
SENATE BILL 6410

State of Washington

64th Legislature

2016 Regular Session

By Senators Hewitt and Warnick

Read first time 01/20/16. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to requiring periodic certification elections for
2 labor unions representing public employees; and amending RCW
3 41.56.060, 41.56.070, 41.80.070, 41.80.080, 28B.52.030, 41.76.020,
4 and 41.59.070.

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

6 **Sec. 1.** RCW 41.56.060 and 2005 c 232 s 1 are each amended to
7 read as follows:

8 (1) The commission, after hearing upon reasonable notice, shall
9 decide in each application for certification as an exclusive
10 bargaining representative, the unit appropriate for the purpose of
11 collective bargaining. In determining, modifying, or combining the
12 bargaining unit, the commission shall consider the duties, skills,
13 and working conditions of the public employees; the history of
14 collective bargaining by the public employees and their bargaining
15 representatives; the extent of organization among the public
16 employees; and the desire of the public employees. The commission
17 ((shall)) must determine the bargaining representative by((~~:(a)~~
18 ~~Examination of organization membership rolls; (b) comparison of~~
19 ~~signatures on organization bargaining authorization cards; or (c))~~)
20 conducting an election specifically therefor.

1 (2) For classified employees of school districts and educational
2 service districts:

3 (a) Appropriate bargaining units existing on July 24, 2005, may
4 not be divided into more than one unit without the agreement of the
5 public employer and the certified bargaining representative of the
6 unit; and

7 (b) In making bargaining unit determinations under this section,
8 the commission must consider, in addition to the factors listed in
9 subsection (1) of this section, the avoidance of excessive
10 fragmentation.

11 **Sec. 2.** RCW 41.56.070 and 2012 c 117 s 83 are each amended to
12 read as follows:

13 ~~((In the event the commission elects to conduct an election to
14 ascertain the exclusive bargaining representative, and))~~ (1) Upon the
15 request of a prospective bargaining representative showing written
16 proof of at least thirty percent representation of the public
17 employees within the unit, the commission shall hold an election by
18 secret ballot to determine the issue. The ballot shall contain the
19 name of such bargaining representative and of any other bargaining
20 representative showing written proof of at least ten percent
21 representation of the public employees within the unit, together with
22 a choice ~~((for any public employee to designate that he or she does
23 not desire to be represented by any bargaining agent))~~ of no union
24 representation. Where more than one organization is on the ballot and
25 neither of the three or more choices receives a majority vote of the
26 public employees within the bargaining unit, a run-off election shall
27 be held. The run-off ballot shall contain the two choices which
28 received the largest and second-largest number of votes. No question
29 concerning representation may be raised within one year of ~~((a
30 certification—or))~~ an attempted certification or successful
31 decertification. Where there is a valid collective bargaining
32 agreement in effect, no question of representation may be raised
33 except ~~((during the period not more than ninety nor less than sixty
34 days prior to the expiration date of the agreement))~~ as provided in
35 subsection (2) of this section. Any agreement ~~((which))~~ that contains
36 a provision for automatic renewal or extension of the agreement
37 ~~((shall not be))~~ is not a valid agreement; nor ~~((shall))~~ is any
38 agreement ~~((be))~~ valid if it provides for a term of existence for
39 more than three years, except that any agreement entered into between

1 school districts, cities, counties, or municipal corporations, and
2 their respective employees, may provide for a term of existence of up
3 to six years.

4 (2) Once a bargaining representative has been certified by the
5 commission to represent a bargaining unit, the commission must
6 conduct periodic secret ballot elections for the members of the unit
7 to determine the bargaining representative, subject to the following
8 conditions:

9 (a) For the bargaining units of adult family home providers,
10 family child care providers, individual providers, and language
11 access providers, the commission must conduct an election to
12 determine the bargaining representative during every even-numbered
13 year. For bargaining units of classified employees of school
14 districts, educational service districts, or institutions of higher
15 education that are education providers under chapter 28A.193 RCW, the
16 commission must conduct an election to determine the bargaining
17 representative during every even-numbered year. For all other
18 bargaining units covered by this chapter, the commission must conduct
19 an election to determine the bargaining representative during every
20 odd-numbered year;

21 (b) The existing bargaining representative must be on the ballot
22 automatically and a choice of no union representation must also be on
23 the ballot automatically. Any other bargaining representative may
24 appear on the ballot by providing the commission with proof of
25 interest from at least ten percent of the bargaining unit; and

26 (c) The commission must certify the bargaining representative
27 that receives a majority of the votes cast by members of the
28 bargaining unit. If a bargaining representative other than the
29 incumbent exclusive bargaining representative is certified, the then
30 existing collective bargaining agreement is terminable by the new
31 bargaining representative within sixty days after its certification
32 or terminated on its expiration date, whichever is sooner. If a
33 majority of votes cast by members of the bargaining unit are for no
34 union representation, then the incumbent bargaining representative
35 loses its certification and the agreement is deemed to be terminated
36 at its expiration date or third anniversary date, whichever is
37 sooner.

38 **Sec. 3.** RCW 41.80.070 and 2002 c 354 s 308 are each amended to
39 read as follows:

1 (1) A bargaining unit of employees covered by this chapter
2 existing on June 13, 2002, shall be considered an appropriate unit,
3 unless the unit does not meet the requirements of (a) and (b) of this
4 subsection. The commission, after hearing upon reasonable notice to
5 all interested parties, shall decide, in each application for
6 certification as an exclusive bargaining representative, the unit
7 appropriate for certification. In determining the new units or
8 modifications of existing units, the commission shall consider: The
9 duties, skills, and working conditions of the employees; the history
10 of collective bargaining; the extent of organization among the
11 employees; the desires of the employees; and the avoidance of
12 excessive fragmentation. However, a unit is not appropriate if it
13 includes:

14 (a) Both supervisors and nonsupervisory employees. A unit that
15 includes only supervisors may be considered appropriate if a majority
16 of the supervisory employees indicates by vote that they desire to be
17 included in such a unit; or

18 (b) More than one institution of higher education. For the
19 purposes of this section, any branch or regional campus of an
20 institution of higher education is part of that institution of higher
21 education.

22 ~~(2) ((The exclusive bargaining representatives certified to~~
23 ~~represent the bargaining units existing on June 13, 2002, shall~~
24 ~~continue as the exclusive bargaining representative without the~~
25 ~~necessity of an election.~~

26 ~~(3))~~) If a single employee organization is the exclusive
27 bargaining representative for two or more units, upon petition by the
28 employee organization, the units may be consolidated into a single
29 larger unit if the commission considers the larger unit to be
30 appropriate. If consolidation is appropriate, the commission shall
31 certify the employee organization as the exclusive bargaining
32 representative of the new unit.

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

35 (1) The commission shall determine all questions pertaining to
36 representation and shall administer all elections and be responsible
37 for the processing and adjudication of all disputes that arise as a
38 consequence of elections. The commission shall adopt rules that
39 provide for at least the following:

- 1 (a) Secret balloting;
- 2 (b) Consulting with employee organizations;
- 3 (c) Access to lists of employees, job classification, work
- 4 locations, and home mailing addresses;
- 5 (d) Absentee voting;
- 6 (e) Procedures for the greatest possible participation in voting;
- 7 (f) Campaigning on the employer's property during working hours;
- 8 and
- 9 (g) Election observers.

10 (2)(a) If an employee organization has been certified as the
11 exclusive bargaining representative of the employees of a bargaining
12 unit, the employee organization may act for and negotiate master
13 collective bargaining agreements that will include within the
14 coverage of the agreement all employees in the bargaining unit as
15 provided in RCW 41.80.010(2)(a). However, if a master collective
16 bargaining agreement is in effect for the exclusive bargaining
17 representative, it shall apply to the bargaining unit for which the
18 certification has been issued. Nothing in this section requires the
19 parties to engage in new negotiations during the term of that
20 agreement.

21 (b) This subsection (2) does not apply to exclusive bargaining
22 representatives who represent employees of institutions of higher
23 education.

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

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

30 (a) Fewer than twelve months have elapsed since the last
31 (~~certification or election~~) attempted certification or successful
32 decertification; or

33 (b) A valid collective bargaining agreement exists (~~covering the~~
34 ~~unit, except for that period of no more than one hundred twenty~~
35 ~~calendar days nor less than ninety calendar days before the~~
36 ~~expiration of the contract~~), except as provided in subsection (5) of
37 this section.

38 (5) Once an employee organization has been certified by the
39 commission as the exclusive bargaining representative of a bargaining
40 unit, the commission must conduct periodic secret ballot elections

1 for the members of the unit to determine the exclusive bargaining
2 representative, subject to the following conditions:

3 (a) An election to determine the bargaining representative must
4 be conducted during every even-numbered year;

5 (b) The existing exclusive bargaining representative must be on
6 the ballot automatically and a choice of no union representation must
7 also be on the ballot automatically. Any other employee organization
8 may appear on the ballot by providing the commission with proof of
9 interest from at least ten percent of the bargaining unit; and

10 (c) The commission must certify as the exclusive bargaining
11 representative the employee organization that receives a majority of
12 the votes cast by members of the bargaining unit. If an employee
13 organization other than the incumbent exclusive bargaining
14 representative is certified, the then existing collective bargaining
15 agreement is terminable by the new exclusive bargaining
16 representative within sixty days after its certification or
17 terminated on its expiration date, whichever is sooner. If a majority
18 of votes cast by members of the bargaining unit are for no union
19 representation, then the incumbent employee organization loses its
20 certification as the exclusive bargaining representative and the
21 agreement is deemed to be terminated at its expiration date or third
22 anniversary date, whichever is sooner.

23 **Sec. 5.** RCW 28B.52.030 and 1991 c 238 s 147 are each amended to
24 read as follows:

25 (1) Representatives of an employee organization, which
26 organization (~~shall~~) has by secret ballot (~~have~~) won a majority
27 in an election to represent the academic employees within its college
28 district, (~~shall have~~) has the right to bargain as defined in RCW
29 28B.52.020(8).

30 (2) No question concerning representation may be raised:

31 (a) Within one year of an attempted certification or successful
32 decertification; or

33 (b) Where there is a valid collective bargaining agreement in
34 effect, except as provided in subsection (3) of this section.

35 (3) Once an employee organization has been certified by the
36 commission as the exclusive bargaining representative of a bargaining
37 unit, the commission must conduct periodic secret ballot elections
38 for the members of the unit to determine the exclusive bargaining
39 representative, subject to the following conditions:

1 (a) An election to determine the bargaining representative must
2 be conducted during every even-numbered year;

3 (b) The existing exclusive bargaining representative must be on
4 the ballot automatically and a choice of no union representation must
5 also be on the ballot automatically. Any other employee organization
6 may appear on the ballot by providing the commission with proof of
7 interest from at least ten percent of the bargaining unit; and

8 (c) The commission must certify as the exclusive bargaining
9 representative the employee organization that receives a majority of
10 the votes cast by members of the bargaining unit. If an employee
11 organization other than the incumbent exclusive bargaining
12 representative is certified, the then existing collective bargaining
13 agreement is terminable by the new exclusive bargaining
14 representative within sixty days after its certification or
15 terminated on its expiration date, whichever is sooner. If a majority
16 of votes cast by members of the bargaining unit are for no union
17 representation, then the incumbent employee organization loses its
18 certification as the exclusive bargaining representative and the
19 agreement is deemed to be terminated at its expiration date or third
20 anniversary date, whichever is sooner.

21 **Sec. 6.** RCW 41.76.020 and 2002 c 356 s 7 are each amended to
22 read as follows:

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

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

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

1 ~~anniversary date following the filing of the petition, whichever is~~
2 ~~later.~~

3 ~~(3)) :~~

4 (a) Within one year following an attempted certification or
5 successful decertification; or

6 (b) If there is a valid collective bargaining agreement in
7 effect, except as provided in subsection (8) of this section.

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

16 ~~((4))~~ (3) A petition filed by an employer must be supported by
17 credible evidence demonstrating the good faith basis on which the
18 employer claims the existence of a question concerning the
19 representation of its faculty.

20 ~~((5))~~ (4) Any employee organization ((which)) that makes a
21 confidential showing to the commission of credible evidence
22 demonstrating that it has the support of at least ten percent of the
23 faculty in the bargaining unit involved is entitled to intervene in
24 proceedings under this section and to have its name listed as a
25 choice on the ballot in an election conducted by the commission.

26 ~~((6))~~ (5) The commission shall determine any question
27 concerning representation by conducting a secret ballot election
28 among the faculty members in the bargaining unit(~~(, except under the~~
29 following circumstances:

30 ~~(a) If only one employee organization is seeking certification as~~
31 ~~exclusive bargaining representative of a bargaining unit for which~~
32 ~~there is no incumbent exclusive bargaining representative, the~~
33 ~~commission may, upon the concurrence of the employer and the employee~~
34 ~~organization, determine the question concerning representation by~~
35 ~~conducting a cross-check comparing the employee organization's~~
36 ~~membership records or bargaining authorization cards against the~~
37 ~~employment records of the employer; or~~

38 ~~(b) If the commission determines that a serious unfair labor~~
39 ~~practice has been committed which interfered with the election~~
40 ~~process and precludes the holding of a fair election, the commission~~

1 ~~may determine the question concerning representation by conducting a~~
2 ~~cross-check comparing the employee organization's membership records~~
3 ~~or bargaining authorization cards against the employment records of~~
4 ~~the employer)).~~

5 ~~((+7))~~ (6) The representation election ballot must contain a
6 choice for each employee organization qualifying under subsection
7 ~~((+3) or (+5))~~ (2) or (4) of this section, together with a choice for
8 no union representation. The representation election shall be
9 determined by the majority of the valid ballots cast. If there are
10 three or more choices on the ballot and none of the three or more
11 choices receives a majority of the valid ballots cast, a runoff
12 election shall be conducted between the two choices receiving the
13 highest and second highest numbers of votes.

14 ~~((+8))~~ (7) The commission shall certify as the exclusive
15 bargaining representative the employee organization that has been
16 determined to represent a majority of faculty members in a bargaining
17 unit.

18 (8) Once an employee organization has been certified by the
19 commission as the exclusive bargaining representative of a bargaining
20 unit, the commission must conduct periodic secret ballot elections
21 for the members of the unit to determine the exclusive bargaining
22 representative, subject to the following conditions:

23 (a) An election to determine the bargaining representative must
24 be conducted during every even-numbered year;

25 (b) The existing exclusive bargaining representative must be on
26 the ballot automatically and a choice of no union representation must
27 also be on the ballot automatically. Any other employee organization
28 may appear on the ballot by providing the commission with proof of
29 interest from at least ten percent of the bargaining unit; and

30 (c) The commission must certify as the exclusive bargaining
31 representative the employee organization that receives a majority of
32 the votes cast by members of the bargaining unit. If an employee
33 organization other than the incumbent exclusive bargaining
34 representative is certified, the then existing collective bargaining
35 agreement is terminable by the new exclusive bargaining
36 representative within sixty days after its certification or
37 terminated on its expiration date, whichever is sooner. If a majority
38 of votes cast by members of the bargaining unit are for no union
39 representation, then the incumbent employee organization loses its
40 certification as the exclusive bargaining representative and the

1 agreement is deemed to be terminated at its expiration date or third
2 anniversary date, whichever is sooner.

3 **Sec. 7.** RCW 41.59.070 and 1975 1st ex.s. c 288 s 8 are each
4 amended to read as follows:

5 (1) Any employee organization may file a request with the
6 commission for recognition as the exclusive representative. Such
7 request shall allege that a majority of the employees in an
8 appropriate collective bargaining unit wish to be represented for the
9 purpose of collective bargaining by such organization, shall describe
10 the grouping of jobs or positions which constitute the unit claimed
11 to be appropriate, shall be supported by credible evidence
12 demonstrating that at least thirty percent of the employees in the
13 appropriate unit desire the organization requesting recognition as
14 their exclusive representative, and shall indicate the name, address,
15 and telephone number of any other interested employee organization,
16 if known to the requesting organization.

17 (2) The commission (~~shall~~) must determine the exclusive
18 representative by conducting an election by secret ballot(~~(, except~~
19 ~~under the following circumstances:~~

20 ~~(a) In instances where a serious unfair labor practice has been~~
21 ~~committed which interfered with the election process and precluded~~
22 ~~the holding of a fair election, the commission shall determine the~~
23 ~~exclusive bargaining representative by an examination of organization~~
24 ~~membership rolls or a comparison of signatures on organization~~
25 ~~bargaining authorization cards.~~

26 ~~(b) In instances where there is then in effect a lawful written~~
27 ~~collective bargaining agreement between the employer and another~~
28 ~~employee organization covering any employees included in the unit~~
29 ~~described in the request for recognition, the request for recognition~~
30 ~~shall not be entertained unless it shall be filed within the time~~
31 ~~limits prescribed in subsection (3) of this section for~~
32 ~~decertification or a new recognition election.~~

33 ~~(c) In instances where within the previous twelve months another~~
34 ~~employee organization has been lawfully recognized or certified as~~
35 ~~the exclusive bargaining representative of any employees included in~~
36 ~~the unit described in the request for recognition, the request for~~
37 ~~recognition shall not be entertained.~~

38 ~~(d) In instances where the commission has within the previous~~
39 ~~twelve months conducted a secret ballot election involving any~~

1 ~~employees included in the unit described in the request for~~
2 ~~recognition in which a majority of the valid ballots cast chose not~~
3 ~~to be represented by any employee organization, the request for~~
4 ~~recognition shall not be entertained)).~~

5 (3) Whenever the commission conducts an election to ascertain the
6 exclusive bargaining representative, the ballot shall contain the
7 name of the proposed bargaining representative and of any other
8 bargaining representative showing written proof of at least ten
9 percent representation of the educational employees within the unit,
10 together with a choice (~~for any educational employee to designate~~
11 ~~that he or she does not desire to be represented by any bargaining~~
12 ~~agent)) of no union representation. Where more than one organization
13 is on the ballot and neither of the three or more choices receives a
14 majority of the valid ballots cast by the educational employees
15 within the bargaining unit, a run-off election shall be held. The
16 run-off ballot shall contain the two choices which receive the
17 largest and second largest number of votes. No question concerning
18 representation may be raised within one year of (~~a certification~~
19 ~~or~~) an attempted certification or successful decertification. Where
20 there is a valid collective bargaining agreement in effect, no
21 question of representation may be raised except (~~during the period~~
22 ~~not more than ninety nor less than sixty days prior to the expiration~~
23 ~~date of the agreement. In the event that a valid collective~~
24 ~~bargaining agreement, together with any renewals or extensions~~
25 ~~thereof, has been or will be in existence for three years, then the~~
26 ~~question of representation may be raised not more than ninety nor~~
27 ~~less than sixty days prior to the third anniversary date of the~~
28 ~~agreement or any renewals or extensions thereof as long as such~~
29 ~~renewals and extensions do not exceed three years; and if the~~
30 ~~exclusive bargaining representative is removed as a result of such~~
31 ~~procedure, the then existing collective bargaining agreement shall be~~
32 ~~terminable by the new exclusive bargaining representative so selected~~
33 ~~within sixty days after its certification or terminated on its~~
34 ~~expiration date, whichever is sooner, or if no exclusive bargaining~~
35 ~~representative is so selected, then the agreement shall be deemed to~~
36 ~~be terminated at its expiration date or as of such third anniversary~~
37 ~~date, whichever is sooner.~~~~

38 (4) ~~Within the time limits prescribed in subsection (3) of this~~
39 ~~section, a petition may be filed signed by at least thirty percent of~~
40 ~~the employees of a collective bargaining unit, then represented by an~~

1 ~~exclusive bargaining representative, alleging that a majority of the~~
2 ~~employees in that unit do not wish to be represented by an employee~~
3 ~~organization, requesting that the exclusive bargaining representative~~
4 ~~be decertified, and indicating the name, address and telephone number~~
5 ~~of the exclusive bargaining representative and any other interested~~
6 ~~employee organization, if known. Upon the verification of the~~
7 ~~signatures on the petition, the commission shall conduct an election~~
8 ~~by secret ballot as prescribed by subsection (3) of this section)) as~~
9 ~~provided in subsection (4) of this section.~~

10 (4) Once an employee organization has been certified by the
11 commission as the exclusive bargaining representative of a collective
12 bargaining unit, the commission must conduct periodic secret ballot
13 elections for the members of the unit to determine the exclusive
14 bargaining representative, subject to the following conditions:

15 (a) An election to determine the bargaining representative must
16 be conducted during every even-numbered year;

17 (b) The existing exclusive bargaining representative must be on
18 the ballot automatically and a choice of no union representation must
19 also be on the ballot automatically. Any other employee organization
20 may appear on the ballot by providing the commission with proof of
21 interest from at least ten percent of the bargaining unit; and

22 (c) The commission must certify as the exclusive bargaining
23 representative the employee organization that receives a majority of
24 the votes cast by members of the bargaining unit. If an employee
25 organization other than the incumbent exclusive bargaining
26 representative is certified, the then existing collective bargaining
27 agreement is terminable by the new exclusive bargaining
28 representative within sixty days after its certification or
29 terminated on its expiration date, whichever is sooner. If a majority
30 of votes cast by members of the bargaining unit are for no union
31 representation, then the incumbent employee organization loses its
32 certification as the exclusive bargaining representative and the
33 agreement is deemed to be terminated at its expiration date or third
34 anniversary date, whichever is sooner.

--- END ---