
SENATE BILL 5728

State of Washington

62nd Legislature

2011 Regular Session

By Senator Zarelli

Read first time 02/09/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to state collective bargaining and competitive
2 contracting; amending RCW 41.80.010, 41.80.020, 41.80.040, and
3 41.06.142; creating a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 41.80.010 and 2010 c 104 s 1 are each amended to read
6 as follows:

7 (1) For the purpose of negotiating collective bargaining agreements
8 under this chapter, the employer shall be represented by the governor
9 or governor's designee, except as provided for institutions of higher
10 education in subsection (4) of this section.

11 (2)(a) If an exclusive bargaining representative represents more
12 than one bargaining unit, the exclusive bargaining representative shall
13 negotiate with each employer representative as designated in subsection
14 (1) of this section one master collective bargaining agreement on
15 behalf of all the employees in bargaining units that the exclusive
16 bargaining representative represents. For those exclusive bargaining
17 representatives who represent fewer than a total of five hundred
18 employees each, negotiation shall be by a coalition of all those
19 exclusive bargaining representatives. The coalition shall bargain for

1 a master collective bargaining agreement covering all of the employees
2 represented by the coalition. The governor's designee and the
3 exclusive bargaining representative or representatives are authorized
4 to enter into supplemental bargaining of agency-specific issues for
5 inclusion in or as an addendum to the master collective bargaining
6 agreement, subject to the parties' agreement regarding the issues and
7 procedures for supplemental bargaining. This section does not prohibit
8 cooperation and coordination of bargaining between two or more
9 exclusive bargaining representatives.

10 (b) This subsection (2) does not apply to exclusive bargaining
11 representatives who represent employees of institutions of higher
12 education, except when the institution of higher education has elected
13 to exercise its option under subsection (4) of this section to have its
14 negotiations conducted by the governor or governor's designee under the
15 procedures provided for general government agencies in subsections (1)
16 through (3) of this section.

17 (c) If five hundred or more employees of an independent state
18 elected official listed in RCW 43.01.010 are organized in a bargaining
19 unit or bargaining units under RCW 41.80.070, the official shall be
20 consulted by the governor or the governor's designee before any
21 agreement is reached under (a) of this subsection concerning
22 supplemental bargaining of agency specific issues affecting the
23 employees in such bargaining unit.

24 (3) The governor shall submit a request for funds necessary to
25 implement the compensation and fringe benefit provisions in the master
26 collective bargaining agreement or for legislation necessary to
27 implement the agreement. Requests for funds necessary to implement the
28 provisions of bargaining agreements shall not be submitted to the
29 legislature by the governor unless such requests:

30 (a) Have been submitted to the director of the office of financial
31 management by October 1 prior to the legislative session at which the
32 requests are to be considered; and

33 (b) Have been certified by the director of the office of financial
34 management as being feasible financially for the state.

35 The legislature shall approve or reject the submission of the
36 request for funds as a whole. The legislature shall not consider a
37 request for funds to implement a collective bargaining agreement unless
38 the request is transmitted to the legislature as part of the governor's

1 budget document submitted under RCW 43.88.030 and 43.88.060. If the
2 legislature rejects or fails to act on the submission, either party may
3 reopen all or part of the agreement or the exclusive bargaining
4 representative may seek to implement the procedures provided for in RCW
5 41.80.090.

6 (4)(a)(i) For the purpose of negotiating agreements for
7 institutions of higher education, the employer shall be the respective
8 governing board of each of the universities, colleges, or community
9 colleges or a designee chosen by the board to negotiate on its behalf.

10 (ii) A governing board of a university or college may elect to have
11 its negotiations conducted by the governor or governor's designee under
12 the procedures provided for general government agencies in subsections
13 (1) through (3) of this section, except that:

14 (A) The governor or the governor's designee and an exclusive
15 bargaining representative shall negotiate one master collective
16 bargaining agreement for all of the bargaining units of employees of a
17 university or college that the representative represents; or

18 (B) If the parties mutually agree, the governor or the governor's
19 designee and an exclusive bargaining representative shall negotiate one
20 master collective bargaining agreement for all of the bargaining units
21 of employees of more than one university or college that the
22 representative represents.

23 (iii) A governing board of a community college may elect to have
24 its negotiations conducted by the governor or governor's designee under
25 the procedures provided for general government agencies in subsections
26 (1) through (3) of this section.

27 (b) Prior to entering into negotiations under this chapter, the
28 institutions of higher education or their designees shall consult with
29 the director of the office of financial management regarding financial
30 and budgetary issues that are likely to arise in the impending
31 negotiations.

32 (c)(i) If appropriations are necessary to implement the
33 compensation and fringe benefit provisions of the bargaining agreements
34 reached between institutions of higher education and exclusive
35 bargaining representatives agreed to under the provisions of this
36 chapter, the governor shall submit a request for such funds to the
37 legislature according to the provisions of subsection (3) of this
38 section, except as provided in (c)(ii) of this subsection.

1 (ii) In the case of a bargaining unit of employees of institutions
2 of higher education in which the exclusive bargaining representative is
3 certified during or after the conclusion of a legislative session, the
4 legislature may act upon the compensation and fringe benefit provisions
5 of the unit's initial collective bargaining agreement if those
6 provisions are agreed upon and submitted to the office of financial
7 management and legislative budget committees before final legislative
8 action on the biennial or supplemental operating budget by the sitting
9 legislature.

10 (5) There is hereby created a joint committee on employment
11 relations, which consists of two members with leadership positions in
12 the house of representatives, representing each of the two largest
13 caucuses; the chair and ranking minority member of the house
14 appropriations committee, or its successor, representing each of the
15 two largest caucuses; two members with leadership positions in the
16 senate, representing each of the two largest caucuses; and the chair
17 and ranking minority member of the senate ways and means committee, or
18 its successor, representing each of the two largest caucuses. The
19 governor shall periodically consult with the committee regarding
20 appropriations necessary to implement the compensation and fringe
21 benefit provisions in the master collective bargaining agreements, and
22 upon completion of negotiations, advise the committee on the elements
23 of the agreements and on any legislation necessary to implement the
24 agreements.

25 (6) 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, the
29 compensation and fringe benefit provisions specified in the law shall
30 be null and void, and both parties shall immediately enter into
31 collective bargaining for ((a)) mutually agreed ((upon modification of
32 the agreement)) compensation and fringe benefit provisions. Any
33 compensation and fringe benefit provisions agreed upon shall be
34 submitted to the legislature for approval and shall not take effect
35 until approved. Prior to legislative approval of a new agreement
36 pursuant to this subsection, the employer may implement compensation
37 and fringe benefit provisions according to law.

1 (~~(7) After the expiration date of a collective bargaining~~
2 ~~agreement negotiated under this chapter, all of the terms and~~
3 ~~conditions specified in the collective bargaining agreement remain in~~
4 ~~effect until the effective date of a subsequently negotiated agreement,~~
5 ~~not to exceed one year from the expiration date stated in the~~
6 ~~agreement. Thereafter, the employer may unilaterally implement~~
7 ~~according to law.))~~

8 **Sec. 2.** 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(~~(7~~
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(~~(7)~~) and promotional preferences(~~(7~~
23 ~~dollar amount expended on behalf of each employee for health care~~
24 ~~benefits. However, except as provided otherwise in this subsection for~~
25 ~~institutions of higher education, negotiations regarding the number of~~
26 ~~names to be certified for vacancies, promotional preferences, and the~~
27 ~~dollar amount expended on behalf of each employee for health care~~
28 ~~benefits shall be conducted between the employer and one coalition of~~
29 ~~all the exclusive bargaining representatives subject to this chapter.~~
30 ~~The exclusive bargaining representatives for employees that are subject~~
31 ~~to chapter 47.64 RCW shall bargain the dollar amount expended on behalf~~
32 ~~of each employee for health care benefits with the employer as part of~~
33 ~~the coalition under this subsection. Any such provision agreed to by~~
34 ~~the employer and the coalition shall be included in all master~~
35 ~~collective bargaining agreements negotiated by the parties)). For~~
36 institutions of higher education, promotional preferences and the

1 number of names to be certified for vacancies shall be bargained under
2 the provisions of RCW 41.80.010(4).

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

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

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

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

21 **Sec. 3.** RCW 41.80.040 and 2002 c 354 s 305 are each amended to
22 read as follows:

23 The employer shall not bargain over rights of management which, in
24 addition to all powers, duties, and rights established by
25 constitutional provision or statute, shall include but not be limited
26 to the following:

27 (1) The functions and programs of the employer, the use of
28 technology, and the structure of the organization;

29 (2) The employer's budget and the size of the agency workforce,
30 including determining the ((financial)) basis for layoffs;

31 (3) The right to direct and supervise employees;

32 (4) The right to take whatever actions are deemed necessary to
33 carry out the mission of the state and its agencies during emergencies;
34 and

35 (5) Retirement plans and retirement benefits.

1 **Sec. 4.** RCW 41.06.142 and 2008 c 267 s 9 are each amended to read
2 as follows:

3 (1) Any department, agency, or institution of higher education may
4 purchase services, including services that have been customarily and
5 historically provided by employees in the classified service under this
6 chapter, by contracting with individuals, nonprofit organizations,
7 businesses, employee business units, or other entities if the following
8 criteria are met:

9 (a) The invitation for bid or request for proposal contains
10 measurable standards for the performance of the contract;

11 (b) Displaced employees in the classified service (~~(whose positions~~
12 ~~or work would be displaced by the contract))~~) are provided an
13 opportunity to offer alternatives to purchasing services by contract
14 and, if these alternatives are not accepted, compete for the contract
15 under competitive contracting procedures in subsection (4) of this
16 section;

17 (c) The contract with an entity other than an employee business
18 unit includes a provision requiring the entity to consider employment
19 of state employees who may be displaced by the contract;

20 (d) The department, agency, or institution of higher education has
21 established a contract monitoring process to measure contract
22 performance, costs, service delivery quality, and other contract
23 standards, and to cancel contracts that do not meet those standards;
24 and

25 (e) The department, agency, or institution of higher education has
26 determined that the contract results in savings or efficiency
27 improvements. The contracting agency must consider the consequences
28 and potential mitigation of improper or failed performance by the
29 contractor.

30 (2) Any provision contrary to or in conflict with this section in
31 any collective bargaining agreement in effect on July 1, 2005, is not
32 effective beyond the expiration date of the agreement.

33 (3) Contracting for services that is expressly mandated by the
34 legislature or was authorized by law prior to July 1, 2005, including
35 contracts and agreements between public entities, shall not be subject
36 to the processes set forth in subsections (1), (4), and (5) of this
37 section.

38 (4) Competitive contracting shall be implemented as follows:

1 (a) At least ninety days prior to the date the contracting agency
2 requests bids from private entities for a contract for services
3 provided by classified employees, the contracting agency shall notify
4 the ((classified)) displaced employees whose positions or work would be
5 displaced by the contract. The displaced employees shall have sixty
6 days from the date of notification to offer alternatives to purchasing
7 services by contract, and the agency shall consider the alternatives
8 before requesting bids.

9 (b) If the displaced employees decide to compete for the contract,
10 they shall notify the contracting agency of their decision. Displaced
11 employees must form one or more employee business units for the purpose
12 of submitting a bid or bids to perform the services.

13 (c) The director of personnel, with the advice and assistance of
14 the department of general administration, shall develop and make
15 available to employee business units training in the bidding process
16 and general bid preparation.

17 (d) The director of general administration, with the advice and
18 assistance of the department of personnel, shall, by rule, establish
19 procedures to ensure that bids are submitted and evaluated in a fair
20 and objective manner and that there exists a competitive market for the
21 service, and to adopt rules as may be reasonably necessary to carry out
22 the purposes of this section. Such rules shall include, but not be
23 limited to: (i) Prohibitions against participation in the bid
24 evaluation process by displaced employees who prepared the business
25 unit's bid or who perform any of the services to be contracted; (ii)
26 provisions to ensure no bidder receives an advantage over other bidders
27 and that bid requirements are applied equitably to all parties; and
28 (iii) procedures that require the contracting agency to receive
29 complaints regarding the bidding process and to consider them before
30 awarding the contract. Appeal of an agency's actions under this
31 subsection is an adjudicative proceeding and subject to the applicable
32 provisions of chapter 34.05 RCW, the administrative procedure act, with
33 the final decision to be rendered by an administrative law judge
34 assigned under chapter 34.12 RCW.

35 (e) An employee business unit's bid must include the fully
36 allocated costs of the service, including the cost of the employees'
37 salaries and benefits, space, equipment, materials, and other costs
38 necessary to perform the function. An employee business unit's cost

1 shall not include the state's indirect overhead costs unless those
2 costs can be attributed directly to the function in question and would
3 not exist if that function were not performed in state service.

4 (f) A department, agency, or institution of higher education may
5 contract with the department of general administration to conduct the
6 bidding process.

7 (5) As used in this section:

8 (a) "Employee business unit" means a group of employees who perform
9 services to be contracted under this section and who submit a bid for
10 the performance of those services under subsection (4) of this section.

11 (b) "Indirect overhead costs" means the pro rata share of existing
12 agency administrative salaries and benefits, and rent, equipment costs,
13 utilities, and materials associated with those administrative
14 functions.

15 (c) "Competitive contracting" means the process by which classified
16 employees of a department, agency, or institution of higher education
17 compete with businesses, individuals, nonprofit organizations, or other
18 entities for contracts authorized by subsection (1) of this section.

19 (d) "Displaced employee" means an employee in the classified
20 service whose position is eliminated by the contract resulting in the
21 employee being laid off or assigned to a lower job class.

22 (6) The requirements of this section do not apply to RCW
23 74.13.031(5).

24 (7) There is no private right of action under this section.

25 NEW SECTION. Sec. 5. Sections 1 through 3 of this act apply only
26 to collective bargaining agreements entered into or extended after the
27 effective date of this section.

28 NEW SECTION. Sec. 6. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. Sec. 7. This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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