

HOUSE BILL REPORT

SSB 5055

As Passed House:

March 24, 2021

Title: An act relating to establishing a statewide roster for arbitrating law enforcement personnel disciplinary grievances and publishing their decisions.

Brief Description: Establishing a statewide roster for arbitrating law enforcement personnel disciplinary grievances and publishing their decisions.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators Nguyen, Saldaña, Billig, Darneille, Das, Hunt, Keiser, Kuderer, Liias, Lovelett, Nobles, Stanford and Wilson, C.).

Brief History:

Committee Activity:

Labor & Workplace Standards: 3/10/21, 3/17/21 [DP].

Floor Activity:

Passed House: 3/24/21, 60-38.

Brief Summary of Substitute Bill

- Establishes mandatory procedures for selecting arbitrators in grievance arbitrations for disciplinary actions of law enforcement personnel covered by collective bargaining agreements.
- Requires the Public Employment Relations Commission to appoint arbitrators, implement training, create a fee schedule, and post arbitrator decisions on its website.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 6 members: Representatives Sells, Chair; Berry, Vice Chair; Mosbrucker, Assistant Ranking Minority Member; Bronoske, Harris and Ortiz-

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

Self.

Minority Report: Without recommendation. Signed by 1 member: Representative Hoff, Ranking Minority Member.

Staff: Trudes Tango (786-7384).

Background:

The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining of wages, hours, and working conditions of employees of cities, counties, and other political subdivisions. Police have the authority to collectively bargain under the PECBA, as do the officers of the Washington State Patrol and the Washington Department of Fish and Wildlife. Under the PECBA, parties may agree to binding arbitration to resolve grievances. The Public Employment Relations Commission (Commission) administers the PECBA.

Many collective bargaining agreements (CBAs) covering law enforcement personnel include provisions for binding arbitration to resolve grievances around disciplinary actions. Grievance procedures vary depending on the CBA. Generally, the parties will submit a request for an arbitrator or panel of arbitrators to an agency or organization that maintains a list of arbitrators (such as the Commission, the American Arbitration Association, and the Federal Mediation and Conciliation Service). The parties will typically receive a list of names and will each strike names from the list until the parties agree on an arbitrator. The PECBA does not establish training requirements or minimum standards for arbitrators. Instead, each organization has their own standards. The Commission requires a candidate to have an advanced degree, substantial experience in labor relations, and letters of recommendations.

Summary of Bill:

Procedures are established for selecting arbitrators in grievance arbitrations for disciplinary actions of law enforcement personnel covered by CBAs. The procedures become effective January 1, 2022. Grievance procedures in CBAs negotiated after January 1, 2022, must include these arbitration selection procedures if the CBA provides for arbitration to resolve grievances for disciplinary actions, discharges, or terminations. Grievance procedures in CBAs negotiated before January 1, 2022, that do not contain the arbitrator selection procedures expire and may not be extended. Parties are not required to reopen or renegotiate an existing CBA.

Roster of Appointed Arbitrators.

The Commission must appoint a roster of nine to 18 persons to act as arbitrators for law enforcement personnel grievance arbitrations.

The Commission may only consider appointing persons who possess a minimum of six years' experience as:

- a full-time labor relations advocate and who has been the principal representative of either labor or management in at least 10 arbitration proceedings;
- a full-time labor mediator with substantial mediation experience;
- an arbitrator who has decided at least 10 cases involving collective bargaining disputes; or
- a practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration.

In making appointments, the Commission must consider the candidate's:

- familiarity, experience, and technical and theoretical understanding of and experience with labor law, the grievance process, and the field of labor arbitration;
- ability and willingness to travel through the state, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time;
- experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and
- familiarity and experience with the law enforcement profession, including ride-alongs with on-duty officers, participation in a citizen's academy conducted by a law enforcement agency, or other activities that provide exposure to the environments, choices, and judgments required by officers in the field.

Except for initial appointments that have staggered expiration dates, appointments are for three-year terms. The Commission may reappoint an arbitrator and, by a majority vote, the Commission may remove an arbitrator from the roster.

Assignment of Arbitrators.

The Commission's Executive Director must assign an arbitrator or panel of arbitrators from the roster to each law enforcement personnel grievance arbitration. Arbitrators are assigned on rotation through the roster in alphabetical order of the arbitrators' last names. Parties may not participate in, negotiate for, or agree to the selection of an arbitrator.

The arbitrator must disclose any conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality. Either party may petition to have an assigned arbitrator removed due to a conflict of interest and the next arbitrator on the roster will be assigned.

The arbitrator's decision in the disciplinary grievance is binding, subject to the Uniform Arbitration Act.

Fees charged by arbitrators must be based on a fee schedule established by the

Commission. Parties must pay the arbitrator's fees in accordance with their CBA, or if there is no fee-sharing provision in the CBA, parties must split the fees equally.

Training of Arbitrators.

Within six months of being appointed, an arbitrator must complete initial training developed, implemented, and required by the Commission's Executive Director. The Commission may establish fees to cover the costs of training. Initial training must include at least six hours on:

- topics of cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and
- topics related to the daily experience of law enforcement personnel, which may include ride-alongs with on-duty officers, participation in a citizen's academy conducted by a law enforcement agency, shoot/don't shoot training, or other activities that provide exposure to the environments, choices, and judgments required of officers in the field.

Posting of Arbitration Decisions.

The Commission must post law enforcement grievance arbitration decisions on its website within 30 days of the date the arbitration decision is made. Names of the grievants and witnesses must be redacted.

Definitions.

"Law enforcement personnel" means individuals employed, hired, or otherwise commissioned to enforce criminal laws by any municipal, county, or state agency or department that has, as its primary function, the enforcement of criminal laws in general. This includes officers of the Washington Department of Fish and Wildlife and corrections officers and community corrections officers employed by the Department of Corrections.

The term does not include prosecutors or other attorneys hired to litigate criminal laws or civilians hired to do administrative work.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is modeled after another state's law and passed out of the Senate with strong bi-partisan support. Numerous stakeholders were consulted. One goal of the bill is to streamline the arbitration process, which currently can make it difficult to successfully discipline an officer who has violated the law or policy. It increases transparency of

arbitration decisions. There is a lot of work being done around police reform, and this bill takes a look at one area that other bills do not address. It makes a modest change to the process. It will provide needed consistency and will increase the public trust in the grievance process.

(Opposed) None.

(Other) The bill allows the Public Employment Relations Commission to pass on the cost of training to the arbitrators. Minnesota passed a similar bill, and the Commission has been working with them to understand what issues they have faced.

Persons Testifying: (In support) Senator Nguyen, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Candice Bock, Association of Washington Cities.

(Other) Mike Sellars, Public Employment Relations Commission.

Persons Signed In To Testify But Not Testifying: None.