SENATE BILL REPORT
SB 5055

As of January 14, 2021

Title: An act relating to law enforcement personnel collective bargaining.

Brief Description: Concerning law enforcement personnel collective bargaining.

Sponsors: Senators Nguyen, Saldaña, Billig, Darneille, Das, Hunt, Keiser, Kuderer, Liias, Lovelett, Nobles, Stanford and Wilson, C..

Brief History:
    Committee Activity: Labor, Commerce & Tribal Affairs: 1/14/21.

Brief Summary of Bill

- Establishes an arbitrator selection procedure for grievance arbitrations for law enforcement personnel that applies to all disciplinary grievance arbitrations heard on or after January 1, 2022.

- Requires the Public Employment Relations Commission to appoint a roster of nine arbitrators who hear disciplinary grievances for law enforcement personnel on a rotating basis.

- Prohibits a public employer of law enforcement personnel from entering into a collective bargaining agreement that prevents implementation of, alters, or suppresses a city or county ordinance or charter that establishes civilian review of the discipline of law enforcement personnel.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Jarrett Sacks (786-7448)

Background: The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining of wages, hours, and working conditions with employees of cities, counties, and other political subdivisions. Police have the authority to collectively bargain

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under PECBA, as do the officers of the Washington State Patrol and the Department of Fish and Wildlife. PECBA is administered by the Public Employment Relations Commission (PERC). Under PECBA, grievance procedures and discipline are mandatory subjects of bargaining and the parties may agree to binding arbitration to resolve grievances.

Many police agencies in Washington are represented for the purposes of collective bargaining and have collective bargaining agreements that call for binding arbitration to resolve grievances. Grievance procedures vary depending on the agreement, but may include an agreed-upon list of arbitrators. The parties may also request a list of arbitrators from PERC, the American Arbitration Association, or the Federal Mediation and Conciliation Service.

Summary of Bill: Arbitrator Selection Procedures. An arbitrator selection procedure for grievance arbitrations for law enforcement personnel is established and applies to all grievance arbitrations for disciplinary actions, discharges, and terminations heard on or after January 1, 2022.

PERC must appoint a roster of nine arbitrators for law enforcement personnel grievance arbitrations. The executive director assigns an arbitrator, or a panel of arbitrators, to grievance arbitrations in alphabetical order on a rotating basis. The parties to the arbitration may not participate in, negotiate for, or agree to the selection of a particular arbitrator or arbitration panel. Appointments are for three years and arbitrators may be re-appointed. PERC may remove an arbitrator from the roster through a majority vote.

PERC may only consider appointing individuals to the roster who possess a minimum of six years' experience as:
- a full-time labor relations advocate who was the principal representative of either labor or management in at least six arbitration proceedings;
- a full-time labor mediator with substantial mediation experience;
- an arbitrator who has decided at least six 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 the appointments, PERC must consider a candidate's:
- familiarity, experience, and understanding of labor law, the grievance process, the field of labor arbitration, and the law enforcement profession;
- ability and willingness to travel, conduct hearings in a fair and impartial manner, analyze testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties; and
- experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences.

A person appointed to the roster must complete training required by PERC within six months of their appointment. PERC may establish training requirements by rule and may set fees to cover the costs of developing the training. At a minimum, the initial training must include at least six hours on the topics of:

- cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and
- the daily experience of law enforcement personnel, which may include ride-alongs with on-duty officers or other activities that provide exposure to the environments, choices, and judgments required of officers in the field.

Arbitrator decisions are binding and PERC must post the decisions on its website within 30 days after the decision is made.

A grievance arbitration is a binding arbitration of a grievance under the grievance procedures of a collective bargaining agreement. A grievance is a dispute regarding any disciplinary action, discharge, or termination decision arising under a collective bargaining agreement covering law enforcement personnel.

Civilian Review of Law Enforcement Personnel. Public employers of law enforcement personnel are prohibited from entering into a collective bargaining agreement that prevents implementation of, alters, or suppresses a city or county ordinance or charter establishing civilian review of the discipline of law enforcement personnel.

Law Enforcement Personnel. Law enforcement personnel means any public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipality, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There is a need to have greater consistency with regard to arbitration decisions. Communities need certainty with regard to police discipline. If disciplinary decisions get overturned, the process loses credibility. Police officers should not get two bites at the apple with a whole new hearing at arbitration. The training requirements in the bill enhance arbitrators' ability to handle cases and they should

have implicit bias training and training on the unique circumstances of law enforcement. Arbitration hearings should be made public and there should be some deference to management disciplinary decisions. Civilian review of law enforcement should not be undercut. The bill creates a repository for decisions, which will allow people to collect data and assess reforms. The bill preserves workers' rights to bargain and arbitrate while proposing meaningful reform.

CON: The legislature should preserve the labor protections and practices currently in state law. The limited number of arbitrators may cause a backlog of cases and cause delays. Management prevails on half of arbitrations, which means the system is well balanced. The bill is an attack on workers' rights and tips the scale towards management. The title of the bill is too broad.

OTHER: Creating a pool of arbitrators is good, but limiting the size may cause delays. A pool of arbitrators already happens in practice. Most arbitrators would not have trouble meeting the requirements of the bill. The bill becomes undesirable if its amended to include anything that limits access to arbitration.

Persons Testifying: PRO: Senator Joe Nguyen, Prime Sponsor; Candice Bock, Association of Washington Cities; James McMahan, Washington Association Sheriffs & Police Chiefs; Jenny Durkan, Mayor, City of Seattle; Victoria Woodards, Mayor, City of Tacoma; Breean Beggs, Council President, Spokane City Council; Samantha Grad, United Food & Commercial Workers Local 21; Colleen Echohawk, Commissioner, Seattle Community Police Commission; Marco Monteblanco, Washington State Fraternal Order of Police; Lisa Herbold, Seattle City Council; Monisha Harell, Equal Rights Washington; Colleen Echohawk, Commissioner, Seattle Police Commission.

CON: Teresa Taylor, Washington Council of Police & Sheriffs; Dennis Lawson, Washington State Council of Fire Fighters.

OTHER: Dario de la Rosa, Public Employment Relations Commission; Joe Kendo, Washington State Labor Council, AFL-CIO; Michelle Woodrow, Teamsters Local 117.

Persons Signed In To Testify But Not Testifying: No one.