 the agreement should take effect. These time periods may only be  
22 altered by mutual agreement of the parties in writing. ((Any such  
23 agreement and any impasse procedures agreed to by the parties under RCW  
24 47.64.200 must include an agreement regarding the new time periods that  
25 will allow final resolution by negotiations or arbitration by October  
26 1st of each even-numbered year.))

27 (7) It is the intent of this section that the collective bargaining  
28 agreement ((or arbitrator's award)) shall commence on July 1st of each  
29 odd-numbered year and shall terminate on June 30th of the next odd-  
30 numbered year to coincide with the ensuing biennial budget year, as  
31 defined by RCW 43.88.020(7), to the extent practical. It is further  
32 the intent of this section that all collective bargaining agreements be  
33 concluded by October 1st of the even-numbered year before the  
34 commencement of the biennial budget year during which the agreements  
35 are to be in effect. After the expiration date of a collective  
36 bargaining agreement negotiated under this chapter, all of the terms  
37 and conditions specified in the collective bargaining agreement remain  
38 in effect until the effective date of a subsequently negotiated

1 agreement, not to exceed one year from the expiration date stated in  
2 the agreement. Thereafter, the employer may unilaterally implement  
3 according to law.

4 (8) The office of financial management shall conduct a salary  
5 survey, for use in collective bargaining (~~and arbitration~~), which  
6 must be conducted through a contract with a firm nationally recognized  
7 in the field of human resources management consulting.

8 (9)(a) The governor shall submit a request either for funds  
9 necessary to implement the collective bargaining agreements including,  
10 but not limited to, the compensation and fringe benefit provisions or  
11 for legislation necessary to implement the agreement, or both.  
12 Requests for funds necessary to implement the collective bargaining  
13 agreements shall not be submitted to the legislature by the governor  
14 unless such requests:

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

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

20 ~~(b) ((The governor shall submit a request either for funds  
21 necessary to implement the arbitration awards or for legislation  
22 necessary to implement the arbitration awards, or both. Requests for  
23 funds necessary to implement the arbitration awards shall not be  
24 submitted to the legislature by the governor unless such requests:~~

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

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

30 ~~(c))~~ The legislature shall approve or reject the submission of the  
31 request for funds necessary to implement the collective bargaining  
32 agreements (~~or arbitration awards~~) as a whole for each agreement (~~or~~  
33 ~~award~~). The legislature shall not consider a request for funds to  
34 implement a collective bargaining agreement (~~or arbitration award~~)  
35 unless the request is transmitted to the legislature as part of the  
36 governor's budget document submitted under RCW 43.88.030 and 43.88.060.  
37 If the legislature rejects or fails to act on the submission, either

1 party may reopen all or part of the agreement and award or the  
2 exclusive bargaining representative may seek to implement the  
3 procedures provided for in RCW 47.64.210 (~~and 47.64.300~~).

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

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.64 RCW  
11 to read as follows:

12 (1) Captains of Washington state ferry vessels may not be included  
13 in a collective bargaining unit.

14 (2) The captain, also known as the master of the vessel or the  
15 commanding officer, is the sole individual responsible for all  
16 activities aboard a vessel.

17 (3) By January 1, 2012, all captains must not be part of any  
18 collective bargaining units.

19 **Sec. 5.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read  
20 as follows:

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

23 (1) "Collective bargaining representative" means the persons  
24 designated by the governor and employee organizations to be the  
25 exclusive representatives during collective bargaining negotiations.

26 (2) "Commission" means the (~~marine employees~~) public employment  
27 relations commission created in RCW (~~47.64.280~~) 41.58.010.

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

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

31 (5) "Ferry employee" means any employee of the marine  
32 transportation division of the department of transportation who is a  
33 member of a collective bargaining unit represented by a ferry employee  
34 organization and does not include an exempt employee pursuant to RCW  
35 41.06.079.

1 (6) "Ferry employee organization" means any labor organization  
2 recognized to represent a collective bargaining unit of ferry  
3 employees.

4 (7) "Lockout" means the refusal of the employer to furnish work to  
5 ferry employees in an effort to get ferry employee organizations to  
6 make concessions during collective bargaining, grievance, or other  
7 labor relation negotiations. Curtailment of employment of ferry  
8 employees due to lack of work resulting from a strike or work stoppage  
9 shall not be considered a lockout.

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

12 (9) "Strike or work stoppage" means a ferry employee's refusal, in  
13 concerted action with others, to report to duty, or his or her willful  
14 absence from his or her position, or his or her stoppage or slowdown of  
15 work, or his or her abstinence in whole or in part from the full,  
16 faithful, and proper performance of the duties of employment, for the  
17 purpose of inducing, influencing, or coercing a change in conditions,  
18 compensation, rights, privileges, or obligations of his, her, or any  
19 other ferry employee's employment. A refusal, in good faith, to work  
20 under conditions which pose an endangerment to the health and safety of  
21 ferry employees or the public, as determined by the master of the  
22 vessel, shall not be considered a strike for the purposes of this  
23 chapter.

24 **Sec. 6.** RCW 47.64.210 and 2007 c 160 s 2 are each amended to read  
25 as follows:

26 In the (~~absence of an impasse~~) event there is no agreement  
27 between the parties (~~or the failure of either party to utilize its~~  
28 ~~procedures~~) by August 1st in the even-numbered year preceding the  
29 biennium, either party may request the commission to appoint an  
30 impartial and disinterested person to act as mediator. It is the  
31 function of the mediator to bring the parties together to effectuate a  
32 settlement of the dispute, but the mediator shall not compel the  
33 parties to agree.

34 **Sec. 7.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are  
35 each reenacted and amended to read as follows:

36 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)



1 of this section, or as provided in RCW 36.54.130 and subsection (3) of  
2 this section, if any party assumes the operation and maintenance of any  
3 ferry or ferry system by rent, lease, or charter from the department of  
4 transportation, such party shall assume and be bound by all the  
5 provisions herein and any agreement or contract for such operation of  
6 any ferry or ferry system entered into by the department shall provide  
7 that the wages to be paid, hours of employment, working conditions, and  
8 seniority rights of employees will be established by the ((~~marine~~  
9 ~~employees~~)) commission in accordance with the terms and provisions of  
10 this chapter and it shall further provide that all labor disputes shall  
11 be adjudicated in accordance with chapter 47.64 RCW.

12 (2) If a public transportation benefit area meeting the  
13 requirements of RCW 36.57A.200 has voter approval to operate passenger-  
14 only ferry service, it may enter into an agreement with Washington  
15 State Ferries to rent, lease, or purchase passenger-only vessels,  
16 related equipment, or terminal space for purposes of loading and  
17 unloading the passenger-only ferry. Charges for the vessels,  
18 equipment, and space must be fair market value taking into account the  
19 public benefit derived from the ferry service. A benefit area or  
20 subcontractor of that benefit area that qualifies under this subsection  
21 is not subject to the restrictions of subsection (1) of this section,  
22 but is subject to:

23 (a) The terms of those collective bargaining agreements that it or  
24 its subcontractors negotiate with the exclusive bargaining  
25 representatives of its or its subcontractors' employees under chapter  
26 41.56 RCW or the National Labor Relations Act, as applicable;

27 (b) Unless otherwise prohibited by federal or state law, a  
28 requirement that the benefit area and any contract with its  
29 subcontractors, give preferential hiring to former employees of the  
30 department of transportation who separated from employment with the  
31 department because of termination of the ferry service by the state of  
32 Washington; and

33 (c) Unless otherwise prohibited by federal or state law, a  
34 requirement that the benefit area and any contract with its  
35 subcontractors, on any questions concerning representation of employees  
36 for collective bargaining purposes, may be determined by conducting a  
37 cross-check comparing an employee organization's membership records or

1 bargaining authorization cards against the employment records of the  
2 employer.

3 (3) If a ferry district is formed under RCW 36.54.110 to operate  
4 passenger-only ferry service, it may enter into an agreement with  
5 Washington State Ferries to rent, lease, or purchase vessels, related  
6 equipment, or terminal space for purposes of loading and unloading the  
7 ferry. Charges for the vessels, equipment, and space must be fair  
8 market value taking into account the public benefit derived from the  
9 ferry service. A ferry district or subcontractor of that district that  
10 qualifies under this subsection is not subject to the restrictions of  
11 subsection (1) of this section, but is subject to:

12 (a) The terms of those collective bargaining agreements that it or  
13 its subcontractors negotiate with the exclusive bargaining  
14 representatives of its or its subcontractors' employees under chapter  
15 41.56 RCW or the National Labor Relations Act, as applicable;

16 (b) Unless otherwise prohibited by federal or state law, a  
17 requirement that the ferry district and any contract with its  
18 subcontractors, give preferential hiring to former employees of the  
19 department of transportation who separated from employment with the  
20 department because of termination of the ferry service by the state of  
21 Washington; and

22 (c) Unless otherwise prohibited by federal or state law, a  
23 requirement that the ferry district and any contract with its  
24 subcontractors, on any questions concerning representation of employees  
25 for collective bargaining purposes, may be determined by conducting a  
26 cross-check comparing an employee organization's membership records or  
27 bargaining authorization cards against the employment records of the  
28 employer.

29 (4) The department of transportation shall make its terminal, dock,  
30 and pier space available to private operators of passenger-only ferries  
31 if the space can be made available without limiting the operation of  
32 car ferries operated by the department. These private operators are  
33 not bound by the provisions of subsection (1) of this section. Charges  
34 for the equipment and space must be fair market value taking into  
35 account the public benefit derived from the passenger-only ferry  
36 service.

1       **Sec. 8.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read  
2 as follows:

3       An agreement with a ferry employee organization that is the  
4 exclusive representative of ferry employees in an appropriate unit may  
5 provide procedures for the consideration of ferry employee grievances  
6 and of disputes over the interpretation and application of agreements.  
7 Negotiated procedures may provide for binding arbitration of ferry  
8 employee grievances and of disputes over the interpretation and  
9 application of existing agreements. An arbitrator's decision on a  
10 grievance shall not change or amend the terms, conditions, or  
11 applications of the collective bargaining agreement. The procedures  
12 shall provide for the invoking of arbitration only ~~((with the~~  
13 ~~approval))~~ by mutual agreement of the employee organization and  
14 management. The costs of arbitrators shall be shared equally by the  
15 parties.

16       Ferry system employees shall follow ~~((either))~~ the grievance  
17 procedures provided in a collective bargaining agreement, or if no such  
18 procedures are so provided, shall submit the grievances to the ~~((marine~~  
19 ~~employees))~~ commission ~~((as provided in RCW 47.64.280))~~.

20       **Sec. 9.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read  
21 as follows:

22       For any matter concerning the state ferry system and employee  
23 relations, collective bargaining, or labor disputes or stoppages, the  
24 provisions of chapter 47.64 RCW and this chapter shall govern.  
25 However, if a conflict exists between the provisions of chapter 47.64  
26 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

27       **Sec. 10.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and  
28 2010 c 1 s 1 are each reenacted and amended to read as follows:

29       (1) The provisions of this chapter do not apply to:

30       (a) The members of the legislature or to any employee of, or  
31 position in, the legislative branch of the state government including  
32 members, officers, and employees of the legislative council, joint  
33 legislative audit and review committee, statute law committee, and any  
34 interim committee of the legislature;

35       (b) The justices of the supreme court, judges of the court of

1 appeals, judges of the superior courts or of the inferior courts, or to  
2 any employee of, or position in the judicial branch of state  
3 government;

4 (c) Officers, academic personnel, and employees of technical  
5 colleges;

6 (d) The officers of the Washington state patrol;

7 (e) Elective officers of the state;

8 (f) The chief executive officer of each agency;

9 (g) In the departments of employment security and social and health  
10 services, the director and the director's confidential secretary; in  
11 all other departments, the executive head of which is an individual  
12 appointed by the governor, the director, his or her confidential  
13 secretary, and his or her statutory assistant directors;

14 (h) In the case of a multimember board, commission, or committee,  
15 whether the members thereof are elected, appointed by the governor or  
16 other authority, serve ex officio, or are otherwise chosen:

17 (i) All members of such boards, commissions, or committees;

18 (ii) If the members of the board, commission, or committee serve on  
19 a part-time basis and there is a statutory executive officer: The  
20 secretary of the board, commission, or committee; the chief executive  
21 officer of the board, commission, or committee; and the confidential  
22 secretary of the chief executive officer of the board, commission, or  
23 committee;

24 (iii) If the members of the board, commission, or committee serve  
25 on a full-time basis: The chief executive officer or administrative  
26 officer as designated by the board, commission, or committee; and a  
27 confidential secretary to the chair of the board, commission, or  
28 committee;

29 (iv) If all members of the board, commission, or committee serve ex  
30 officio: The chief executive officer; and the confidential secretary  
31 of such chief executive officer;

32 (i) The confidential secretaries and administrative assistants in  
33 the immediate offices of the elective officers of the state;

34 (j) Assistant attorneys general;

35 (k) Commissioned and enlisted personnel in the military service of  
36 the state;

37 (l) Inmate, student, part-time, or temporary employees, and part-

1 time professional consultants, as defined by the Washington personnel  
2 resources board;

3 (m) The public printer or to any employees of or positions in the  
4 state printing plant;

5 (n) Officers and employees of the Washington state fruit  
6 commission;

7 (o) Officers and employees of the Washington apple commission;

8 (p) Officers and employees of the Washington state dairy products  
9 commission;

10 (q) Officers and employees of the Washington tree fruit research  
11 commission;

12 (r) Officers and employees of the Washington state beef commission;

13 (s) Officers and employees of the Washington grain commission;

14 (t) Officers and employees of any commission formed under chapter  
15 15.66 RCW;

16 (u) Officers and employees of agricultural commissions formed under  
17 chapter 15.65 RCW;

18 (v) Officers and employees of the nonprofit corporation formed  
19 under chapter 67.40 RCW;

20 (w) Executive assistants for personnel administration and labor  
21 relations in all state agencies employing such executive assistants  
22 including but not limited to all departments, offices, commissions,  
23 committees, boards, or other bodies subject to the provisions of this  
24 chapter and this subsection shall prevail over any provision of law  
25 inconsistent herewith unless specific exception is made in such law;

26 (x) In each agency with fifty or more employees: Deputy agency  
27 heads, assistant directors or division directors, and not more than  
28 three principal policy assistants who report directly to the agency  
29 head or deputy agency heads;

30 (y) ~~((All employees of the marine employees' commission;~~  
31 ~~+z))~~ Staff employed by the department of commerce to administer  
32 energy policy functions;

33 ~~((+aa))~~ (z) The manager of the energy facility site evaluation  
34 council;

35 ~~((+bb))~~ (aa) A maximum of ten staff employed by the department of  
36 commerce to administer innovation and policy functions, including the  
37 three principal policy assistants exempted under (x) of this  
38 subsection;

1       (~~(cc)~~) (bb) Staff employed by Washington State University to  
2 administer energy education, applied research, and technology transfer  
3 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

4       (2) The following classifications, positions, and employees of  
5 institutions of higher education and related boards are hereby exempted  
6 from coverage of this chapter:

7       (a) Members of the governing board of each institution of higher  
8 education and related boards, all presidents, vice presidents, and  
9 their confidential secretaries, administrative, and personal  
10 assistants; deans, directors, and chairs; academic personnel; and  
11 executive heads of major administrative or academic divisions employed  
12 by institutions of higher education; principal assistants to executive  
13 heads of major administrative or academic divisions; other managerial  
14 or professional employees in an institution or related board having  
15 substantial responsibility for directing or controlling program  
16 operations and accountable for allocation of resources and program  
17 results, or for the formulation of institutional policy, or for  
18 carrying out personnel administration or labor relations functions,  
19 legislative relations, public information, development, senior computer  
20 systems and network programming, or internal audits and investigations;  
21 and any employee of a community college district whose place of work is  
22 one which is physically located outside the state of Washington and who  
23 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
24 program operating outside of the state of Washington;

25       (b) The governing board of each institution, and related boards,  
26 may also exempt from this chapter classifications involving research  
27 activities, counseling of students, extension or continuing education  
28 activities, graphic arts or publications activities requiring  
29 prescribed academic preparation or special training as determined by  
30 the board: PROVIDED, That no nonacademic employee engaged in office,  
31 clerical, maintenance, or food and trade services may be exempted by  
32 the board under this provision;

33       (c) Printing craft employees in the department of printing at the  
34 University of Washington.

35       (3) In addition to the exemptions specifically provided by this  
36 chapter, the director of personnel may provide for further exemptions  
37 pursuant to the following procedures. The governor or other  
38 appropriate elected official may submit requests for exemption to the

1 director of personnel stating the reasons for requesting such  
2 exemptions. The director of personnel shall hold a public hearing,  
3 after proper notice, on requests submitted pursuant to this subsection.  
4 If the director determines that the position for which exemption is  
5 requested is one involving substantial responsibility for the  
6 formulation of basic agency or executive policy or one involving  
7 directing and controlling program operations of an agency or a major  
8 administrative division thereof, the director of personnel shall grant  
9 the request and such determination shall be final as to any decision  
10 made before July 1, 1993. The total number of additional exemptions  
11 permitted under this subsection shall not exceed one percent of the  
12 number of employees in the classified service not including employees  
13 of institutions of higher education and related boards for those  
14 agencies not directly under the authority of any elected public  
15 official other than the governor, and shall not exceed a total of  
16 twenty-five for all agencies under the authority of elected public  
17 officials other than the governor.

18 The salary and fringe benefits of all positions presently or  
19 hereafter exempted except for the chief executive officer of each  
20 agency, full-time members of boards and commissions, administrative  
21 assistants and confidential secretaries in the immediate office of an  
22 elected state official, and the personnel listed in subsections (1)(j)  
23 through (v) (~~and (y)~~) and (2) of this section, shall be determined by  
24 the director of personnel. Changes to the classification plan  
25 affecting exempt salaries must meet the same provisions for classified  
26 salary increases resulting from adjustments to the classification plan  
27 as outlined in RCW 41.06.152.

28 From February 18, 2009, through June 30, 2011, a salary or wage  
29 increase shall not be granted to any position exempt from  
30 classification under this chapter, except that a salary or wage  
31 increase may be granted to employees pursuant to collective bargaining  
32 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,  
33 or negotiated by the nonprofit corporation formed under chapter 67.40  
34 RCW, and except that increases may be granted for positions for which  
35 the employer has demonstrated difficulty retaining qualified employees  
36 if the following conditions are met:

37 (a) The salary increase can be paid within existing resources; and

1 (b) The salary increase will not adversely impact the provision of  
2 client services.

3 Any agency granting a salary increase from February 15, 2010,  
4 through June 30, 2011, to a position exempt from classification under  
5 this chapter shall submit a report to the fiscal committees of the  
6 legislature no later than July 31, 2011, detailing the positions for  
7 which salary increases were granted, the size of the increases, and the  
8 reasons for giving the increases.

9 Any person holding a classified position subject to the provisions  
10 of this chapter shall, when and if such position is subsequently  
11 exempted from the application of this chapter, be afforded the  
12 following rights: If such person previously held permanent status in  
13 another classified position, such person shall have a right of  
14 reversion to the highest class of position previously held, or to a  
15 position of similar nature and salary.

16 Any classified employee having civil service status in a classified  
17 position who accepts an appointment in an exempt position shall have  
18 the right of reversion to the highest class of position previously  
19 held, or to a position of similar nature and salary.

20 A person occupying an exempt position who is terminated from the  
21 position for gross misconduct or malfeasance does not have the right of  
22 reversion to a classified position as provided for in this section.

23 From February 15, 2010, until June 30, 2011, no monetary  
24 performance-based awards or incentives may be granted by the director  
25 or employers to employees covered by rules adopted under this section.  
26 This subsection does not prohibit the payment of awards provided for in  
27 chapter 41.60 RCW.

28 NEW SECTION. **Sec. 11.** (1) The marine employees' commission is  
29 hereby abolished and its powers, duties, and functions are hereby  
30 transferred to the public employment relations commission.

31 (2)(a) All reports, documents, surveys, books, records, files,  
32 papers, or written material in the possession of the marine employees'  
33 commission shall be delivered to the custody of the public employment  
34 relations commission. All cabinets, furniture, office equipment, motor  
35 vehicles, and other tangible property employed by the marine employees'  
36 commission shall be made available to the public employment relations



1 commission. All funds, credits, or other assets held by the marine  
2 employees' commission shall be assigned to the public employment  
3 relations commission.

4 (b) If any question arises as to the transfer of any funds, books,  
5 documents, records, papers, files, equipment, or other tangible  
6 property used or held in the exercise of the powers and the performance  
7 of the duties and functions transferred, the director of financial  
8 management shall make a determination as to the proper allocation and  
9 certify the same to the state agencies concerned.

10 (3) All rules and all pending business before the marine employees'  
11 commission shall be continued and acted upon by the public employment  
12 relations commission. All existing contracts and obligations shall  
13 remain in full force and shall be performed by the public employment  
14 relations commission.

15 (4) The transfer of the powers, duties, and functions of the marine  
16 employees' commission shall not affect the validity of any act  
17 performed before the effective date of this section.

18 (5) If apportionments of budgeted funds are required because of the  
19 transfers directed by this section, the director of financial  
20 management shall certify the apportionments to the agencies affected,  
21 the state auditor, and the state treasurer. Each of these shall make  
22 the appropriate transfer and adjustments in funds and appropriation  
23 accounts and equipment records in accordance with the certification.

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

26 A collective bargaining agreement may not allow for department of  
27 transportation Washington management services managers or exempt  
28 management services managers to belong to the same bargaining unit  
29 representing employees whom the managers supervise.

30 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
31 each repealed:

32 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &  
33 1961 c 13 s 47.64.080;

34 (2) RCW 47.64.200 (Impasse procedures) and 2010 c 283 s 12, 2006 c  
35 164 s 7, & 1983 c 15 s 11;

1 (3) RCW 47.64.230 (Waiver of mediation) and 2007 c 160 s 3, 2006 c  
2 164 s 11, & 1983 c 15 s 14;

3 (4) RCW 47.64.280 (Marine employees' commission) and 2010 c 283 s  
4 14, 2006 c 164 s 18, 1984 c 287 s 95, & 1983 c 15 s 19;

5 (5) RCW 47.64.300 (Interest arbitration--Procedures) and 2007 c 160  
6 s 4 & 2006 c 164 s 12;

7 (6) RCW 47.64.310 (Interest arbitration--Function) and 2006 c 164  
8 s 13;

9 (7) RCW 47.64.320 (Parties not bound by arbitration--Arbitration  
10 factors) and 2010 c 283 s 15 & 2006 c 164 s 14; and

11 (8) RCW 47.64.330 (Collective bargaining limitations) and 2006 c  
12 164 s 15.

13 NEW SECTION. **Sec. 14.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 immediately.

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