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**SENATE BILL 5885**

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

**By** Senators Conway, Keiser, Hasegawa, and Chase

AN ACT Relating to enhancing the safety of employees working for western state hospital and eastern state hospital through collective bargaining and binding interest arbitration; 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 employees working for western state hospital and eastern state hospital.

(2) This chapter governs the collective bargaining relationship between the state and employees working for western state hospital and eastern state hospital, 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, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.

(b)(i) The following bargaining units of employees working for western state hospital and eastern state hospital shall be considered appropriate units under this chapter as of the effective date of this section, but there may be proceedings concerning certification and unit clarification under this chapter thereafter:

(A) All nonsupervisory classified employees of the state working for western state hospital in the psychiatric treatment and recovery center, the habilitative mental health unit, and at eastern state hospital in the adult psychiatric unit, forensic services unit, and geropsychiatric unit, excluding persons exempt from the coverage of chapter 41.06 RCW, employees in the Washington management service, confidential employees, supervisors, institutions employees in historically excluded groups that have not been modified by subsequent orders of the public employment relations commission, and all other employees of the state;

(B) All supervisory classified employees of the state working for western state hospital in the psychiatric treatment and recovery center, the habilitative mental health unit, and at eastern state hospital in the adult psychiatric unit, forensic services unit, and geropsychiatric unit, excluding persons exempt from the coverage of chapter 41.06 RCW, employees in the Washington management services, confidential employees, nonsupervisory employees, institutions employees in historically excluded groups that have not been modified by subsequent orders, and all other employees of the state.

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

(c) The exclusive bargaining representatives recognized under chapter 41.80 RCW as representing the bargaining units of employees working for western state hospital and eastern state hospital shall be the exclusive bargaining representatives recognized under this chapter as representing the bargaining units of employees working for western state hospital and eastern state hospital without the necessity of an election as of the effective date of this section, but there may be proceedings concerning representation under this chapter thereafter.

(d) If an exclusive bargaining representative represents more than one bargaining unit, 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.

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

(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 for legislation necessary to implement the agreement. Requests for funds necessary to implement the compensation and fringe benefit provisions of bargaining agreements 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 or reflects the decision of an arbitration panel reached under section 2 of this act.

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(13), 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 the employees of the state working for western state hospital and eastern state hospital as provided in this section, 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(2)(e)(i) of this act, and may not consider matters that are subject to bargaining under section 1(2)(e)(iii) of this act, 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) 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 in an arbitrated collective bargaining agreement, is not binding on the state or western state hospital and eastern state hospital.

(4) 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 to pay for the provisions of a collective bargaining agreement;

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

(c) Stipulations of the parties;

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

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

(f) 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(2)(e)(i) of this act and mediation or arbitration under this section.

**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 western state hospital and eastern state hospital under this chapter shall commence no later than August 1, 2015. A collective bargaining agreement between the state and any bargaining unit of employees working for western state hospital and eastern state hospital entered into under this chapter shall not be effective prior to August 1, 2016.

(2) Any collective bargaining agreement between the state and any bargaining unit of employees working for western state hospital and eastern state hospital entered into under chapter 41.80 RCW before August 1, 2015, that expires after August 1, 2015, 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 August 1, 2016, or until superseded by a collective bargaining agreement entered into under this chapter, whichever is later.

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

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