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ENGROSSED HOUSE BILL 2011

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Sells, Pearson, and Reykdal

Read first time 03/05/11.

1 AN ACT Relating to enhancing the safety of employees working for  
2 the department of corrections through collective bargaining and binding  
3 interest arbitration; amending RCW 41.80.020; and adding new sections  
4 to chapter 41.56 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.56 RCW  
7 to read as follows:

8 (1) In addition to the entities listed in RCW 41.56.020, this  
9 chapter applies to the state with respect to employees working for the  
10 department of corrections.

11 (2) This chapter governs the collective bargaining relationship  
12 between the state and employees working for the department of  
13 corrections, except as follows:

14 (a) The state shall be represented by the governor or the  
15 governor's designee who is appointed under chapter 41.80 RCW, and costs  
16 of the negotiations under this section shall be reimbursed as provided  
17 in RCW 41.80.140.

18 (b)(i) The following bargaining units of employees working for the  
19 department of corrections shall be considered appropriate units under

1 this chapter as of the effective date of this section, but there may be  
2 proceedings concerning certification and unit clarification under this  
3 chapter thereafter:

4 (A) All nonsupervisory classified employees of the state working  
5 for the department of corrections in correctional institutions, the  
6 correctional industries program, the sex offender treatment program,  
7 and regional business service center, excluding persons exempt from the  
8 coverage of chapter 41.06 RCW, employees in the Washington management  
9 service, confidential employees, supervisors, institutions employees in  
10 historically excluded groups that have not been modified by subsequent  
11 orders of the public employment relations commission, and all other  
12 employees of the state;

13 (B) All supervisory classified employees of the state working for  
14 the department of corrections in correctional institutions, the  
15 correctional industries program, the sex offender treatment program,  
16 and regional business service center, excluding persons exempt from the  
17 coverage of chapter 41.06 RCW, employees in the Washington management  
18 services, confidential employees, nonsupervisory employees,  
19 institutions employees in historically excluded groups that have not  
20 been modified by subsequent orders, and all other employees of the  
21 state;

22 (C) Psychiatric social workers;

23 (D) Psychology associates;

24 (E) Chaplains;

25 (F) Psychiatrists;

26 (G) Psychologist 3 and 4 nonsupervisory;

27 (H) Psychologist 3 and 4 supervisory;

28 (I) Nonsupervisory community corrections;

29 (J) Supervisors community corrections;

30 (K) Nonsupervisors - warrants/records unit;

31 (L) Nonsupervisory marine department;

32 (M) Nonsupervisory officers at McNeil Island; and

33 (N) Ferry operators (deckhands) at McNeil Island.

34 (ii) This act does not preclude either party from seeking to  
35 clarify the scope of any bargaining unit pursuant to RCW 41.56.060.

36 (c) The exclusive bargaining representatives recognized under  
37 chapter 41.80 RCW as representing the bargaining units of employees  
38 working for the department of corrections shall be the exclusive

1 bargaining representatives recognized under this chapter as  
2 representing the bargaining units of employees working for the  
3 department of corrections without the necessity of an election as of  
4 the effective date of this section, but there may be proceedings  
5 concerning representation under this chapter thereafter.

6 (d) If an exclusive bargaining representative represents more than  
7 one bargaining unit, the exclusive bargaining representative shall  
8 negotiate with the governor or the governor's designee one master  
9 collective bargaining agreement on behalf of all the employees in  
10 bargaining units that the exclusive bargaining representative  
11 represents.

12 (e) Notwithstanding the definition of "collective bargaining" in  
13 RCW 41.56.030(4), the scope of collective bargaining for employees  
14 working for the department of corrections: (i) Includes terms and  
15 conditions of employment relevant to employee safety, such as staffing  
16 levels with a direct relationship to employee workload and safety; (ii)  
17 excludes matters pertaining to management rights established in RCW  
18 41.80.040, such as the employer's budget, the size of the agency  
19 workforce, and the right to direct and supervise employees; and (iii)  
20 is otherwise the same as the scope of collective bargaining described  
21 in RCW 41.80.020.

22 (f) The governor or the governor's designee and one coalition of  
23 all the exclusive bargaining representatives subject to this section  
24 and chapter 41.80 RCW shall conduct negotiations regarding the number  
25 of names to be certified for vacancies, promotional preferences, and  
26 the dollar amount expended on behalf of each employee for health care  
27 benefits as described in RCW 41.80.020.

28 (3) The governor or the governor's designee shall periodically  
29 consult with the joint committee on employment relations created in RCW  
30 41.80.010(5) regarding appropriations necessary to implement the  
31 compensation and fringe benefit provisions in a collective bargaining  
32 agreement and, upon completion of negotiations, advise the committee on  
33 the elements of the agreement and on any legislation necessary to  
34 implement the agreement.

35 (4) The governor shall submit a request for funds necessary to  
36 implement the compensation and fringe benefit provisions in the  
37 collective bargaining agreement or for legislation necessary to  
38 implement the agreement. Requests for funds necessary to implement the

1 compensation and fringe benefit provisions of bargaining agreements  
2 shall not be submitted to the legislature by the governor unless such  
3 requests:

4 (a) Have been submitted to the director of financial management by  
5 October 1st before the legislative session at which the requests are to  
6 be considered; and

7 (b) Have been certified by the director of financial management as  
8 being feasible financially for the state or reflects the decision of an  
9 arbitration panel reached under section 2 of this act.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56 RCW  
11 to read as follows:

12 In addition to the classes of employees listed in RCW  
13 41.56.030(14), the provisions of RCW 41.56.430 through 41.56.452 and  
14 41.56.470, 41.56.480, and 41.56.490 also apply to the employees of the  
15 state working for the department of corrections as provided in this  
16 section, subject to the following:

17 (1) Within ten working days after the first Monday in September of  
18 every odd-numbered year, the governor or the governor's designee and  
19 the bargaining representative for the appropriate bargaining unit shall  
20 attempt to agree on an interest arbitration panel consisting of three  
21 members to be used if the parties are not successful in negotiating a  
22 comprehensive collective bargaining agreement. Each party shall name  
23 one person to serve as its arbitrator on the arbitration panel. The  
24 two members so appointed shall meet within seven days following the  
25 appointment of the later appointed member to attempt to choose a third  
26 member to act as the neutral chair of the arbitration panel. Upon the  
27 failure of the arbitrators to select a neutral chair within seven days,  
28 the two appointed members shall use one of the two following options in  
29 the appointment of the third member, who shall act as chair of the  
30 panel: (a) By mutual consent, the two appointed members may jointly  
31 request the commission to, and the commission shall, appoint a third  
32 member within two days of such a request. Costs of each party's  
33 appointee shall be borne by each party respectively; other costs of the  
34 arbitration proceedings shall be borne by the commission; or (b) either  
35 party may apply to the commission, the federal mediation and  
36 conciliation service, or the American arbitration association to  
37 provide a list of five qualified arbitrators from which the neutral

1 chair shall be chosen. Each party shall pay the fees and expenses of  
2 its arbitrator, and the fees and expenses of the neutral chair shall be  
3 shared equally between the parties. Immediately upon selecting an  
4 interest arbitration panel, the parties shall cooperate to reserve  
5 dates with the arbitration panel for potential arbitration between  
6 August 1st and September 15th of the following even-numbered year. The  
7 parties shall also prepare a schedule of at least five negotiation  
8 dates for the following year, absent an agreement to the contrary. The  
9 parties shall execute a written agreement before November 1st of each  
10 odd-numbered year setting forth the names of the members of the  
11 arbitration panel and the dates reserved for bargaining and  
12 arbitration. This subsection imposes minimum obligations only and is  
13 not intended to define or limit a party's full, good faith bargaining  
14 obligation under other sections of this chapter.

15 (2) The mediator or arbitration panel may consider only matters  
16 that are subject to bargaining under section 1(2)(e)(i) of this act,  
17 and may not consider matters that are subject to bargaining under  
18 section 1(2)(e)(iii) of this act, the number of names to be certified  
19 for vacancies, promotional preferences, and the dollar amount expended  
20 on behalf of each employee for health care benefits.

21 (3) The decision of an arbitration panel is not binding on the  
22 legislature and, if the legislature does not approve the funds  
23 necessary to implement the compensation and fringe benefit provisions  
24 in an arbitrated collective bargaining agreement, is not binding on the  
25 state or the department of corrections.

26 (4) In making its determination, the arbitration panel shall be  
27 mindful of the legislative purpose enumerated in RCW 41.56.430 and, as  
28 additional standards or guidelines to aid it in reaching a decision,  
29 shall take into consideration the following factors:

30 (a) The financial ability of the department to pay for the  
31 provisions of a collective bargaining agreement;

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

33 (c) Stipulations of the parties;

34 (d) Comparison of the terms and conditions of employment relevant  
35 to employee safety of personnel involved in the proceedings with the  
36 terms and conditions of employment relevant to employee safety of like  
37 personnel of like employers of similar size on the west coast of the  
38 United States;

1 (e) Changes in any of the factors listed in this subsection during  
2 the pendency of the proceedings; and

3 (f) Such other factors, not confined to those listed in this  
4 subsection, which are normally or traditionally taken into  
5 consideration in the determination of matters that are subject to  
6 bargaining under section 1(2)(e)(i) of this act and mediation or  
7 arbitration under this section.

8 **Sec. 3.** RCW 41.80.020 and 2010 c 283 s 16 are each amended to read  
9 as follows:

10 (1) Except as otherwise provided in this chapter, the matters  
11 subject to bargaining include wages, hours, and other terms and  
12 conditions of employment, and the negotiation of any question arising  
13 under a collective bargaining agreement.

14 (2) The employer is not required to bargain over matters pertaining  
15 to:

16 (a) Health care benefits or other employee insurance benefits,  
17 except as required in subsection (3) of this section;

18 (b) Any retirement system or retirement benefit; or

19 (c) Rules of the director of personnel or the Washington personnel  
20 resources board adopted under section 203, chapter 354, Laws of 2002.

21 (3) Matters subject to bargaining include the number of names to be  
22 certified for vacancies, promotional preferences, and the dollar amount  
23 expended on behalf of each employee for health care benefits. However,  
24 except as provided otherwise in this subsection for institutions of  
25 higher education, negotiations regarding the number of names to be  
26 certified for vacancies, promotional preferences, and the dollar amount  
27 expended on behalf of each employee for health care benefits shall be  
28 conducted between the employer and one coalition of all the exclusive  
29 bargaining representatives subject to this chapter and all the  
30 exclusive bargaining representatives subject to section 1 of this act.

31 The exclusive bargaining representatives for employees that are subject  
32 to chapter 47.64 RCW shall bargain the dollar amount expended on behalf  
33 of each employee for health care benefits with the employer as part of  
34 the coalition under this subsection. Any such provision agreed to by  
35 the employer and the coalition shall be included in all master  
36 collective bargaining agreements negotiated by the parties. For

1 institutions of higher education, promotional preferences and the  
2 number of names to be certified for vacancies shall be bargained under  
3 the provisions of RCW 41.80.010(4).

4 (4) The employer and the exclusive bargaining representative shall  
5 not agree to any proposal that would prevent the implementation of  
6 approved affirmative action plans or that would be inconsistent with  
7 the comparable worth agreement that provided the basis for the salary  
8 changes implemented beginning with the 1983-1985 biennium to achieve  
9 comparable worth.

10 (5) The employer and the exclusive bargaining representative shall  
11 not bargain over matters pertaining to management rights established in  
12 RCW 41.80.040.

13 (6) Except as otherwise provided in this chapter, if a conflict  
14 exists between an executive order, administrative rule, or agency  
15 policy relating to wages, hours, and terms and conditions of employment  
16 and a collective bargaining agreement negotiated under this chapter,  
17 the collective bargaining agreement shall prevail. A provision of a  
18 collective bargaining agreement that conflicts with the terms of a  
19 statute is invalid and unenforceable.

20 (7) This section does not prohibit bargaining that affects  
21 contracts authorized by RCW 41.06.142.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.56 RCW  
23 to read as follows:

24 (1) Collective bargaining negotiations between the state and  
25 bargaining units of employees working for the department of corrections  
26 under this chapter shall commence no later than July 1, 2012. A  
27 collective bargaining agreement between the state and any bargaining  
28 unit of employees working for the department of corrections entered  
29 into under this chapter shall not be effective prior to July 1, 2013.

30 (2) Any collective bargaining agreement between the state and any  
31 bargaining unit of employees working for the department of corrections  
32 entered into under chapter 41.80 RCW before July 1, 2012, that expires  
33 after July 1, 2012, shall, unless a superseding agreement complying  
34 with this chapter is negotiated by the parties, remain in full force  
35 during its duration, but the agreement may not be renewed or extended  
36 beyond July 1, 2013, or until superseded by a collective bargaining  
37 agreement entered into under this chapter, whichever is later.

1           (3) The duration of any collective bargaining agreement between the  
2 state and bargaining units of employees working for the department of  
3 corrections under this chapter shall not exceed one fiscal biennium.

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