

SENATE BILL REPORT

SB 5436

As of February 11, 2021

Title: An act relating to collective bargaining over the content of reports by ombuds and the selection of ombuds and their staff who oversee law enforcement personnel.

Brief Description: Concerning collective bargaining over the content of reports by ombuds and the selection of ombuds and their staff who oversee law enforcement personnel.

Sponsors: Senators Billig, Nguyen and Nobles.

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 2/11/21.

Brief Summary of Bill

- Provides that matters relating to the contents of certain reports by an ombuds employed by a municipality or county and a local government's selection process of certain ombuds and staff are not mandatory subjects of bargaining.
- Nullifies provisions of a collective bargaining agreement relating to the contents of reports by ombuds and the selection process for ombuds that are in effect on the effective date of the bill.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Jarrett Sacks (786-7448)

Background: Mandatory Subjects of Bargaining. 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 under PECBA, as do the officers of the Washington State Patrol and the Department of Fish and Wildlife.

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.

For the purposes of collective bargaining, there are three types of bargaining subjects—mandatory, permissive, and illegal. Mandatory subjects of bargaining are matters over which employers and unions must bargain in good faith. Permissive subjects of bargaining are matters over which the parties may negotiate, but each party is free to bargain or not, or to agree or not. Illegal subjects of bargaining are matters that the parties may not agree upon because of statutory or constitutional prohibitions. Mandatory subjects of bargaining under PECBA are grievance procedures and personnel matters including wages, hours, and working conditions.

Summary of Bill: For the purposes of collective bargaining under PECBA, the following are not mandatory subjects of bargaining:

- matters relating to the contents of reports by an ombuds employed by a municipality or county to be published after a discipline process is complete under a collective bargaining agreement covering law enforcement personnel; and
- a local government's selection process for an ombuds and their staff, if the ombuds and staff are exempt from collective bargaining, and have, as their primary duties, oversight of law enforcement personnel.

The bill does not prohibit or restrict bargaining over whether, or to what extent, the reports published by an ombuds may be used in the disciplinary process for law enforcement personnel.

Provisions in a collective bargaining agreement in effect on the effective date of the bill that relate to the contents of reports by ombuds and local government selection processes for ombuds covered under the bill are null and void.

Law enforcement personnel means any individual employed, hired, or otherwise commissioned to enforce criminal laws by any municipal or county agency or department that has as its primary function the enforcement of criminal laws in general, rather than the implementation or enforcement of laws related to specialized subject matter areas. Law enforcement personnel does not include prosecutors or civilians hired to do administrative work.

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: The bill is very narrow, but it is important. Spokane voters have consistently voted for an independent ombudsman, but the office is not

totally independent yet, which is critical for public trust. The selection process and the reports of an ombudsman should be independent and not mandatory subjects of bargaining. The ombuds model is one communities could adopt statewide, but they should not have to wait as long as Spokane has for a completely independent ombudsman. The office cannot be independent if the police have a say in appointments and reports.

CON: Strong labor protections are important to peace officers because they create equity and balance. The bill upsets that equity and balance, and inhibits collective bargaining agreements negotiated in good faith by local employees with local governments. These issues should be resolved through bargaining with local governments. Spokane officers have been without contract for years but are working toward agreement on these issues.

OTHER: Disputes over these types of issues do not reach PERC very often, but they do come up during mediations. Grievances are set up by collective bargaining agreements and go through those processes, including through third party arbitrators. The bill is clear that the parties can still negotiate the impacts of the reports on discipline.

Persons Testifying: PRO: Senator Andy Billig, Prime Sponsor; Breean Beggs, Spokane City Council; Jenny Rose, City of Spokane Office of Police Ombudsman Oversight Commission; Shar Lichty, Peace & Justice Action League of Spokane.

CON: Teresa Taylor, Washington Council of Police and Sheriffs.

OTHER: Mike Sellars, Public Employment Relations Commission.

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