

SENATE BILL REPORT

SB 6126

As Reported by Senate Committee On:
Ways & Means, May 26, 2015

Title: An act relating to collective bargaining.

Brief Description: Addressing collective bargaining.

Sponsors: Senator Braun.

Brief History:

Committee Activity: Ways & Means: 5/26/15 [DPS, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6126 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hewitt, O'Ban, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

Signed by Senators Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Billig, Conway, Fraser, Hasegawa, Hatfield and Rolfes.

Staff: Julie Murray (786-7711)

Background: The Personnel System Reform Act of 2002 (PSRA) provides for collective bargaining of wages, hours, and other terms and conditions of employment between the Governor and classified employees of state agencies and between governing boards of institutions of higher education and their classified employees. The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining by counties, cities, other political subdivisions and certain state employees.

The PECBA explicitly authorizes the use of binding interest arbitration to resolve impasses over contract negotiations to avoid employee strikes, work slowdowns or stoppages. Examples of employees covered by interest arbitration include firefighters in all cities and counties, law enforcement officers in larger cities and counties, and state patrol officers. Impasse procedures under the PSRA are a permissive subject of bargaining.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The PECBA also provides for collective bargaining between the Governor and certain non-state employee groups such as family child care providers, adult family home providers, individual providers of home care services, and language access providers. The groups are state employees solely for the purpose of collective bargaining. The scope of bargaining varies by non-state employee groups with individual providers of home care services having the broadest scope covering wages, hours, working conditions, and training.

Under the PSRA and PECBA, the Governor must submit to the Legislature a request for funds necessary to implement a collective bargaining agreement (CBA) as part of the Governor's budget document. However, the Governor may not submit a request for funds unless (1) the CBA has been submitted to the OFM Director by October 1 prior to the legislative session at which the request is to be considered and (2) the request for funds has been certified by the Office of Financial Management (OFM) Director as being financially feasible or reflective of a binding decision of an arbitration panel. The terms "feasible financially for the state" and "request for funds" are not defined in either the PSRA or the PECBA.

The PSRA created the Joint Committee on Employment Relations (Committee) consisting of legislators from both houses from the two largest caucuses. The PSRA and other statutes providing for collective bargaining require the Governor to periodically consult with the Committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise on the elements of the agreements and on any legislation necessary to implement the agreements.

The state Open Public Meetings Act (OPMA) requires that all meetings of governing bodies of public agencies, including cities, counties, and special purpose districts, be open and accessible to the public. A meeting generally includes any situation in which a majority of a city council, board of county commissioners, or other governing body meets and discusses the business of that body. Certain types of meetings are exempt from public meeting requirements. Collective bargaining sessions with unions are one such exemption, and include contract negotiations; grievance meetings; and discussions relating to the interpretation or application of a labor agreement.

Summary of Bill (Recommended Substitute): The provision exempting collective bargaining sessions with unions involving contract negotiations from the OPMA is removed. Language is added to all the collective bargaining chapters, requiring collective bargaining sessions involving contract negotiations to be open to the public.

The Committee must meet six times each year for the purpose of consulting with the Governor and institutions of higher education on matters related to collective bargaining. A quorum is not required for meetings and Committee members may meet by telephonic means. A meeting must be held within 10 working days if a CBA is determined not to be financially feasible. Staff of the appropriate labor and fiscal committees of the house and senate must schedule and staff the Committee meetings and the Governor and institutions of higher education must attend, participate, and provide information as directed by the Committee.

OFM must maintain a website to post copies of all CBAs requiring funding by the Legislature. CBAs must be posted within 60 days of implementation. Additionally OFM must create a summary of each CBA to post on the website.

State employers that engage in collective bargaining under may not enter into an agreement that permits the use of interest arbitration as a means of resolving issues arising in collective bargaining; any such provision is void and unenforceable. State and local governments that bargain under the PECBA may not enter into an agreement that permits the use of interest arbitration as a means of resolving issues arising in collective bargaining, except as specifically authorized by the PECBA. Any such provision is void and unenforceable.

The collective bargaining provisions of the PECBA, instead of the PSRA, are applied to the state of Washington with respect to classified employees working for the Department of Corrections (DOC) until July 1, 2023. The mediation and binding interest arbitration provisions of the PECBA are also extended to DOC employees. Negotiations under the PECBA must begin no later than July 1, 2016, and a CBA must not be effective prior to July 1, 2017. A CBA under the PSRA entered into before July 1, 2016, remains in full force, but may not be renewed or extended beyond July 1, 2017. Exclusive bargaining representatives and bargaining units are "grandfathered" and considered appropriate units and representatives under the PECBA. Negotiations and impasse procedures for any agreement for the term 2023-2025, and thereafter, is under the provisions of the PSRA.

Other collective bargaining provisions for DOC employees are comparable to the PSRA. The scope of bargaining is wages, hours, and other terms and conditions of employment and does not include management rights. The state is represented by the Governor. Bargaining representatives must negotiate one master agreement with the Governor if they represent multiple units within DOC and must be part of the coalition that negotiates employee health care benefits. The Governor must submit requests to the Legislature for any funds and legislation necessary to implement a CBA or arbitration award. A request must not be submitted unless it has been certified by the OFM Director as being financially feasible. The Legislature must approve or reject the request for funds as a whole. If the Legislature rejects the request or fails to act, an agreement or award may be reopened. The parties may enter into collective bargaining if a significant revenue shortfall occurs.

The Joint Legislative Audit and Review Committee must review the granting of binding interest arbitration to DOC employees and its effect on employee recruitment and retention, training, employee safety, total compensation, and state costs. The report is due January 1, 2021.

Persons employed as individual providers for home care services under state law and any other persons who are public employees solely for the purposes of collective bargaining are not eligible for coverage in the Public Employees' Retirement System (PERS). CBAs with individual providers of home care services may not include a provision for any defined benefit retirement plan or require the state to contribute to a defined contribution retirement plan at a level that exceeds 3 percent of individual provider wages.

For negotiated or awarded CBAs with classified employees at state agencies, classified employees at institutions of higher education, and non-state employees groups where a request for funds to implement the CBA must be certified by the OFM Director as financially feasible for the state:

- The term "request for funds" is defined to mean the incremental increased cost of the compensation and fringe benefits provisions of a CBA or interest arbitration award. It does not appropriate necessary to maintain and continue the compensation and fringe benefits provisions of a current CBA into ensuing biennia.
- The term "feasible financially for the state" is defined to mean (1) the total general fund and related fund cost of the request for funds for all CBAs negotiated or awarded does not exceed the amount of available fiscal resources remaining after projected maintenance level as measured under the state balanced budget requirement or (2) the request for funds does not exceed a 3 percent biennial increase in general fund and related funds costs from the current bargaining agreement for the term of the agreement and for the ensuing biennium.

If a CBA is determined not feasible, parties must renegotiate a modified CBA that may be presented to the Legislature that is still in session if certified as financially feasible for the state.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): The Joint Committee on Employment Relations may review issues affecting collective bargaining rather than legislative proposals. Clarifies that negotiations and impasse procedures for any agreement for the term 2023-2025, and thereafter, is under the provisions of the Personnel System Reform Act of 2002. Expiration of binding interest arbitration is changed from July 1, 2022, to July 1, 2023. Arbitrators must take into consideration wages, hours, and working conditions of personnel in states of comparable size, revenue, and incarceration rates rather than western states. Commas are removed to clarify that persons who are public employees solely for the purpose of collective bargaining are not eligible for PERS.

Appropriation: None.

Fiscal Note: Requested on May 21, 2015.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: We support access to the state collective bargaining process and negotiations. Idaho and Oregon have made changes to be more transparent in their negotiations. OFM's posting of CBAs and summaries of CBAs are smart reforms.

CON: Not sure why this bill is necessary. Serious negotiations are not open to the public. The Committee can meet whenever it wants. Bill includes overly prescriptive summaries of CBAs. The interest arbitration provisions excludes other public safety groups and expires.

Financial feasibility standard is too restrictive. Open public meetings will unduly impede bargaining. The Committee's role is unnecessarily expanded into bargaining. Posting of CBAs and CBA summaries on a website will cause confusion because CBAs are contextual. Cannot support preventing other public safety employees from receiving interest arbitration and the sunset of interest arbitration to DOC employees. Bill is a distraction. It does not fund the CBAs or the state's education responsibilities. No tax break or spending program is held to the bill's financial feasibility standard. Legislature is asking CBA negotiations to an open meeting standard the Legislature does not meet. I am an individual provider. Between low wages and reduced hours, I cannot save for retirement. I work other jobs in addition to being an individual provider; I will work until my death. Legislature should respect the will of the voters who allowed for collective bargaining of wages and benefits, which includes retirement. Oppose the legislation, especially the portion on retirement. State would pay more if our clients were institutionalized. Many have left other jobs and made other sacrifices to care for our loved ones. Our ability to save for retirement is prohibitive due to the low wages we receive. Bill sets an arbitrary retirement benefit limit. I am a member of SEIU 775 and earn \$11.31 an hour after earning several professional certificates. In 2005 I was in a traumatic accident leaving me with paralysis and unable to work. After some recovery, I began to assist with my mother's care and began additional training to be an individual provider. I am paid poverty level wages and work three jobs, leaving me unable to save for emergencies let alone retirement. The voter initiative allowed for bargaining of retirement and the Legislature should respect the voters' wishes. Oppose sections 2 and 5, which relate to public school collective bargaining, and believe these will impede our negotiations. Bill is not advisable. Public negotiations of bargaining will not improve the process. Current system provides significant public input and legislative oversight. Financial feasibility and approval of the contracts ultimately rests with the Legislature. Financial feasibility does not neatly fit into a mathematical formula. Current flexible standard allows the executive branch to negotiate in good faith. Average wages are not \$17 and hour, more like \$12 an hour. Appreciate allowing a retirement benefit and a defined contribution plan. However, cap on benefit is too low and unions will want to bargain higher. Our company's employer contribution is much higher, increasing to 20 percent with employees with 20 years of service.

Persons Testifying: PRO: Maxford Nelsen, Freedom Foundation.

CON: Joe Kendo, WA State Labor Council, AFL-CIO; Greg Devereux, WA Federation of State Employees, AFSCME Council 28; Michelle Woodrow, Teamsters Local 117; Sharon Kitchel, Dave Lindberg, Heather Garcia Imus, citizen; Peter Nazzal, Catholic Community Services; Dan Steele, WA Association of School Administrators; John Lane, OFM.

Persons Signed in to Testify But Not Testifying: No one.