

**ESHB 1087** - S AMD TO S COMM AMD (S-2838.3) **372**

By Senators Kastama, Baumgartner, Sheldon, Tom, Hobbs

ADOPTED 04/18/2011

1 On page 193, after line 29, insert the following:

2 " **Sec. 928.** RCW 41.06.022 and 2002 c 354 s 207 are each amended to  
3 read as follows:

4 For purposes of this chapter, "manager" means any employee who:

5 (1) Formulates statewide policy or directs the work of an agency  
6 or agency subdivision;

7 (2) Is responsible to administer one or more statewide policies or  
8 programs of an agency or agency subdivision;

9 (3) Manages, administers, and controls a local branch office of an  
10 agency or agency subdivision, including the physical, financial, or  
11 personnel resources;

12 (4) Has substantial responsibility in personnel administration,  
13 legislative relations, public information, or the preparation and  
14 administration of budgets; or

15 (5) Functionally is above the first level of supervision and  
16 exercises authority that is not merely routine or clerical in nature  
17 and requires the consistent use of independent judgment.

18 No employee who is a member of the Washington management service  
19 may be included in a collective bargaining unit established under RCW  
20 41.80.001 and 41.80.010 through 41.80.130.

21 During the 2011-13 fiscal biennium, except as required by a  
22 collective bargaining agreement in place on the effective date of this  
23 section, a manager whose position is eliminated as a result of the  
24 provisions of section 729 of this act and who is hired or transferred  
25 to a different position shall be compensated at a level no higher than  
26 that which is commensurate with the employee's new position.

27

1 During the 2011-13 biennium, unless required by a collective  
2 bargaining agreement in place on the effective date of this section,  
3 no manager shall have the right of reversion to a classified position  
4 in the event that the employee's position is eliminated as a result of  
5 the provisions of section 729 of this act unless the employee was  
6 employed in the classified position in question, or a substantially  
7 equivalent classified position, within the three year period prior to  
8 the effective date of this act.

9

10 **Sec. 929.** RCW 41.06.070 and 2010 c 271 s 801 are each amended to  
11 read as follows:

12 (1) The provisions of this chapter do not apply to:

13 (a) The members of the legislature or to any employee of, or  
14 position in, the legislative branch of the state government including  
15 members, officers, and employees of the legislative council, joint  
16 legislative audit and review committee, statute law committee, and any  
17 interim committee of the legislature;

18 (b) The justices of the supreme court, judges of the court of  
19 appeals, judges of the superior courts or of the inferior courts, or  
20 to any employee of, or position in the judicial branch of state  
21 government;

22 (c) Officers, academic personnel, and employees of technical  
23 colleges;

24 (d) The officers of the Washington state patrol;

25 (e) Elective officers of the state;

26 (f) The chief executive officer of each agency;

27 (g) In the departments of employment security and social and  
28 health services, the director and the director's confidential  
29 secretary; in all other departments, the executive head of which is an  
30 individual appointed by the governor, the director, his or her  
31 confidential secretary, and his or her statutory assistant directors;

32 (h) In the case of a multimember board, commission, or committee,  
33 whether the members thereof are elected, appointed by the governor or  
34 other authority, serve ex officio, or are otherwise chosen:

- 1 (i) All members of such boards, commissions, or committees;
- 2 (ii) If the members of the board, commission, or committee serve  
3 on a part-time basis and there is a statutory executive officer: The  
4 secretary of the board, commission, or committee; the chief executive  
5 officer of the board, commission, or committee; and the confidential  
6 secretary of the chief executive officer of the board, commission, or  
7 committee;
- 8 (iii) If the members of the board, commission, or committee serve  
9 on a full-time basis: The chief executive officer or administrative  
10 officer as designated by the board, commission, or committee; and a  
11 confidential secretary to the chair of the board, commission, or  
12 committee;
- 13 (iv) If all members of the board, commission, or committee serve  
14 ex officio: The chief executive officer; and the confidential  
15 secretary of such chief executive officer;
- 16 (i) The confidential secretaries and administrative assistants in  
17 the immediate offices of the elective officers of the state;
- 18 (j) Assistant attorneys general;
- 19 (k) Commissioned and enlisted personnel in the military service of  
20 the state;
- 21 (l) Inmate, student, part-time, or temporary employees, and part-  
22 time professional consultants, as defined by the Washington personnel  
23 resources board;
- 24 (m) The public printer or to any employees of or positions in the  
25 state printing plant;
- 26 (n) Officers and employees of the Washington state fruit  
27 commission;
- 28 (o) Officers and employees of the Washington apple commission;
- 29 (p) Officers and employees of the Washington state dairy products  
30 commission;
- 31 (q) Officers and employees of the Washington tree fruit research  
32 commission;
- 33 (r) Officers and employees of the Washington state beef  
34 commission;

- 1 (s) Officers and employees of the Washington grain commission;
- 2 (t) Officers and employees of any commission formed under chapter  
3 15.66 RCW;
- 4 (u) Officers and employees of agricultural commissions formed  
5 under chapter 15.65 RCW;
- 6 (v) Officers and employees of the nonprofit corporation formed  
7 under \*chapter 67.40 RCW;
- 8 (w) Executive assistants for personnel administration and labor  
9 relations in all state agencies employing such executive assistants  
10 including but not limited to all departments, offices, commissions,  
11 committees, boards, or other bodies subject to the provisions of this  
12 chapter and this subsection shall prevail over any provision of law  
13 inconsistent herewith unless specific exception is made in such law;
- 14 (x) In each agency with fifty or more employees: Deputy agency  
15 heads, assistant directors or division directors, and not more than  
16 three principal policy assistants who report directly to the agency  
17 head or deputy agency heads;
- 18 (y) All employees of the marine employees' commission;
- 19 (z) Staff employed by the department of commerce to administer  
20 energy policy functions;
- 21 (aa) The manager of the energy facility site evaluation council;
- 22 (bb) A maximum of ten staff employed by the department of commerce  
23 to administer innovation and policy functions, including the three  
24 principal policy assistants exempted under (x) of this subsection;
- 25 (cc) Staff employed by Washington State University to administer  
26 energy education, applied research, and technology transfer programs  
27 under RCW 43.21F.045 as provided in RCW 28B.30.900(5).
- 28 (2) The following classifications, positions, and employees of  
29 institutions of higher education and related boards are hereby  
30 exempted from coverage of this chapter:
- 31 (a) Members of the governing board of each institution of higher  
32 education and related boards, all presidents, vice presidents, and  
33 their confidential secretaries, administrative, and personal  
34 assistants; deans, directors, and chairs; academic personnel; and

1 executive heads of major administrative or academic divisions employed  
2 by institutions of higher education; principal assistants to executive  
3 heads of major administrative or academic divisions; other managerial  
4 or professional employees in an institution or related board having  
5 substantial responsibility for directing or controlling program  
6 operations and accountable for allocation of resources and program  
7 results, or for the formulation of institutional policy, or for  
8 carrying out personnel administration or labor relations functions,  
9 legislative relations, public information, development, senior  
10 computer systems and network programming, or internal audits and  
11 investigations; and any employee of a community college district whose  
12 place of work is one which is physically located outside the state of  
13 Washington and who is employed pursuant to RCW 28B.50.092 and assigned  
14 to an educational program operating outside of the state of  
15 Washington;

16 (b) The governing board of each institution, and related boards,  
17 may also exempt from this chapter classifications involving research  
18 activities, counseling of students, extension or continuing education  
19 activities, graphic arts or publications activities requiring  
20 prescribed academic preparation or special training as determined by  
21 the board: PROVIDED, That no nonacademic employee engaged in office,  
22 clerical, maintenance, or food and trade services may be exempted by  
23 the board under this provision;

24 (c) Printing craft employees in the department of printing at the  
25 University of Washington.

26 (3) In addition to the exemptions specifically provided by this  
27 chapter, the director of personnel may provide for further exemptions  
28 pursuant to the following procedures. The governor or other  
29 appropriate elected official may submit requests for exemption to the  
30 director of personnel stating the reasons for requesting such  
31 exemptions. The director of personnel shall hold a public hearing,  
32 after proper notice, on requests submitted pursuant to this  
33 subsection. If the director determines that the position for which  
34 exemption is requested is one involving substantial responsibility for

1 the formulation of basic agency or executive policy or one involving  
2 directing and controlling program operations of an agency or a major  
3 administrative division thereof, the director of personnel shall grant  
4 the request and such determination shall be final as to any decision  
5 made before July 1, 1993. The total number of additional exemptions  
6 permitted under this subsection shall not exceed one percent of the  
7 number of employees in the classified service not including employees  
8 of institutions of higher education and related boards for those  
9 agencies not directly under the authority of any elected public  
10 official other than the governor, and shall not exceed a total of  
11 twenty-five for all agencies under the authority of elected public  
12 officials other than the governor.

13 The salary and fringe benefits of all positions presently or  
14 hereafter exempted except for the chief executive officer of each  
15 agency, full-time members of boards and commissions, administrative  
16 assistants and confidential secretaries in the immediate office of an  
17 elected state official, and the personnel listed in subsections (1)(j)  
18 through (v) and (y) and (2) of this section, shall be determined by  
19 the director of personnel. Changes to the classification plan  
20 affecting exempt salaries must meet the same provisions for classified  
21 salary increases resulting from adjustments to the classification plan  
22 as outlined in RCW 41.06.152.

23 During the 2011-13 fiscal biennium, except as required by a  
24 collective bargaining agreement in place on the effective date of this  
25 section, an employee whose position exempt under this chapter is  
26 eliminated as a result of the provisions of section 729 and who is  
27 hired or transferred to a different position exempt under the  
28 provisions of this chapter shall be compensated at a level no higher  
29 than that which is commensurate with the employee's new position.

30 From February 18, 2009, through June 30, 2011, a salary or wage  
31 increase shall not be granted to any position exempt from  
32 classification under this chapter, except that a salary or wage  
33 increase may be granted to employees pursuant to collective bargaining  
34 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76

1 RCW, or negotiated by the nonprofit corporation formed under \*chapter  
2 67.40 RCW, and except that increases may be granted for positions for  
3 which the employer has demonstrated difficulty retaining qualified  
4 employees if the following conditions are met:

5 (a) The salary increase can be paid within existing resources; and

6 (b) The salary increase will not adversely impact the provision of  
7 client services.

8 Any agency granting a salary increase from February 15, 2010,  
9 through June 30, 2011, to a position exempt from classification under  
10 this chapter shall submit a report to the fiscal committees of the  
11 legislature no later than July 31, 2011, detailing the positions for  
12 which salary increases were granted, the size of the increases, and  
13 the reasons for giving the increases.

14 Any person holding a classified position subject to the provisions  
15 of this chapter shall, when and if such position is subsequently  
16 exempted from the application of this chapter, be afforded the  
17 following rights: If such person previously held permanent status in  
18 another classified position, such person shall have a right of  
19 reversion to the highest class of position previously held, or to a  
20 position of similar nature and salary.

21 Any classified employee having civil service status in a  
22 classified position who accepts an appointment in an exempt position  
23 shall have the right of reversion to the highest class of position  
24 previously held, or to a position of similar nature and salary, except  
25 that during the 2011-13 biennium, unless required by a collective  
26 bargaining agreement in place on the effective date of this section,  
27 no employee shall have the right of reversion to a classified position  
28 in the event that the employee's position is eliminated as a result of  
29 the provisions of section 729 of this act unless the employee was  
30 employed in the classified position in question, or a substantially  
31 equivalent classified position, within the three year period prior to  
32 the effective date of this act.

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1 A person occupying an exempt position who is terminated from the  
2 position for gross misconduct or malfeasance does not have the right  
3 of reversion to a classified position as provided for in this section.

4 From February 15, 2010, until June 30, 2011, no monetary  
5 performance-based awards or incentives may be granted by the director  
6 or employers to employees covered by rules adopted under this section.  
7 This subsection does not prohibit the payment of awards provided for  
8 in chapter 41.60 RCW."

9

10 Renumber the remaining sections consecutively and correct any  
11 internal references accordingly.

12

EFFECT: Directs that, to the extent permitted by collective bargaining agreements, an employee whose position is eliminated as a result of the management position cuts provided in section 729 may not revert to a classified position to which the employee would ordinarily be able to "bump", unless the employee occupied either that position or a substantially similar classified position within the last three years. Additionally, a manager whose position is eliminated and who is subsequently transferred or hired into another position may not be compensated at a level higher than that which is commensurate with the duties of new position.

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