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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

Read first time 02/02/15. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to the public employees' collective bargaining  
2 act as applied to commissioned officers of the department of fish and  
3 wildlife; amending RCW 41.80.020; and adding new sections to chapter  
4 41.56 RCW.

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

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

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

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

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

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

20            (c) The exclusive bargaining representative certified to  
21 represent the bargaining unit of employees described in subsection

1 (1) of this section existing at the department of fish and wildlife  
2 on the effective date of this section shall continue as the exclusive  
3 bargaining representative without the necessity of an election.

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

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

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

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

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

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

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

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

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

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

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

30 In addition to the classes of employees listed in RCW 41.56.030,  
31 the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470,  
32 41.56.480, and 41.56.490 also apply to employees of the state working  
33 for the department of fish and wildlife as described in section 1(1)  
34 of this act, subject to the following:

35 (1) Within ten working days after the first Monday in September  
36 of every odd-numbered year, the governor or the governor's designee  
37 and the bargaining representative for the appropriate bargaining unit  
38 shall attempt to agree on an interest arbitration panel consisting of  
39 three members to be used if the parties are not successful in

1 negotiating a comprehensive collective bargaining agreement. Each  
2 party shall name one person to serve as its arbitrator on the  
3 arbitration panel. The two members so appointed shall meet within  
4 seven days following the appointment of the later appointed member to  
5 attempt to choose a third member to act as the neutral chair of the  
6 arbitration panel. Upon the failure of the arbitrators to select a  
7 neutral chair within seven days, the two appointed members shall use  
8 one of the two following options in the appointment of the third  
9 member, who shall act as chair of the panel: (a) By mutual consent,  
10 the two appointed members may jointly request the commission to, and  
11 the commission shall, appoint a third member within two days of such  
12 a request. Costs of each party's appointee shall be borne by each  
13 party respectively; other costs of the arbitration proceedings shall  
14 be borne by the commission; or (b) either party may apply to the  
15 commission, the federal mediation and conciliation service, or the  
16 American arbitration association to provide a list of five qualified  
17 arbitrators from which the neutral chair shall be chosen. Each party  
18 shall pay the fees and expenses of its arbitrator, and the fees and  
19 expenses of the neutral chair shall be shared equally between the  
20 parties. Immediately upon selecting an interest arbitration panel,  
21 the parties shall cooperate to reserve dates with the arbitration  
22 panel for potential arbitration between August 1st and September 15th  
23 of the following even-numbered year. The parties shall also prepare a  
24 schedule of at least five negotiation dates for the following year,  
25 absent an agreement to the contrary. The parties shall execute a  
26 written agreement before November 1st of each odd-numbered year  
27 setting forth the names of the members of the arbitration panel and  
28 the dates reserved for bargaining and arbitration. This subsection  
29 imposes minimum obligations only and is not intended to define or  
30 limit a party's full, good faith bargaining obligation under other  
31 sections of this chapter.

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

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

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

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

5 (c) Stipulations of the parties;

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

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

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

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

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

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

29 **Sec. 3.** RCW 41.80.020 and 2013 2nd sp.s. c 4 s 972 are each  
30 amended to read as follows:

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

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

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

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

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

4 (3) Matters subject to bargaining include the number of names to  
5 be certified for vacancies, promotional preferences, and the dollar  
6 amount expended on behalf of each employee for health care benefits.  
7 However, except as provided otherwise in this subsection for  
8 institutions of higher education, negotiations regarding the number  
9 of names to be certified for vacancies, promotional preferences, and  
10 the dollar amount expended on behalf of each employee for health care  
11 benefits shall be conducted between the employer and one coalition of  
12 all the exclusive bargaining representatives subject to this chapter  
13 and all the exclusive bargaining representatives subject to section 1  
14 of this act. The exclusive bargaining representatives for employees  
15 that are subject to chapter 47.64 RCW shall bargain the dollar amount  
16 expended on behalf of each employee for health care benefits with the  
17 employer as part of the coalition under this subsection. Any such  
18 provision agreed to by the employer and the coalition shall be  
19 included in all master collective bargaining agreements negotiated by  
20 the parties. For institutions of higher education, promotional  
21 preferences and the number of names to be certified for vacancies  
22 shall be bargained under the provisions of RCW 41.80.010(4). For  
23 agreements covering the 2013-2015 fiscal biennium, any agreement  
24 between the employer and the coalition regarding the dollar amount  
25 expended on behalf of each employee for health care benefits is a  
26 separate agreement and shall not be included in the master collective  
27 bargaining agreements negotiated by the parties.

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

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

37 (6) Except as otherwise provided in this chapter, if a conflict  
38 exists between an executive order, administrative rule, or agency  
39 policy relating to wages, hours, and terms and conditions of  
40 employment and a collective bargaining agreement negotiated under

1 this chapter, the collective bargaining agreement shall prevail. A  
2 provision of a collective bargaining agreement that conflicts with  
3 the terms of a statute is invalid and unenforceable.

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

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

8 (1) Collective bargaining negotiations between the state and  
9 bargaining units of employees working for the department of fish and  
10 wildlife under this chapter shall commence no later than July 1,  
11 2016. A collective bargaining agreement between the state and any  
12 bargaining unit of employees working for the department of fish and  
13 wildlife entered into under this chapter shall not be effective prior  
14 to July 1, 2017.

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

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

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