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**SENATE BILL 5763**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Warnick, Pearson, and Hatfield

AN ACT Relating to the public employees' collective bargaining act as applied to commissioned officers of the department of fish and wildlife; amending RCW 41.80.020; and adding new sections to chapter 41.56 RCW.

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

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

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to commissioned officers, except for captains, of the department of fish and wildlife.

(2) This chapter governs the collective bargaining relationship between the state and employees described in subsection (1) of this section, except as follows:

(a) The state shall be represented by the governor or the governor's designee who is appointed under chapter 41.80 RCW.

(b) A bargaining unit of employees described in subsection (1) of this section existing on the effective date of this section is an appropriate unit unless the unit does not meet the requirements of RCW 41.56.060.

(c) The exclusive bargaining representative certified to represent the bargaining unit of employees described in subsection (1) of this section existing at the department of fish and wildlife on the effective date of this section shall continue as the exclusive bargaining representative without the necessity of an election.

(d) If an exclusive bargaining representative represents more than one bargaining unit within the department of fish and wildlife, the exclusive bargaining representative shall negotiate with the governor or the governor's designee one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents within the department of fish and wildlife.

(e) Notwithstanding the definition of collective bargaining in RCW 41.56.030, the scope of collective bargaining between the representatives of the employer and the exclusive bargaining representative is the same as the scope of collective bargaining described in RCW 41.80.020. The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

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

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

(4) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the collective bargaining agreement or interest arbitration award, or for legislation necessary to implement the agreement or award. Requests for funds necessary to implement the compensation and fringe benefit provisions of bargaining agreements or interest arbitration awards shall not be submitted to the legislature by the governor unless such requests:

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

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

(5) The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement or interest arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, the agreement or award may be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

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

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

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

In addition to the classes of employees listed in RCW 41.56.030, the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to employees of the state working for the department of fish and wildlife as described in section 1(1) of this act, subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the governor or the governor's designee and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

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

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

(a) The financial ability of the department of fish and wildlife to pay for the compensation and benefit provisions of a collective bargaining agreement;

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

(c) Stipulations of the parties;

(d) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like state government employers of similar size in the western United States;

(e) The ability of the state to retain employees working for the department of fish and wildlife;

(f) The overall compensation presently received by employees of the department of fish and wildlife, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received;

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

(h) Such other factors, not confined to those listed in this subsection, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under section 1 of this act and mediation or arbitration under this section.

(4) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state or the department of fish and wildlife.

**Sec.**  RCW 41.80.020 and 2013 2nd sp.s. c 4 s 972 are each amended to read as follows:

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

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

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

(b) Any retirement system or retirement benefit; or

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

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter and all the exclusive bargaining representatives subject to section 1 of this act. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013‑2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

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

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

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

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

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

(1) Collective bargaining negotiations between the state and bargaining units of employees working for the department of fish and wildlife under this chapter shall commence no later than July 1, 2016. A collective bargaining agreement between the state and any bargaining unit of employees working for the department of fish and wildlife entered into under this chapter shall not be effective prior to July 1, 2017.

(2) Any collective bargaining agreement between the state and a bargaining unit of employees described in section 1(1) of this act entered into under chapter 41.80 RCW before July 1, 2016, that expires after July 1, 2016, shall, unless a superseding agreement complying with this chapter is negotiated by the parties, remain in full force during its duration, but the agreement may not be renewed or extended beyond July 1, 2017. If an agreement under this chapter cannot be reached by July 1, 2017, the terms and conditions of any collective bargaining agreement negotiated under chapter 41.80 RCW shall remain in effect until the effective date of an agreement under this chapter, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(3) The duration of any collective bargaining agreement between the state and bargaining unit of employees described in section 1(1) of this act shall not exceed one fiscal biennium.

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