

---

SENATE BILL 5387

---

State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Pearson, Conway, Hasegawa, and Roach

Read first time 01/29/13. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to the public employees' collective bargaining act  
2 as applied to department of corrections employees; reenacting and  
3 amending RCW 41.80.020; and adding new sections to chapter 41.56 RCW.

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

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

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

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

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

17           (b)(i) The following bargaining units of employees working for the  
18 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 the regional business service center, excluding persons exempt from  
8 the coverage of chapter 41.06 RCW, employees in the Washington  
9 management service, confidential employees, supervisors, institutions'  
10 employees in historically excluded groups that have not been modified  
11 by subsequent orders of the public employment relations commission, and  
12 all other 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 the regional business service center, excluding persons exempt from  
17 the coverage of chapter 41.06 RCW, employees in the Washington  
18 management 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; and
- 30 (K) Nonsupervisors - warrants/records unit.

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

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

1 department of corrections without the necessity of an election as of  
2 the effective date of this section, but there may be proceedings  
3 concerning representation under this chapter thereafter.

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

10 (e) Notwithstanding the definition of "collective bargaining" in  
11 RCW 41.56.030(4), the scope of collective bargaining for employees  
12 working for the department of corrections is the same as the scope of  
13 collective bargaining described in RCW 41.80.020.

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

20 (3) The governor or the governor's designee shall periodically  
21 consult with the joint committee on employment relations created in RCW  
22 41.80.010(5) regarding appropriations necessary to implement the  
23 compensation and fringe benefit provisions in a collective bargaining  
24 agreement and, upon completion of negotiations, advise the committee on  
25 the elements of the agreement and on any legislation necessary to  
26 implement the agreement.

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

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

37 (b) Have been certified by the director of financial management as

1 being feasible financially for the state or reflects the decision of an  
2 arbitration panel reached under section 2 of this act.

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

5 In addition to the classes of employees listed in RCW  
6 41.56.030(13), the provisions of RCW 41.56.430 through 41.56.452 and  
7 41.56.470, 41.56.480, and 41.56.490 also apply to the employees of the  
8 state working for the department of corrections as provided in this  
9 section, subject to the following:

10 (1) Within ten working days after the first Monday in September of  
11 every odd-numbered year, the governor or the governor's designee and  
12 the bargaining representative for the appropriate bargaining unit shall  
13 attempt to agree on an interest arbitration panel consisting of three  
14 members to be used if the parties are not successful in negotiating a  
15 comprehensive collective bargaining agreement. Each party shall name  
16 one person to serve as its arbitrator on the arbitration panel. The  
17 two members so appointed shall meet within seven days following the  
18 appointment of the later appointed member to attempt to choose a third  
19 member to act as the neutral chair of the arbitration panel. Upon the  
20 failure of the arbitrators to select a neutral chair within seven days,  
21 the two appointed members shall use one of the two following options in  
22 the appointment of the third member, who shall act as chair of the  
23 panel: (a) By mutual consent, the two appointed members may jointly  
24 request the commission to, and the commission shall, appoint a third  
25 member within two days of such a request. Costs of each party's  
26 appointee shall be borne by each party respectively; other costs of the  
27 arbitration proceedings shall be borne by the commission; or (b) either  
28 party may apply to the commission, the federal mediation and  
29 conciliation service, or the American arbitration association to  
30 provide a list of five qualified arbitrators from which the neutral  
31 chair shall be chosen. Each party shall pay the fees and expenses of  
32 its arbitrator, and the fees and expenses of the neutral chair shall be  
33 shared equally between the parties. Immediately upon selecting an  
34 interest arbitration panel, the parties shall cooperate to reserve  
35 dates with the arbitration panel for potential arbitration between  
36 August 1st and September 15th of the following even-numbered year. The  
37 parties shall also prepare a schedule of at least five negotiation

1 dates for the following year, absent an agreement to the contrary. The  
2 parties shall execute a written agreement before November 1st of each  
3 odd-numbered year setting forth the names of the members of the  
4 arbitration panel and the dates reserved for bargaining and  
5 arbitration. This subsection imposes minimum obligations only and is  
6 not intended to define or limit a party's full, good faith bargaining  
7 obligation under other sections of this chapter.

8 (2) The mediator or arbitration panel may consider only matters  
9 that are subject to bargaining under section 1 of this act, and may not  
10 consider the number of names to be certified for vacancies, promotional  
11 preferences, and the dollar amount expended on behalf of each employee  
12 for health care benefits.

13 (3) In making its determination, the arbitration panel shall be  
14 mindful of the legislative purpose enumerated in RCW 41.56.430 and, as  
15 additional standards or guidelines to aid it in reaching a decision,  
16 shall take into consideration the following factors:

- 17 (a) The constitutional and statutory authority of the employer;
- 18 (b) Stipulations of the parties;
- 19 (c) Comparison of the hours and conditions of employment of  
20 personnel involved in the proceedings with the hours and conditions of  
21 employment of like personnel of like employers of similar size on the  
22 west coast of the United States;
- 23 (d) Changes in any of the factors listed in this subsection during  
24 the pendency of the proceedings; and
- 25 (e) Such other factors, not confined to those listed in this  
26 subsection, which are normally or traditionally taken into  
27 consideration in the determination of matters that are subject to  
28 bargaining under section 1 of this act and mediation or arbitration  
29 under this section.

30 **Sec. 3.** RCW 41.80.020 and 2011 1st sp.s. c 50 s 939 and 2011 1st  
31 sp.s. c 43 s 445 are each reenacted and amended to read as follows:

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

36 (2) The employer is not required to bargain over matters pertaining  
37 to:

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

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

4 (c) Rules of the human resources director, the director of  
5 enterprise services, or the Washington personnel resources board  
6 adopted under RCW 41.06.157.

7 (3) Matters subject to bargaining include the number of names to be  
8 certified for vacancies, promotional preferences, and the dollar amount  
9 expended on behalf of each employee for health care benefits. However,  
10 except as provided otherwise in this subsection for institutions of  
11 higher education, negotiations regarding the number of names to be  
12 certified for vacancies, promotional preferences, and the dollar amount  
13 expended on behalf of each employee for health care benefits shall be  
14 conducted between the employer and one coalition of all the exclusive  
15 bargaining representatives subject to this chapter and all the  
16 exclusive bargaining representatives subject to section 1 of this act.

17 The exclusive bargaining representatives for employees that are subject  
18 to chapter 47.64 RCW shall bargain the dollar amount expended on behalf  
19 of each employee for health care benefits with the employer as part of  
20 the coalition under this subsection. Any such provision agreed to by  
21 the employer and the coalition shall be included in all master  
22 collective bargaining agreements negotiated by the parties. For  
23 institutions of higher education, promotional preferences and the  
24 number of names to be certified for vacancies shall be bargained under  
25 the provisions of RCW 41.80.010(4). For agreements covering the 2011-  
26 2013 fiscal biennium, any agreement between the employer and the  
27 coalition regarding the dollar amount expended on behalf of each  
28 employee for health care benefits is a separate agreement and shall not  
29 be included in the master collective bargaining agreements negotiated  
30 by the parties.

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

37 (5) The employer and the exclusive bargaining representative shall

1 not bargain over matters pertaining to management rights established in  
2 RCW 41.80.040.

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

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

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

14 (1) Collective bargaining negotiations between the state and  
15 bargaining units of employees working for the department of corrections  
16 under this chapter shall commence no later than July 1, 2014. A  
17 collective bargaining agreement between the state and any bargaining  
18 unit of employees working for the department of corrections entered  
19 into under this chapter shall not be effective prior to July 1, 2015.

20 (2) Any collective bargaining agreement between the state and any  
21 bargaining unit of employees working for the department of corrections  
22 entered into under chapter 41.80 RCW before July 1, 2014, that expires  
23 after July 1, 2014, shall, unless a superseding agreement complying  
24 with this chapter is negotiated by the parties, remain in full force  
25 during its duration, but the agreement may not be renewed or extended  
26 beyond July 1, 2015, or until superseded by a collective bargaining  
27 agreement entered into under this chapter, whichever is later.

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

--- END ---