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**SUBSTITUTE HOUSE BILL 2212**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Labor & Workplace Standards (originally sponsored by Representatives Blake, Chapman, Fitzgibbon, Ormsby, Sells, Irwin, Wylie, and Goodman)

READ FIRST TIME 01/17/20.

1 AN ACT Relating to providing department of fish and wildlife  
2 officers interest arbitration under certain circumstances; amending  
3 RCW 41.80.340; and reenacting and amending RCW 41.80.005 and  
4 41.80.010.

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

6 **Sec. 1.** RCW 41.80.005 and 2019 c 234 s 1 and 2019 c 145 s 3 are  
7 each reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10 (1) "Agency" means any agency as defined in RCW 41.06.020 and  
11 covered by chapter 41.06 RCW. "Agency" also includes the assistant  
12 attorneys general of the attorney general's office, regardless of  
13 whether those employees are exempt under chapter 41.06 RCW.

14 (2) "Collective bargaining" means the performance of the mutual  
15 obligation of the representatives of the employer and the exclusive  
16 bargaining representative to meet at reasonable times and to bargain  
17 in good faith in an effort to reach agreement with respect to the  
18 subjects of bargaining specified under RCW 41.80.020. The obligation  
19 to bargain does not compel either party to agree to a proposal or to  
20 make a concession, except as otherwise provided in this chapter.

1 (3) "Commission" means the public employment relations  
2 commission.

3 (4) "Confidential employee" means an employee who, in the regular  
4 course of his or her duties, assists in a confidential capacity  
5 persons who formulate, determine, and effectuate management policies  
6 with regard to labor relations or who, in the regular course of his  
7 or her duties, has authorized access to information relating to the  
8 effectuation or review of the employer's collective bargaining  
9 policies, or who assists or aids a manager. "Confidential employee"  
10 also includes employees who assist assistant attorneys general who  
11 advise and represent managers or confidential employees in personnel  
12 or labor relations matters, or who advise or represent the state in  
13 tort actions.

14 (5) "Director" means the director of the public employment  
15 relations commission.

16 (6) "Employee" means any employee, including employees whose work  
17 has ceased in connection with the pursuit of lawful activities  
18 protected by this chapter, covered by chapter 41.06 RCW. "Employee"  
19 includes assistant attorneys general of the office of the attorney  
20 general, regardless of their exemption under chapter 41.06 RCW.  
21 "Employee" does not include:

22 (a) Employees covered for collective bargaining by chapter 41.56  
23 RCW;

24 (b) Confidential employees;

25 (c) Members of the Washington management service;

26 (d) Internal auditors in any agency; or

27 (e) Any employee of the commission, the office of financial  
28 management, or the office of risk management within the department of  
29 enterprise services.

30 (7) "Employee organization" means any organization, union, or  
31 association in which employees participate and that exists for the  
32 purpose, in whole or in part, of collective bargaining with  
33 employers.

34 (8) "Employer" means the state of Washington.

35 (9) "Exclusive bargaining representative" means any employee  
36 organization that has been certified under this chapter as the  
37 representative of the employees in an appropriate bargaining unit.

38 (10) "Institutions of higher education" means the University of  
39 Washington, Washington State University, Central Washington  
40 University, Eastern Washington University, Western Washington

1 University, The Evergreen State College, and the various state  
2 community colleges.

3 (11) "Labor dispute" means any controversy concerning terms,  
4 tenure, or conditions of employment, or concerning the association or  
5 representation of persons in negotiating, fixing, maintaining,  
6 changing, or seeking to arrange terms or conditions of employment  
7 with respect to the subjects of bargaining provided in this chapter,  
8 regardless of whether the disputants stand in the proximate relation  
9 of employer and employee.

10 (12) "Manager" means "manager" as defined in RCW 41.06.022.

11 (13) "Supervisor" means an employee who has authority, in the  
12 interest of the employer, to hire, transfer, suspend, lay off,  
13 recall, promote, discharge, direct, reward, or discipline employees,  
14 or to adjust employee grievances, or effectively to recommend such  
15 action, if the exercise of the authority is not of a merely routine  
16 nature but requires the consistent exercise of individual judgment.  
17 However, no employee who is a member of the Washington management  
18 service may be included in a collective bargaining unit established  
19 under this section.

20 (14) "Unfair labor practice" means any unfair labor practice  
21 listed in RCW 41.80.110.

22 (15) "Uniformed personnel" means (~~duly~~):

23 (a) Duly sworn police officers employed as members of a police  
24 force established pursuant to RCW 28B.10.550; and

25 (b) Fish and wildlife officers as defined in RCW 77.08.010(21)  
26 who rank below lieutenant.

27 **Sec. 2.** RCW 41.80.010 and 2019 c 415 s 961 and 2019 c 145 s 4  
28 are each reenacted and amended to read as follows:

29 (1) For the purpose of negotiating collective bargaining  
30 agreements under this chapter, the employer shall be represented by  
31 the governor or governor's designee, except as provided for  
32 institutions of higher education in subsection (4) of this section.

33 (2)(a) Except as otherwise provided, if an exclusive bargaining  
34 representative represents more than one bargaining unit, the  
35 exclusive bargaining representative shall negotiate with each  
36 employer representative as designated in subsection (1) of this  
37 section one master collective bargaining agreement on behalf of all  
38 the employees in bargaining units that the exclusive bargaining  
39 representative represents. For those exclusive bargaining

1 representatives who represent fewer than a total of five hundred  
2 employees each, negotiation shall be by a coalition of all those  
3 exclusive bargaining representatives. The coalition shall bargain for  
4 a master collective bargaining agreement covering all of the  
5 employees represented by the coalition. The governor's designee and  
6 the exclusive bargaining representative or representatives are  
7 authorized to enter into supplemental bargaining of agency-specific  
8 issues for inclusion in or as an addendum to the master collective  
9 bargaining agreement, subject to the parties' agreement regarding the  
10 issues and procedures for supplemental bargaining. This section does  
11 not prohibit cooperation and coordination of bargaining between two  
12 or more exclusive bargaining representatives.

13 (b) This subsection (2) does not apply to exclusive bargaining  
14 representatives who represent employees of institutions of higher  
15 education, except when the institution of higher education has  
16 elected to exercise its option under subsection (4) of this section  
17 to have its negotiations conducted by the governor or governor's  
18 designee under the procedures provided for general government  
19 agencies in subsections (1) through (3) of this section.

20 (c) If five hundred or more employees of an independent state  
21 elected official listed in RCW 43.01.010 are organized in a  
22 bargaining unit or bargaining units under RCW 41.80.070, the official  
23 shall be consulted by the governor or the governor's designee before  
24 any agreement is reached under (a) of this subsection concerning  
25 supplemental bargaining of agency specific issues affecting the  
26 employees in such bargaining unit.

27 (d) For assistant attorneys general, the governor or the  
28 governor's designee and an exclusive bargaining representative shall  
29 negotiate one master collective bargaining agreement.

30 (e) Uniformed personnel who are fish and wildlife officers may  
31 not be excluded from coalition bargaining for a master agreement of  
32 all exclusive bargaining representatives of fewer than five hundred  
33 employees. However, any exclusive bargaining representative of  
34 uniformed personnel who are fish and wildlife officers may, should it  
35 so choose, but not later than the first Monday in September of every  
36 odd-numbered year, choose to, alone or in conjunction with any other  
37 exclusive bargaining representative of uniformed personnel who are  
38 fish and wildlife officers which also so chooses, enter into separate  
39 bargaining with the employer regarding agency-specific issues and be  
40 subject to the provisions set forth in RCW 41.80.310 through

1 41.80.370. If any exclusive bargaining representative does not choose  
2 to enter into separate bargaining with the employer, RCW 41.80.310  
3 through 41.80.370 do not apply. For purposes of this subsection  
4 (2)(e), "agency-specific issues" are limited to those specified in  
5 RCW 41.80.020 and include but are not limited to rates of pay and  
6 other compensation.

7 (3) The governor shall submit a request for funds necessary to  
8 implement the compensation and fringe benefit provisions in the  
9 master collective bargaining agreement or for legislation necessary  
10 to implement the agreement. Requests for funds necessary to implement  
11 the provisions of bargaining agreements shall not be submitted to the  
12 legislature by the governor unless such requests:

13 (a) Have been submitted to the director of the office of  
14 financial management by October 1 prior to the legislative session at  
15 which the requests are to be considered; and

16 (b) Have been certified by the director of the office of  
17 financial management as being feasible financially for the state.

18 The legislature shall approve or reject the submission of the  
19 request for funds as a whole. The legislature shall not consider a  
20 request for funds to implement a collective bargaining agreement  
21 unless the request is transmitted to the legislature as part of the  
22 governor's budget document submitted under RCW 43.88.030 and  
23 43.88.060. If the legislature rejects or fails to act on the  
24 submission, either party may reopen all or part of the agreement or  
25 the exclusive bargaining representative may seek to implement the  
26 procedures provided for in RCW 41.80.090.

27 (4)(a)(i) For the purpose of negotiating agreements for  
28 institutions of higher education, the employer shall be the  
29 respective governing board of each of the universities, colleges, or  
30 community colleges or a designee chosen by the board to negotiate on  
31 its behalf.

32 (ii) A governing board of a university or college may elect to  
33 have its negotiations conducted by the governor or governor's  
34 designee under the procedures provided for general government  
35 agencies in subsections (1) through (3) of this section, except that:

36 (A) The governor or the governor's designee and an exclusive  
37 bargaining representative shall negotiate one master collective  
38 bargaining agreement for all of the bargaining units of employees of  
39 a university or college that the representative represents; or

1 (B) If the parties mutually agree, the governor or the governor's  
2 designee and an exclusive bargaining representative shall negotiate  
3 one master collective bargaining agreement for all of the bargaining  
4 units of employees of more than one university or college that the  
5 representative represents.

6 (iii) A governing board of a community college may elect to have  
7 its negotiations conducted by the governor or governor's designee  
8 under the procedures provided for general government agencies in  
9 subsections (1) through (3) of this section.

10 (b) Prior to entering into negotiations under this chapter, the  
11 institutions of higher education or their designees shall consult  
12 with the director of the office of financial management regarding  
13 financial and budgetary issues that are likely to arise in the  
14 impending negotiations.

15 (c)(i) In the case of bargaining agreements reached between  
16 institutions of higher education other than the University of  
17 Washington and exclusive bargaining representatives agreed to under  
18 the provisions of this chapter, if appropriations are necessary to  
19 implement the compensation and fringe benefit provisions of the  
20 bargaining agreements, the governor shall submit a request for such  
21 funds to the legislature according to the provisions of subsection  
22 (3) of this section, except as provided in (c)(iii) of this  
23 subsection.

24 (ii) In the case of bargaining agreements reached between the  
25 University of Washington and exclusive bargaining representatives  
26 agreed to under the provisions of this chapter, if appropriations are  
27 necessary to implement the compensation and fringe benefit provisions  
28 of a bargaining agreement, the governor shall submit a request for  
29 such funds to the legislature according to the provisions of  
30 subsection (3) of this section, except as provided in this subsection  
31 (4)(c)(ii) and as provided in (c)(iii) of this subsection.

32 (A) If appropriations of less than ten thousand dollars are  
33 necessary to implement the provisions of a bargaining agreement, a  
34 request for such funds shall not be submitted to the legislature by  
35 the governor unless the request has been submitted to the director of  
36 the office of financial management by October 1 prior to the  
37 legislative session at which the request is to be considered.

38 (B) If appropriations of ten thousand dollars or more are  
39 necessary to implement the provisions of a bargaining agreement, a

1 request for such funds shall not be submitted to the legislature by  
2 the governor unless the request:

3 (I) Has been submitted to the director of the office of financial  
4 management by October 1 prior to the legislative session at which the  
5 request is to be considered; and

6 (II) Has been certified by the director of the office of  
7 financial management as being feasible financially for the state.

8 (C) If the director of the office of financial management does  
9 not certify a request under (c)(ii)(B) of this subsection as being  
10 feasible financially for the state, the parties shall enter into  
11 collective bargaining solely for the purpose of reaching a mutually  
12 agreed upon modification of the agreement necessary to address the  
13 absence of those requested funds. The legislature may act upon the  
14 compensation and fringe benefit provisions of the modified collective  
15 bargaining agreement if those provisions are agreed upon and  
16 submitted to the office of financial management and legislative  
17 budget committees before final legislative action on the biennial or  
18 supplemental operating budget by the sitting legislature.

19 (iii) In the case of a bargaining unit of employees of  
20 institutions of higher education in which the exclusive bargaining  
21 representative is certified during or after the conclusion of a  
22 legislative session, the legislature may act upon the compensation  
23 and fringe benefit provisions of the unit's initial collective  
24 bargaining agreement if those provisions are agreed upon and  
25 submitted to the office of financial management and legislative  
26 budget committees before final legislative action on the biennial or  
27 supplemental operating budget by the sitting legislature.

28 (5) If, after the compensation and fringe benefit provisions of  
29 an agreement are approved by the legislature, a significant revenue  
30 shortfall occurs resulting in reduced appropriations, as declared by  
31 proclamation of the governor or by resolution of the legislature,  
32 both parties shall immediately enter into collective bargaining for a  
33 mutually agreed upon modification of the agreement.

34 (6) After the expiration date of a collective bargaining  
35 agreement negotiated under this chapter, all of the terms and  
36 conditions specified in the collective bargaining agreement remain in  
37 effect until the effective date of a subsequently negotiated  
38 agreement, not to exceed one year from the expiration date stated in  
39 the agreement. Thereafter, the employer may unilaterally implement  
40 according to law.

1 (7) (a) For the 2019-2021 fiscal biennium, the legislature may  
2 approve funding for a collective bargaining agreement negotiated by a  
3 higher education institution and the Washington federation of state  
4 employees and ratified by the exclusive bargaining representative  
5 before final legislative action on the omnibus appropriations act by  
6 the sitting legislature.

7 (b) Subsection (3) (a) and (b) of this section do not apply to  
8 requests for funding made pursuant to this subsection.

9 **Sec. 3.** RCW 41.80.340 and 2019 c 234 s 7 are each amended to  
10 read as follows:

11 In making its determination, the panel shall be mindful of the  
12 legislative purpose enumerated in RCW 41.80.300 and, as additional  
13 standards or guidelines to aid it in reaching a decision, shall take  
14 into consideration the following factors:

15 (1) The constitutional and statutory authority of the employer;

16 (2) Stipulations of the parties;

17 (3) Comparison of the hours and conditions of employment of  
18 personnel involved in the proceedings with the hours and conditions  
19 of employment of like personnel of like employers of similar size on  
20 the west coast of the United States, except for uniformed personnel  
21 who are fish and wildlife officers, for whom the comparison of hours  
22 and conditions of employment is with like personnel of like  
23 employers, agencies, or departments, of similar size in the state of  
24 Washington;

25 (4) Changes in any of the circumstances under subsections (1)  
26 through (3) of this section during the pendency of the proceedings;  
27 and

28 (5) Such other factors, not confined to the factors under  
29 subsections (1) through (4) of this section, that are normally or  
30 traditionally taken into consideration in the determination of  
31 matters that are subject to bargaining under this chapter.

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