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**SUBSTITUTE SENATE BILL 5405**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Haugen, King, Sheldon, Fain, Hargrove, Becker, Prentice, Shin, and Tom)

READ FIRST TIME 02/25/11.

1       AN ACT Relating to promoting efficiency in the Washington state  
2 ferry system through personnel and administration reforms; amending RCW  
3 47.64.120, 47.64.170, 47.64.011, 47.64.210, 47.64.150, and 41.58.060;  
4 reenacting and amending RCW 47.64.090 and 41.06.070; adding new  
5 sections to chapter 47.64 RCW; creating new sections; repealing RCW  
6 47.64.080, 47.64.200, 47.64.230, 47.64.280, 47.64.300, 47.64.310,  
7 47.64.320, and 47.64.330; and declaring an emergency.

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

9       NEW SECTION.   **Sec. 1.** The legislature finds that the Washington  
10 state ferry system is a critical component of the state's highway  
11 system. The current system is financially unsustainable and the  
12 legislature intends for this act to provide guidance for efficiently  
13 managing scarce resources. The legislature recognizes that labor is  
14 one of the main cost drivers for operating the system and it is time to  
15 take on the difficult task of controlling labor costs. Furthermore,  
16 the legislature finds that ferry system management must play a strong  
17 role in improving the system and controlling costs, and this act is  
18 intended to provide the tools necessary for management to be held  
19 accountable for the performance of the system. Finally, this act

1 intends to reign in abuses that have been brought to light and to give  
2 clear guidance so that the relationship between employees and  
3 management can move from an adversarial one to one where the focus is  
4 on improving efficiencies, customer service, and working cohesively.

5 **Sec. 2.** RCW 47.64.120 and 2010 c 283 s 10 are each amended to read  
6 as follows:

7 (1) Except as otherwise provided in this chapter, the employer and  
8 ferry system employee organizations, through their collective  
9 bargaining representatives, shall meet at reasonable times to negotiate  
10 in good faith with respect to wages, hours, (~~working conditions,~~) and  
11 insurance, and other matters mutually agreed upon. Employer funded  
12 retirement benefits shall be provided under the public employees'  
13 retirement system under chapter 41.40 RCW and shall not be included in  
14 the scope of collective bargaining. Except as provided under RCW  
15 47.64.270, the employer is not required to bargain over health care  
16 benefits. Any retirement system or retirement benefits shall not be  
17 subject to collective bargaining.

18 (2) (~~Upon ratification of bargaining agreements, ferry employees  
19 are entitled to an amount equivalent to the interest earned on  
20 retroactive compensation increases. For purposes of this section, the  
21 interest earned on retroactive compensation increases is the same  
22 monthly rate of interest that was earned on the amount of the  
23 compensation increases while held in the state treasury. The interest  
24 will be computed for each employee until the date the retroactive  
25 compensation is paid, and must be allocated in accordance with  
26 appropriation authority. The interest earned on retroactive  
27 compensation is not considered part of the ongoing compensation  
28 obligation of the state and is not compensation earnable for the  
29 purposes of chapter 41.40 RCW. Negotiations shall also include  
30 grievance procedures for resolving any questions arising under the  
31 agreement, which shall be embodied in a written agreement and signed by  
32 the parties.~~)

33 (3)) The employer shall make decisions regarding working  
34 conditions to best suit the operational needs of the state and may not  
35 bargain its own decision or the effects of a decision for any working  
36 condition other than shift bidding, scheduling leave time, and  
37 grievance procedures, provided that the grievance procedures do not

1 expand the scope of grievances beyond the interpretation and  
2 application of terms permissible under this chapter. The employer  
3 shall not bargain over rights of management which, in addition to all  
4 powers, duties, and rights established by constitutional provision or  
5 statute, must include, but not be limited to, the following:

6 (a) Assigning employees to work stations, vessels, or terminals;

7 (b) Directing promotions;

8 (c) Directing who will be laid off in the event of a layoff action,  
9 bumping rights, or layoff options;

10 (d) Directing staffing levels;

11 (e) Providing for training; and

12 (f) Directing the use of part-time shifts.

13 (3) A collective bargaining agreement may not contain any provision  
14 that extends the term of an existing collective bargaining agreement or  
15 applicability of items incompatible with this section in an existing  
16 collective bargaining agreement.

17 (4) Employees receiving benefits through industrial insurance or  
18 the federal Jones Act or general maritime law are not entitled to use  
19 sick leave notwithstanding collective bargaining agreements to the  
20 contrary.

21 (5) Except as otherwise provided in this chapter, if a conflict  
22 exists between an executive order, administrative rule, or agency  
23 policy relating to wages((7)) or hours((7, and terms and conditions of  
24 employment)) and a collective bargaining agreement negotiated under  
25 this chapter, the collective bargaining agreement shall prevail. A  
26 provision of a collective bargaining agreement that conflicts with the  
27 terms of a statute is invalid and unenforceable.

28 NEW SECTION. Sec. 3. A new section is added to chapter 47.64 RCW  
29 to read as follows:

30 (1) Any collective bargaining agreement in effect between July 1,  
31 2011, and June 30, 2013, may not contain provisions that allow:

32 (a) Overtime, standby, call out, holiday, or any other pay to be  
33 paid at a rate greater than time and one-half base pay;

34 (b) Rounding of regular time, overtime, compensatory time, or any  
35 other time at greater than six minute increments;

36 (c) Compensatory time to be earned at a rate greater than time and  
37 one-half;

- 1 (d) Exchange time to be earned at a rate greater than straight  
2 time;
- 3 (e) Entitlement to any type of compensation or penalty for other  
4 than work performed;
- 5 (f) A guaranteed minimum shift period;
- 6 (g) Minimum call back time or pay at a rate greater than three  
7 hours;
- 8 (h) Penalty pay;
- 9 (i) Provisions for parking or parking fees; or
- 10 (j) Free passage on Washington state ferry vessels for employees or  
11 their families unless passage is for an active employee during that  
12 employee's work shift for work purposes, other than during nonpeak and  
13 nonholiday times.
- 14 (2) Any collective bargaining agreement in effect between July 1,  
15 2011, and June 30, 2013, may only allow employees to receive travel  
16 time pay or mileage reimbursement if the travel time to commute to work  
17 is less than twenty-five miles one way. Travel time pay may not exceed  
18 the state minimum wage per hour plus mileage.
- 19 (3) Any collective bargaining agreement in effect between July 1,  
20 2011, and June 30, 2013, may not contain provisions that allow the  
21 following at a rate greater than what employees who are subject to  
22 chapter 41.80 RCW receive:
- 23 (a) Annual vacation leave, sick leave, or personal holiday leave  
24 accruals;
- 25 (b) Accruals of other types of leave not mentioned in this  
26 subsection;
- 27 (c) Number of compensated holidays;
- 28 (d) Holiday pay;
- 29 (e) Situations allowing travel time pay for commuting to and from  
30 work;
- 31 (f) Compensation for meals; or
- 32 (g) Provisions for take-home vehicles.

33 **Sec. 4.** RCW 47.64.170 and 2010 c 283 s 11 are each amended to read  
34 as follows:

- 35 (1) Any ferry employee organization certified as the bargaining  
36 representative shall be the exclusive representative of all ferry

1 employees in the bargaining unit and shall represent all such employees  
2 fairly.

3 (2) A ferry employee organization or organizations and the governor  
4 may each designate any individual as its representative to engage in  
5 collective bargaining negotiations.

6 (3) Negotiating sessions, including strategy meetings of the  
7 employer or employee organizations, and mediation(~~(, and the~~  
8 ~~deliberative process of arbitrators))~~) are exempt from the provisions of  
9 chapter 42.30 RCW. (~~Hearings conducted by arbitrators may be open to~~  
10 ~~the public by mutual consent of the parties.))~~)

11 (4) Terms of any collective bargaining agreement may be enforced by  
12 civil action in Thurston county superior court upon the initiative of  
13 either party.

14 (5) Ferry system employees or any employee organization shall not  
15 negotiate or attempt to negotiate directly with anyone other than the  
16 person who has been appointed or authorized a bargaining representative  
17 for the purpose of bargaining with the ferry employees or their  
18 representative.

19 (6)(a) (~~Within ten working days after the first Monday in~~  
20 ~~September of every odd-numbered year, the parties shall attempt to~~  
21 ~~agree on an interest arbitrator to be used if the parties are not~~  
22 ~~successful in negotiating a comprehensive collective bargaining~~  
23 ~~agreement. If the parties cannot agree on an arbitrator within the~~  
24 ~~ten-day period, either party may request a list of seven arbitrators~~  
25 ~~from the federal mediation and conciliation service. The parties shall~~  
26 ~~select an interest arbitrator using the coin toss/alternate strike~~  
27 ~~method within thirty calendar days of receipt of the list. Immediately~~  
28 ~~upon selecting an interest arbitrator, the parties shall cooperate to~~  
29 ~~reserve dates with the arbitrator for potential arbitration between~~  
30 ~~August 1st and September 15th of the following even-numbered year. The~~  
31 ~~parties shall also prepare a schedule of at least five negotiation~~  
32 ~~dates for the following year, absent an agreement to the contrary. The~~  
33 ~~parties shall execute a written agreement before November 1st of each~~  
34 ~~odd-numbered year setting forth the name of the arbitrator and the~~  
35 ~~dates reserved for bargaining and arbitration. This subsection (6)(a)~~  
36 ~~imposes minimum obligations only and is not intended to define or limit~~  
37 ~~a party's full, good faith bargaining obligation under other sections~~  
38 ~~of this chapter.~~)

1       ~~(b)~~) The negotiation of a proposed collective bargaining agreement  
2 by representatives of the employer and a ferry employee organization  
3 shall commence on or about February 1st of every even-numbered year.

4       ~~((c))~~ (b) For negotiations covering the 2009-2011 biennium and  
5 subsequent biennia, the time periods specified in this section~~((7))~~ and  
6 ~~((in))~~ RCW 47.64.210 ~~((and 47.64.300 through 47.64.320,))~~ must ensure  
7 conclusion of all agreements on or before October 1st of the even-  
8 numbered year next preceding the biennial budget period during which  
9 the agreement should take effect. These time periods may only be  
10 altered by mutual agreement of the parties in writing. Any such  
11 agreement ~~((and any impasse procedures agreed to by the parties under  
12 RCW 47.64.200))~~ must include an agreement regarding the new time  
13 periods that will allow final resolution by negotiations ~~((or  
14 arbitration))~~ by October 1st of each even-numbered year.

15       (7) It is the intent of this section that the collective bargaining  
16 agreement ~~((or arbitrator's award))~~ shall commence on July 1st of each  
17 odd-numbered year and shall terminate on June 30th of the next odd-  
18 numbered year to coincide with the ensuing biennial budget year, as  
19 defined by RCW 43.88.020(7), to the extent practical. It is further  
20 the intent of this section that all collective bargaining agreements be  
21 concluded by October 1st of the even-numbered year before the  
22 commencement of the biennial budget year during which the agreements  
23 are to be in effect. After the expiration date of a collective  
24 bargaining agreement negotiated under this chapter, all of the terms  
25 and conditions specified in the collective bargaining agreement remain  
26 in effect until the effective date of a subsequently negotiated  
27 agreement, not to exceed one year from the expiration date stated in  
28 the agreement. Thereafter, the employer may unilaterally implement  
29 according to law.

30       (8) The office of financial management shall conduct a salary  
31 survey, for use in collective bargaining ~~((and arbitration))~~, which  
32 must be conducted through a contract with a firm nationally recognized  
33 in the field of human resources management consulting. The salary  
34 survey must reflect the actual benefits and advantages of working for  
35 the Washington state ferry system. The cost of the survey must be  
36 shared equally between the office of financial management and the  
37 employee organization.

1           (9)(a) The governor shall submit a request either for funds  
2 necessary to implement the collective bargaining agreements including,  
3 but not limited to, the compensation and fringe benefit provisions or  
4 for legislation necessary to implement the agreement, or both.  
5 Requests for funds necessary to implement the collective bargaining  
6 agreements shall not be submitted to the legislature by the governor  
7 unless such requests:

8           (i) Have been submitted to the director of the office of financial  
9 management by October 1st before the legislative session at which the  
10 requests are to be considered; and

11           (ii) Have been certified by the director of the office of financial  
12 management as being feasible financially for the state.

13           (b) ~~((The governor shall submit a request either for funds  
14 necessary to implement the arbitration awards or for legislation  
15 necessary to implement the arbitration awards, or both. Requests for  
16 funds necessary to implement the arbitration awards shall not be  
17 submitted to the legislature by the governor unless such requests:~~

18           ~~(i) Have been submitted to the director of the office of financial  
19 management by October 1st before the legislative session at which the  
20 requests are to be considered; and~~

21           ~~(ii) Have been certified by the director of the office of financial  
22 management as being feasible financially for the state.~~

23           ~~(c))~~ The legislature shall approve or reject the submission of the  
24 request for funds necessary to implement the collective bargaining  
25 agreements ~~((or arbitration awards))~~ as a whole for each agreement ~~((or  
26 award))~~. The legislature shall not consider a request for funds to  
27 implement a collective bargaining agreement ~~((or arbitration award))~~  
28 unless the request is transmitted to the legislature as part of the  
29 governor's budget document submitted under RCW 43.88.030 and 43.88.060.  
30 If the legislature rejects or fails to act on the submission, either  
31 party may reopen all or part of the agreement and award or the  
32 exclusive bargaining representative may seek to implement the  
33 procedures provided for in RCW 47.64.210 ~~((and 47.64.300))~~.

34           (10) If, after the compensation and fringe benefit provisions of an  
35 agreement are approved by the legislature, a significant revenue  
36 shortfall occurs resulting in reduced appropriations, as declared by  
37 proclamation of the governor or by resolution of the legislature, both

1 parties shall immediately enter into collective bargaining for a  
2 mutually agreed upon modification of the agreement.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.64 RCW  
4 to read as follows:

5 (1) Effective January 1, 2012, all captains of Washington state  
6 ferry vessels are considered management and are subject to RCW  
7 41.06.500 and may not be included in a collective bargaining unit.  
8 Salary increases for captains must be directly related to the  
9 performance of their responsibilities.

10 (2) The captain, also known as the master of a vessel or the  
11 commanding officer, must be assigned to a vessel and is the ultimate  
12 authority on and has responsibility for the entire vessel. The  
13 captain's responsibilities include, but are not limited to:

14 (a) Ensuring the safe navigation of the vessel and its crew and  
15 passengers;

16 (b) Following all applicable federal, state, and agency policies  
17 and regulations;

18 (c) Supervising crew in performance, operations, training,  
19 security, and environmental protection; and

20 (d) Overseeing all aspects of vessel operations including, but not  
21 limited to:

22 (i) Vessel arrivals and departures;

23 (ii) Schedule adherence;

24 (iii) Customer service;

25 (iv) Cost containment; and

26 (v) Fuel efficiency.

27 (3) Effective January 1, 2013, all deck officers, chief engineers,  
28 and terminal supervisors of Washington state ferry vessels are  
29 considered management and are subject to RCW 41.06.500 and may not be  
30 included in a collective bargaining unit. Salary increases for deck  
31 officers, chief engineers, and terminal supervisors must be directly  
32 related to the performance of their responsibilities.

33 (4) The deck officer, also known as a first mate, chief officer, or  
34 first officer, is the second in command of a vessel and directly  
35 assists and supports the captain in conducting operations. The deck  
36 officer's duties include, but are not limited to:

1 (a) Directly supervising the crew in navigation, cleaning,  
2 training, and discipline matters;

3 (b) Supervising the loading and unloading of passengers and  
4 vehicles;

5 (c) Investigating accidents and safety incidents;

6 (d) Following all applicable federal, state, and agency policies  
7 and regulations;

8 (e) Overseeing vessel security procedures; and

9 (f) Preparing and training to assume command.

10 (5) The chief engineer, also known as a staff engineer, is the  
11 engineering department head and reports directly to the captain. The  
12 chief engineer's duties include, but are not limited to:

13 (a) Overseeing all aspects of engineering propulsion, electrical,  
14 and machinery components;

15 (b) Ensuring safe and efficient engineering plant operations;

16 (c) Advising the captain of factors affecting the vessel's  
17 operation from an engineering perspective;

18 (d) Supervising the conduct of engineering watchstanders and  
19 directing work and maintenance routines;

20 (e) Following federal, state, and agency policies and regulations;  
21 and

22 (f) Overseeing all fueling to ensure efficient and environmentally  
23 safe operations.

24 (6) The terminal supervisor must be assigned to a specific ferry  
25 terminal and is the ultimate authority and has responsibility for the  
26 entire operations at that ferry terminal. The terminal supervisor's  
27 duties include, but are not limited to:

28 (a) Overseeing all aspects of dock-side terminal operations;

29 (b) Coordinating with the captain in arrival and departure  
30 procedures;

31 (c) Supervising the conduct of ticket sellers and traffic and  
32 loading attendants and directing selling, loading, and traffic work and  
33 routines; and

34 (d) Following federal, state, and agency policies and regulations.

35 (7) With each biennial budget submittal, the department shall  
36 include recommendations for distributing any appropriations the  
37 legislature may provide for incentive pay for vessel captains, deck  
38 officers, chief engineers, or terminal supervisors.

1 (8) Any employee who is a captain, deck officer, chief engineer, or  
2 terminal supervisor may not belong to a collective bargaining unit  
3 covered under this chapter for twelve months following their status as  
4 a captain, deck officer, chief engineer, or terminal supervisor.

5 **Sec. 6.** RCW 47.64.011 and 2006 c 164 s 1 are each amended to read  
6 as follows:

7 As used in this chapter, unless the context otherwise requires, the  
8 definitions in this section shall apply.

9 (1) "Collective bargaining representative" means the persons  
10 designated by the governor and employee organizations to be the  
11 exclusive representatives during collective bargaining negotiations.

12 (2) "Commission" means the (~~marine employees~~) public employment  
13 relations commission created in RCW (~~(47.64.280)~~) 41.58.010.

14 (3) "Department of transportation" means the department as defined  
15 in RCW 47.01.021.

16 (4) "Employer" means the state of Washington.

17 (5) "Ferry employee" means any employee of the marine  
18 transportation division of the department of transportation who is a  
19 member of a collective bargaining unit represented by a ferry employee  
20 organization and does not include an exempt employee pursuant to RCW  
21 41.06.079.

22 (6) "Ferry employee organization" means any labor organization  
23 recognized to represent a collective bargaining unit of ferry  
24 employees.

25 (7) "Lockout" means the refusal of the employer to furnish work to  
26 ferry employees in an effort to get ferry employee organizations to  
27 make concessions during collective bargaining, grievance, or other  
28 labor relation negotiations. Curtailment of employment of ferry  
29 employees due to lack of work resulting from a strike or work stoppage  
30 shall not be considered a lockout.

31 (8) "Office of financial management" means the office as created in  
32 RCW 43.41.050.

33 (9) "Strike or work stoppage" means a ferry employee's refusal, in  
34 concerted action with others, to report to duty, or his or her willful  
35 absence from his or her position, or his or her stoppage or slowdown of  
36 work, or his or her abstinence in whole or in part from the full,  
37 faithful, and proper performance of the duties of employment, for the

1 purpose of inducing, influencing, or coercing a change in conditions,  
2 compensation, rights, privileges, or obligations of his, her, or any  
3 other ferry employee's employment. A refusal, in good faith, to work  
4 under conditions which pose an endangerment to the health and safety of  
5 ferry employees or the public, as determined by the master of the  
6 vessel, shall not be considered a strike for the purposes of this  
7 chapter.

8 **Sec. 7.** RCW 47.64.210 and 2007 c 160 s 2 are each amended to read  
9 as follows:

10 In the (~~absence of an impasse~~) event there is no agreement  
11 between the parties (~~or the failure of either party to utilize its~~  
12 ~~procedures~~) by August 1st in the even-numbered year preceding the  
13 biennium, either party may request the commission to appoint an  
14 impartial and disinterested person to act as mediator. It is the  
15 function of the mediator to bring the parties together to effectuate a  
16 settlement of the dispute, but the mediator shall not compel the  
17 parties to agree.

18 **Sec. 8.** RCW 47.64.090 and 2003 c 373 s 3 and 2003 c 91 s 1 are  
19 each reenacted and amended to read as follows:

20 (1) Except as provided in RCW 47.60.656 and subsections (2) and (4)  
21 of this section, or as provided in RCW 36.54.130 and subsection (3) of  
22 this section, if any party assumes the operation and maintenance of any  
23 ferry or ferry system by rent, lease, or charter from the department of  
24 transportation, such party shall assume and be bound by all the  
25 provisions herein and any agreement or contract for such operation of  
26 any ferry or ferry system entered into by the department shall provide  
27 that the wages to be paid, hours of employment, working conditions, and  
28 seniority rights of employees will be established by the (~~marine~~  
29 ~~employees~~) commission in accordance with the terms and provisions of  
30 this chapter and it shall further provide that all labor disputes shall  
31 be adjudicated in accordance with chapter 47.64 RCW.

32 (2) If a public transportation benefit area meeting the  
33 requirements of RCW 36.57A.200 has voter approval to operate passenger-  
34 only ferry service, it may enter into an agreement with Washington  
35 State Ferries to rent, lease, or purchase passenger-only vessels,  
36 related equipment, or terminal space for purposes of loading and

1 unloading the passenger-only ferry. Charges for the vessels,  
2 equipment, and space must be fair market value taking into account the  
3 public benefit derived from the ferry service. A benefit area or  
4 subcontractor of that benefit area that qualifies under this subsection  
5 is not subject to the restrictions of subsection (1) of this section,  
6 but is subject to:

7 (a) The terms of those collective bargaining agreements that it or  
8 its subcontractors negotiate with the exclusive bargaining  
9 representatives of its or its subcontractors' employees under chapter  
10 41.56 RCW or the National Labor Relations Act, as applicable;

11 (b) Unless otherwise prohibited by federal or state law, a  
12 requirement that the benefit area and any contract with its  
13 subcontractors, give preferential hiring to former employees of the  
14 department of transportation who separated from employment with the  
15 department because of termination of the ferry service by the state of  
16 Washington; and

17 (c) Unless otherwise prohibited by federal or state law, a  
18 requirement that the benefit area and any contract with its  
19 subcontractors, on any questions concerning representation of employees  
20 for collective bargaining purposes, may be determined by conducting a  
21 cross-check comparing an employee organization's membership records or  
22 bargaining authorization cards against the employment records of the  
23 employer.

24 (3) If a ferry district is formed under RCW 36.54.110 to operate  
25 passenger-only ferry service, it may enter into an agreement with  
26 Washington State Ferries to rent, lease, or purchase vessels, related  
27 equipment, or terminal space for purposes of loading and unloading the  
28 ferry. Charges for the vessels, equipment, and space must be fair  
29 market value taking into account the public benefit derived from the  
30 ferry service. A ferry district or subcontractor of that district that  
31 qualifies under this subsection is not subject to the restrictions of  
32 subsection (1) of this section, but is subject to:

33 (a) The terms of those collective bargaining agreements that it or  
34 its subcontractors negotiate with the exclusive bargaining  
35 representatives of its or its subcontractors' employees under chapter  
36 41.56 RCW or the National Labor Relations Act, as applicable;

37 (b) Unless otherwise prohibited by federal or state law, a  
38 requirement that the ferry district and any contract with its

1 subcontractors, give preferential hiring to former employees of the  
2 department of transportation who separated from employment with the  
3 department because of termination of the ferry service by the state of  
4 Washington; and

5 (c) Unless otherwise prohibited by federal or state law, a  
6 requirement that the ferry district and any contract with its  
7 subcontractors, on any questions concerning representation of employees  
8 for collective bargaining purposes, may be determined by conducting a  
9 cross-check comparing an employee organization's membership records or  
10 bargaining authorization cards against the employment records of the  
11 employer.

12 (4) The department of transportation shall make its terminal, dock,  
13 and pier space available to private operators of passenger-only ferries  
14 if the space can be made available without limiting the operation of  
15 car ferries operated by the department. These private operators are  
16 not bound by the provisions of subsection (1) of this section. Charges  
17 for the equipment and space must be fair market value taking into  
18 account the public benefit derived from the passenger-only ferry  
19 service.

20 **Sec. 9.** RCW 47.64.150 and 1983 c 15 s 6 are each amended to read  
21 as follows:

22 An agreement with a ferry employee organization that is the  
23 exclusive representative of ferry employees in an appropriate unit may  
24 provide procedures for the consideration of ferry employee grievances  
25 and of disputes over the interpretation and application of agreements.  
26 Negotiated procedures may provide for binding arbitration of ferry  
27 employee grievances and of disputes over the interpretation and  
28 application of existing agreements. An arbitrator's decision on a  
29 grievance shall not change or amend the terms, conditions, or  
30 applications of the collective bargaining agreement. The procedures  
31 shall provide for the invoking of arbitration only ~~((with the~~  
32 ~~approval))~~ by mutual agreement of the employee organization and  
33 management. The costs of arbitrators shall be shared equally by the  
34 parties.

35 Ferry system employees shall follow ~~((either))~~ the grievance  
36 procedures provided in a collective bargaining agreement, or if ~~((no))~~

1 such procedures are (~~so~~) not provided, shall submit the grievances to  
2 the (~~marine employees~~) commission (~~as provided in RCW 47.64.280~~).

3 **Sec. 10.** RCW 41.58.060 and 1983 c 15 s 22 are each amended to read  
4 as follows:

5 For any matter concerning the state ferry system and employee  
6 relations, collective bargaining, or labor disputes or stoppages, the  
7 provisions of chapter 47.64 RCW and this chapter shall govern.  
8 However, if a conflict exists between the provisions of chapter 47.64  
9 RCW and this chapter, the provisions of chapter 47.64 RCW shall govern.

10 **Sec. 11.** RCW 41.06.070 and 2010 c 271 s 801, 2010 c 2 s 2, and  
11 2010 c 1 s 1 are each reenacted and amended to 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 to  
20 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 health  
28 services, the director and the director's confidential secretary; in  
29 all other departments, the executive head of which is an individual  
30 appointed by the governor, the director, his or her confidential  
31 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:

35 (i) All members of such boards, commissions, or committees;

1 (ii) If the members of the board, commission, or committee serve on  
2 a part-time basis and there is a statutory executive officer: The  
3 secretary of the board, commission, or committee; the chief executive  
4 officer of the board, commission, or committee; and the confidential  
5 secretary of the chief executive officer of the board, commission, or  
6 committee;

7 (iii) If the members of the board, commission, or committee serve  
8 on a full-time basis: The chief executive officer or administrative  
9 officer as designated by the board, commission, or committee; and a  
10 confidential secretary to the chair of the board, commission, or  
11 committee;

12 (iv) If all members of the board, commission, or committee serve ex  
13 officio: The chief executive officer; and the confidential secretary  
14 of such chief executive officer;

15 (i) The confidential secretaries and administrative assistants in  
16 the immediate offices of the elective officers of the state;

17 (j) Assistant attorneys general;

18 (k) Commissioned and enlisted personnel in the military service of  
19 the state;

20 (l) Inmate, student, part-time, or temporary employees, and part-  
21 time professional consultants, as defined by the Washington personnel  
22 resources board;

23 (m) The public printer or to any employees of or positions in the  
24 state printing plant;

25 (n) Officers and employees of the Washington state fruit  
26 commission;

27 (o) Officers and employees of the Washington apple commission;

28 (p) Officers and employees of the Washington state dairy products  
29 commission;

30 (q) Officers and employees of the Washington tree fruit research  
31 commission;

32 (r) Officers and employees of the Washington state beef commission;

33 (s) Officers and employees of the Washington grain commission;

34 (t) Officers and employees of any commission formed under chapter  
35 15.66 RCW;

36 (u) Officers and employees of agricultural commissions formed under  
37 chapter 15.65 RCW;

1 (v) Officers and employees of the nonprofit corporation formed  
2 under chapter 67.40 RCW;

3 (w) Executive assistants for personnel administration and labor  
4 relations in all state agencies employing such executive assistants  
5 including but not limited to all departments, offices, commissions,  
6 committees, boards, or other bodies subject to the provisions of this  
7 chapter and this subsection shall prevail over any provision of law  
8 inconsistent herewith unless specific exception is made in such law;

9 (x) In each agency with fifty or more employees: Deputy agency  
10 heads, assistant directors or division directors, and not more than  
11 three principal policy assistants who report directly to the agency  
12 head or deputy agency heads;

13 (y) (~~All employees of the marine employees' commission;~~  
14 ~~(z)~~) Staff employed by the department of commerce to administer  
15 energy policy functions;

16 (~~(aa)~~) (z) The manager of the energy facility site evaluation  
17 council;

18 (~~(bb)~~) (aa) A maximum of ten staff employed by the department of  
19 commerce to administer innovation and policy functions, including the  
20 three principal policy assistants exempted under (x) of this  
21 subsection;

22 (~~(cc)~~) (bb) Staff employed by Washington State University to  
23 administer energy education, applied research, and technology transfer  
24 programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

25 (2) The following classifications, positions, and employees of  
26 institutions of higher education and related boards are hereby exempted  
27 from coverage of this chapter:

28 (a) Members of the governing board of each institution of higher  
29 education and related boards, all presidents, vice presidents, and  
30 their confidential secretaries, administrative, and personal  
31 assistants; deans, directors, and chairs; academic personnel; and  
32 executive heads of major administrative or academic divisions employed  
33 by institutions of higher education; principal assistants to executive  
34 heads of major administrative or academic divisions; other managerial  
35 or professional employees in an institution or related board having  
36 substantial responsibility for directing or controlling program  
37 operations and accountable for allocation of resources and program  
38 results, or for the formulation of institutional policy, or for

1 carrying out personnel administration or labor relations functions,  
2 legislative relations, public information, development, senior computer  
3 systems and network programming, or internal audits and investigations;  
4 and any employee of a community college district whose place of work is  
5 one which is physically located outside the state of Washington and who  
6 is employed pursuant to RCW 28B.50.092 and assigned to an educational  
7 program operating outside of the state of Washington;

8 (b) The governing board of each institution, and related boards,  
9 may also exempt from this chapter classifications involving research  
10 activities, counseling of students, extension or continuing education  
11 activities, graphic arts or publications activities requiring  
12 prescribed academic preparation or special training as determined by  
13 the board: PROVIDED, That no nonacademic employee engaged in office,  
14 clerical, maintenance, or food and trade services may be exempted by  
15 the board under this provision;

16 (c) Printing craft employees in the department of printing at the  
17 University of Washington.

18 (3) In addition to the exemptions specifically provided by this  
19 chapter, the director of personnel may provide for further exemptions  
20 pursuant to the following procedures. The governor or other  
21 appropriate elected official may submit requests for exemption to the  
22 director of personnel stating the reasons for requesting such  
23 exemptions. The director of personnel shall hold a public hearing,  
24 after proper notice, on requests submitted pursuant to this subsection.  
25 If the director determines that the position for which exemption is  
26 requested is one involving substantial responsibility for the  
27 formulation of basic agency or executive policy or one involving  
28 directing and controlling program operations of an agency or a major  
29 administrative division thereof, the director of personnel shall grant  
30 the request and such determination shall be final as to any decision  
31 made before July 1, 1993. The total number of additional exemptions  
32 permitted under this subsection shall not exceed one percent of the  
33 number of employees in the classified service not including employees  
34 of institutions of higher education and related boards for those  
35 agencies not directly under the authority of any elected public  
36 official other than the governor, and shall not exceed a total of  
37 twenty-five for all agencies under the authority of elected public  
38 officials other than the governor.

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

11 From February 18, 2009, through June 30, 2011, a salary or wage  
12 increase shall not be granted to any position exempt from  
13 classification under this chapter, except that a salary or wage  
14 increase may be granted to employees pursuant to collective bargaining  
15 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,  
16 or negotiated by the nonprofit corporation formed under chapter 67.40  
17 RCW, and except that increases may be granted for positions for which  
18 the employer has demonstrated difficulty retaining qualified employees  
19 if the following conditions are met:

- 20 (a) The salary increase can be paid within existing resources; and
- 21 (b) The salary increase will not adversely impact the provision of  
22 client services.

23 Any agency granting a salary increase from February 15, 2010,  
24 through June 30, 2011, to a position exempt from classification under  
25 this chapter shall submit a report to the fiscal committees of the  
26 legislature no later than July 31, 2011, detailing the positions for  
27 which salary increases were granted, the size of the increases, and the  
28 reasons for giving the increases.

29 Any person holding a classified position subject to the provisions  
30 of this chapter shall, when and if such position is subsequently  
31 exempted from the application of this chapter, be afforded the  
32 following rights: If such person previously held permanent status in  
33 another classified position, such person shall have a right of  
34 reversion to the highest class of position previously held, or to a  
35 position of similar nature and salary.

36 Any classified employee having civil service status in a classified  
37 position who accepts an appointment in an exempt position shall have

1 the right of reversion to the highest class of position previously  
2 held, or to a position of similar nature and salary.

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

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

11 NEW SECTION. **Sec. 12.** (1) The marine employees' commission is  
12 hereby abolished and its powers, duties, and functions are hereby  
13 transferred to the public employment relations commission.

14 (2)(a) All reports, documents, surveys, books, records, files,  
15 papers, or written material in the possession of the marine employees'  
16 commission shall be delivered to the custody of the public employment  
17 relations commission. All cabinets, furniture, office equipment, motor  
18 vehicles, and other tangible property employed by the marine employees'  
19 commission shall be made available to the public employment relations  
20 commission. All funds, credits, or other assets held by the marine  
21 employees' commission shall be assigned to the public employment  
22 relations commission.

23 (b) Any appropriations made to the marine employees' commission  
24 shall, on the effective date of this section, be transferred and  
25 credited to the public employment relations commission.

26 (c) If any question arises as to the transfer of any funds, books,  
27 documents, records, papers, files, equipment, or other tangible  
28 property used or held in the exercise of the powers and the performance  
29 of the duties and functions transferred, the director of financial  
30 management shall make a determination as to the proper allocation and  
31 certify the same to the state agencies concerned.

32 (3) All rules and all pending business before the marine employees'  
33 commission shall be continued and acted upon by the public employment  
34 relations commission. All existing contracts and obligations shall  
35 remain in full force and shall be performed by the public employment  
36 relations commission.

1 (4) The transfer of the powers, duties, and functions of the marine  
2 employees' commission shall not affect the validity of any act  
3 performed before the effective date of this section.

4 (5) If apportionments of budgeted funds are required because of the  
5 transfers directed by this section, the director of financial  
6 management shall certify the apportionments to the agencies affected,  
7 the state auditor, and the state treasurer. Each of these shall make  
8 the appropriate transfer and adjustments in funds and appropriation  
9 accounts and equipment records in accordance with the certification.

10 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
11 each repealed:

12 (1) RCW 47.64.080 (Employee seniority rights) and 1984 c 7 s 341 &  
13 1961 c 13 s 47.64.080;

14 (2) RCW 47.64.200 (Impasse procedures) and 2010 c 283 s 12, 2006 c  
15 164 s 7, & 1983 c 15 s 11;

16 (3) RCW 47.64.230 (Waiver of mediation) and 2007 c 160 s 3, 2006 c  
17 164 s 11, & 1983 c 15 s 14;

18 (4) RCW 47.64.280 (Marine employees' commission) and 2010 c 283 s  
19 14, 2006 c 164 s 18, 1984 c 287 s 95, & 1983 c 15 s 19;

20 (5) RCW 47.64.300 (Interest arbitration--Procedures) and 2007 c 160  
21 s 4 & 2006 c 164 s 12;

22 (6) RCW 47.64.310 (Interest arbitration--Function) and 2006 c 164  
23 s 13;

24 (7) RCW 47.64.320 (Parties not bound by arbitration--Arbitration  
25 factors) and 2010 c 283 s 15 & 2006 c 164 s 14; and

26 (8) RCW 47.64.330 (Collective bargaining limitations) and 2006 c  
27 164 s 15.

28 NEW SECTION. **Sec. 14.** This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of the  
30 state government and its existing public institutions, and takes effect  
31 immediately.

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