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**SENATE BILL 5237**

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

**By** Senators Hewitt, Baumgartner, King, Braun, Honeyford, and Fraser

Read first time 01/16/15. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to restrictions on when representation under a  
2 public collective bargaining agreement may be challenged; amending  
3 RCW 41.56.070, 41.59.070, 41.76.020, 41.80.080, 49.39.040, and  
4 47.64.135; and adding a new section to chapter 28B.52 RCW.

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

6            **Sec. 1.** RCW 41.56.070 and 2012 c 117 s 83 are each amended to  
7 read as follows:

8            In the event the commission elects to conduct an election to  
9 ascertain the exclusive bargaining representative, and upon the  
10 request of a prospective bargaining representative showing written  
11 proof of at least thirty percent representation of the public  
12 employees within the unit, the commission shall hold an election by  
13 secret ballot to determine the issue. The ballot shall contain the  
14 name of such bargaining representative and of any other bargaining  
15 representative showing written proof of at least ten percent  
16 representation of the public employees within the unit, together with  
17 a choice for any public employee to designate that he or she does not  
18 desire to be represented by any bargaining agent. Where more than one  
19 organization is on the ballot and neither of the three or more  
20 choices receives a majority vote of the public employees within the  
21 bargaining unit, a run-off election shall be held. The run-off ballot

1 shall contain the two choices which received the largest and second-  
2 largest number of votes. No question concerning representation may be  
3 raised within one year of a certification or attempted certification.  
4 Where there is a valid collective bargaining agreement in effect, no  
5 question of representation may be raised except during the period not  
6 more than (~~ninety~~) one hundred fifty days nor less than sixty days  
7 prior to the expiration date of the agreement. Any agreement which  
8 contains a provision for automatic renewal or extension of the  
9 agreement shall not be a valid agreement; nor shall any agreement be  
10 valid if it provides for a term of existence for more than three  
11 years, except that any agreement entered into between school  
12 districts, cities, counties, or municipal corporations, and their  
13 respective employees, may provide for a term of existence of up to  
14 six years.

15 **Sec. 2.** RCW 41.59.070 and 1975 1st ex.s. c 288 s 8 are each  
16 amended to read as follows:

17 (1) Any employee organization may file a request with the  
18 commission for recognition as the exclusive representative. Such  
19 request shall allege that a majority of the employees in an  
20 appropriate collective bargaining unit wish to be represented for the  
21 purpose of collective bargaining by such organization, shall describe  
22 the grouping of jobs or positions which constitute the unit claimed  
23 to be appropriate, shall be supported by credible evidence  
24 demonstrating that at least thirty percent of the employees in the  
25 appropriate unit desire the organization requesting recognition as  
26 their exclusive representative, and shall indicate the name, address,  
27 and telephone number of any other interested employee organization,  
28 if known to the requesting organization.

29 (2) The commission shall determine the exclusive representative  
30 by conducting an election by secret ballot, except under the  
31 following circumstances:

32 (a) In instances where a serious unfair labor practice has been  
33 committed which interfered with the election process and precluded  
34 the holding of a fair election, the commission shall determine the  
35 exclusive bargaining representative by an examination of organization  
36 membership rolls or a comparison of signatures on organization  
37 bargaining authorization cards.

38 (b) In instances where there is then in effect a lawful written  
39 collective bargaining agreement between the employer and another

1 employee organization covering any employees included in the unit  
2 described in the request for recognition, the request for recognition  
3 shall not be entertained unless it shall be filed within the time  
4 limits prescribed in subsection (3) of this section for  
5 decertification or a new recognition election.

6 (c) In instances where within the previous twelve months another  
7 employee organization has been lawfully recognized or certified as  
8 the exclusive bargaining representative of any employees included in  
9 the unit described in the request for recognition, the request for  
10 recognition shall not be entertained.

11 (d) In instances where the commission has within the previous  
12 twelve months conducted a secret ballot election involving any  
13 employees included in the unit described in the request for  
14 recognition in which a majority of the valid ballots cast chose not  
15 to be represented by any employee organization, the request for  
16 recognition shall not be entertained.

17 (3) Whenever the commission conducts an election to ascertain the  
18 exclusive bargaining representative, the ballot shall contain the  
19 name of the proposed bargaining representative and of any other  
20 bargaining representative showing written proof of at least ten  
21 percent representation of the educational employees within the unit,  
22 together with a choice for any educational employee to designate that  
23 he or she does not desire to be represented by any bargaining agent.  
24 Where more than one organization is on the ballot and neither of the  
25 three or more choices receives a majority of the valid ballots cast  
26 by the educational employees within the bargaining unit, a run-off  
27 election shall be held. The run-off ballot shall contain the two  
28 choices which receive the largest and second largest number of votes.  
29 No question concerning representation may be raised within one year  
30 of a certification or attempted certification. Where there is a valid  
31 collective bargaining agreement in effect, no question of  
32 representation may be raised except during the period not more than  
33 (~~ninety~~) one hundred fifty days nor less than sixty days prior to  
34 the expiration date of the agreement. In the event that a valid  
35 collective bargaining agreement, together with any renewals or  
36 extensions thereof, has been or will be in existence for three years,  
37 then the question of representation may be raised not more than  
38 (~~ninety~~) one hundred fifty days nor less than sixty days prior to  
39 the third anniversary date of the agreement or any renewals or  
40 extensions thereof as long as such renewals and extensions do not

1 exceed three years; and if the exclusive bargaining representative is  
2 removed as a result of such procedure, the then existing collective  
3 bargaining agreement shall be terminable by the new exclusive  
4 bargaining representative so selected within sixty days after its  
5 certification or terminated on its expiration date, whichever is  
6 sooner, or if no exclusive bargaining representative is so selected,  
7 then the agreement shall be deemed to be terminated at its expiration  
8 date or as of such third anniversary date, whichever is sooner.

9 (4) Within the time limits prescribed in subsection (3) of this  
10 section, a petition may be filed signed by at least thirty percent of  
11 the employees of a collective bargaining unit, then represented by an  
12 exclusive bargaining representative, alleging that a majority of the  
13 employees in that unit do not wish to be represented by an employee  
14 organization, requesting that the exclusive bargaining representative  
15 be decertified, and indicating the name, address and telephone number  
16 of the exclusive bargaining representative and any other interested  
17 employee organization, if known. Upon the verification of the  
18 signatures on the petition, the commission shall conduct an election  
19 by secret ballot as prescribed by subsection (3) of this section.

20 **Sec. 3.** RCW 41.76.020 and 2002 c 356 s 7 are each amended to  
21 read as follows:

22 The commission shall certify exclusive bargaining representatives  
23 in accordance with the procedures specified in this section.

24 (1) No question concerning representation may be raised within  
25 one year following issuance of a certification under this section.

26 (2) If there is a valid collective bargaining agreement in  
27 effect, no question concerning representation may be raised except  
28 during the period not more than (~~ninety~~) one hundred fifty days nor  
29 less than sixty days prior to the expiration date of the agreement:  
30 PROVIDED, That in the event a valid collective bargaining agreement,  
31 together with any renewals or extensions thereof, has been or will be  
32 in existence for more than three years, then a question concerning  
33 representation may be raised not more than (~~ninety~~) one hundred  
34 fifty days nor less than sixty days prior to the third anniversary  
35 date or any subsequent anniversary date of the agreement; and if the  
36 exclusive bargaining representative is removed as the result of such  
37 procedure, the collective bargaining agreement shall be deemed to be  
38 terminated as of the date of the certification or the anniversary  
39 date following the filing of the petition, whichever is later.

1 (3) An employee organization seeking certification as exclusive  
2 bargaining representative of a bargaining unit, or faculty members  
3 seeking decertification of their exclusive bargaining representative,  
4 must make a confidential showing to the commission of credible  
5 evidence demonstrating that at least thirty percent of the faculty in  
6 the bargaining unit are in support of the petition. The petition must  
7 indicate the name, address, and telephone number of any employee  
8 organization known to claim an interest in the bargaining unit.

9 (4) A petition filed by an employer must be supported by credible  
10 evidence demonstrating the good faith basis on which the employer  
11 claims the existence of a question concerning the representation of  
12 its faculty.

13 (5) Any employee organization which makes a confidential showing  
14 to the commission of credible evidence demonstrating that it has the  
15 support of at least ten percent of the faculty in the bargaining unit  
16 involved is entitled to intervene in proceedings under this section  
17 and to have its name listed as a choice on the ballot in an election  
18 conducted by the commission.

19 (6) The commission shall determine any question concerning  
20 representation by conducting a secret ballot election among the  
21 faculty members in the bargaining unit, except under the following  
22 circumstances:

23 (a) If only one employee organization is seeking certification as  
24 exclusive bargaining representative of a bargaining unit for which  
25 there is no incumbent exclusive bargaining representative, the  
26 commission may, upon the concurrence of the employer and the employee  
27 organization, determine the question concerning representation by  
28 conducting a cross-check comparing the employee organization's  
29 membership records or bargaining authorization cards against the  
30 employment records of the employer; or

31 (b) If the commission determines that a serious unfair labor  
32 practice has been committed which interfered with the election  
33 process and precludes the holding of a fair election, the commission  
34 may determine the question concerning representation by conducting a  
35 cross-check comparing the employee organization's membership records  
36 or bargaining authorization cards against the employment records of  
37 the employer.

38 (7) The representation election ballot must contain a choice for  
39 each employee organization qualifying under subsection (3) or (5) of  
40 this section, together with a choice for no representation. The

1 representation election shall be determined by the majority of the  
2 valid ballots cast. If there are three or more choices on the ballot  
3 and none of the three or more choices receives a majority of the  
4 valid ballots cast, a runoff election shall be conducted between the  
5 two choices receiving the highest and second highest numbers of  
6 votes.

7 (8) The commission shall certify as the exclusive bargaining  
8 representative the employee organization that has been determined to  
9 represent a majority of faculty members in a bargaining unit.

10 **Sec. 4.** RCW 41.80.080 and 2002 c 354 s 309 are each amended to  
11 read as follows:

12 (1) The commission shall determine all questions pertaining to  
13 representation and shall administer all elections and be responsible  
14 for the processing and adjudication of all disputes that arise as a  
15 consequence of elections. The commission shall adopt rules that  
16 provide for at least the following:

- 17 (a) Secret balloting;
- 18 (b) Consulting with employee organizations;
- 19 (c) Access to lists of employees, job classification, work  
20 locations, and home mailing addresses;
- 21 (d) Absentee voting;
- 22 (e) Procedures for the greatest possible participation in voting;
- 23 (f) Campaigning on the employer's property during working hours;
- 24 and
- 25 (g) Election observers.

26 (2)(a) If an employee organization has been certified as the  
27 exclusive bargaining representative of the employees of a bargaining  
28 unit, the employee organization may act for and negotiate master  
29 collective bargaining agreements that will include within the  
30 coverage of the agreement all employees in the bargaining unit as  
31 provided in RCW 41.80.010(2)(a). However, if a master collective  
32 bargaining agreement is in effect for the exclusive bargaining  
33 representative, it shall apply to the bargaining unit for which the  
34 certification has been issued. Nothing in this section requires the  
35 parties to engage in new negotiations during the term of that  
36 agreement.

37 (b) This subsection (2) does not apply to exclusive bargaining  
38 representatives who represent employees of institutions of higher  
39 education.

1 (3) The certified exclusive bargaining representative shall be  
2 responsible for representing the interests of all the employees in  
3 the bargaining unit. This section shall not be construed to limit an  
4 exclusive representative's right to exercise its discretion to refuse  
5 to process grievances of employees that are unmeritorious.

6 (4) No question concerning representation may be raised if:

7 (a) Fewer than twelve months have elapsed since the last  
8 certification or election; or

9 (b) A valid collective bargaining agreement exists covering the  
10 unit, except for that period of no more than one hundred (~~twenty~~)  
11 fifty calendar days nor less than (~~ninety~~) sixty calendar days  
12 before the expiration of the contract.

13 **Sec. 5.** RCW 49.39.040 and 2010 c 6 s 5 are each amended to read  
14 as follows:

15 If the commission elects to conduct an election to ascertain the  
16 exclusive bargaining representative, and upon the request of a  
17 prospective bargaining representative showing written proof of at  
18 least thirty percent representation of the symphony musicians within  
19 the unit, the commission shall hold an election by secret ballot to  
20 determine the issue. The ballot shall contain the name of the  
21 bargaining representative and of any other bargaining representative  
22 showing written proof of at least ten percent representation of the  
23 symphony musicians within the unit, together with a choice for any  
24 symphony musician to designate that he or she does not desire to be  
25 represented by any bargaining agent. Where more than one organization  
26 is on the ballot and neither of the three or more choices receives a  
27 majority vote of valid ballots cast, a run-off election shall be  
28 held. The run-off ballot shall contain the two choices which received  
29 the largest and second-largest number of votes. No question  
30 concerning representation may be raised within one year of a  
31 certification or attempted certification. Where there is a valid  
32 collective bargaining agreement in effect, no question of  
33 representation may be raised except during the period not more than  
34 (~~ninety~~) one hundred fifty days nor less than sixty days prior to  
35 the expiration date of the agreement. Any agreement which contains a  
36 provision for automatic renewal or extension of the agreement shall  
37 not be a valid agreement; nor shall any agreement be valid if it  
38 provides for a term of existence for more than three years.

1       **Sec. 6.** RCW 47.64.135 and 2011 1st sp.s. c 16 s 27 are each  
2 amended to read as follows:

3       (1) The commission shall determine all questions pertaining to  
4 representation and shall administer all elections and be responsible  
5 for the processing and adjudication of all disputes that arise as a  
6 consequence of elections. The commission shall adopt rules that  
7 provide for at least the following:

8       (a) Secret balloting;

9       (b) Consulting with employee organizations;

10       (c) Access to lists of employees, job classification, work  
11 locations, and home mailing addresses;

12       (d) Absentee voting;

13       (e) Procedures for the greatest possible participation in voting;

14       (f) Campaigning on the employer's property during working hours;

15 and

16       (g) Election observers.

17       (2) If an employee organization has been certified as the  
18 exclusive bargaining representative of the employees of a bargaining  
19 unit, the employee organization may act for and negotiate master  
20 collective bargaining agreements that will include within the  
21 coverage of the agreement all employees in the bargaining unit.

22       (3) The certified exclusive bargaining representative is  
23 responsible for representing the interests of all the employees in  
24 the bargaining unit. This section shall not be construed to limit an  
25 exclusive representative's right to exercise its discretion to refuse  
26 to process grievances of employees that are unmeritorious.

27       (4) No question concerning representation may be raised if:

28       (a) Fewer than twelve months have elapsed since the last  
29 certification or election; or

30       (b) A valid collective bargaining agreement exists covering the  
31 unit, except for that period of no more than one hundred (~~twenty~~)  
32 eighty calendar days and no less than ninety calendar days before the  
33 expiration of the contract.

34       NEW SECTION. **Sec. 7.** A new section is added to chapter 28B.52  
35 RCW to read as follows:

36       Academic employees may petition the commission for an election to  
37 change or reject their exclusive bargaining representative, subject  
38 to the following conditions:



1           (1) Petitioners must show written proof of at least thirty  
2 percent representation of the academic employees within the  
3 bargaining unit; and  
4           (2) A question concerning representation may not be raised if:  
5           (a) Fewer than twelve months have elapsed since the last  
6 certification or election; or  
7           (b) A valid collective bargaining agreement exists covering the  
8 unit, except for that period of no more than one hundred fifty  
9 calendar days and no less than sixty calendar days before the  
10 expiration of the contract.

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