

Chapter 47.64 RCW
MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

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RCW 47.64.005 Declaration of policy. The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state. [1961 c 13 § 47.64.005. Prior: 1949 c 148 § 1; Rem. Supp. 1949 § 6524-22.]

RCW 47.64.006 Public policy. The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions. [1989 c 327 § 1; 1983 c 15 § 1.]

RCW 47.64.011 Definitions. As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

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

(2) "Commission" means the public employment relations commission created in RCW 41.58.010.

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

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

(5) "Executive director" means the executive director of the commission.

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

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

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

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

(10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in

good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter. [2011 1st sp.s. c 16 § 24; 2006 c 164 § 1; 1983 c 15 § 2.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

Prospective application—Savings—2006 c 164: "(1) This act applies prospectively only and not retroactively. It applies to collective bargaining agreements, the negotiations of collective bargaining agreements, mediations, arbitrations, and other actions under this act that arise or are commenced on or after March 21, 2006.

(2) This act does not apply to collective bargaining agreements, either in effect or for which the negotiations have begun, or mediations and arbitrations that arose or commenced under *this chapter before March 21, 2006. Such collective bargaining agreements and related proceedings must be administered in accordance with the authorities, rules, and procedures that were established under *this chapter as it existed before March 21, 2006. The repealers in section 19 of this act do not affect any existing right acquired, or liability or obligation incurred, under the statutes repealed or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under them." [2006 c 164 § 16.]

***Reviser's note:** The term "this chapter" apparently refers to chapter 47.64 RCW.

Effective dates—2006 c 164: "Except for section 10 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2006]." [2006 c 164 § 21.]

RCW 47.64.060 Federal social security—State employees' retirement. All employees engaged in the operation of ferries acquired by the department shall remain subject to the federal social security act and shall be under the state employees' retirement act. The department shall make such deductions from salaries of employees and contributions from revenues of the department as shall be necessary to qualify the employees for benefits under the federal social security act. The appropriate officials are authorized to contract with the secretary of health, education and welfare to effect the coverage. [1984 c 7 § 340; 1961 c 13 § 47.64.060. Prior: 1957 c 271 § 7; 1951 c 82 § 2; 1949 c 148 § 5; Rem. Supp. 1949 § 6524-26.]

RCW 47.64.070 Employees subject to industrial insurance laws. Employees, except the masters and members of the crews of vessels, shall be subject to and entitled to the benefits of the industrial insurance laws of the state, and are hereby declared to be in extrahazardous employment within the meaning of such laws. [1961 c 13

§ 47.64.070. Prior: 1951 c 259 § 2; 1949 c 148 § 6; Rem. Supp. 1949 § 6524-27.]

RCW 47.64.090 Other party operating ferry by rent, lease, or charter—Passenger-only ferry service. (1) Except as provided in RCW 47.60.656 and subsections (2) and (4) of this section, or as provided in RCW 36.54.130 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of RCW 36.57A.200 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

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

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

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. A determination through a cross-check process may be made upon a showing of interest submitted in support of the exclusive bargaining representative by more than fifty percent of the employees.

(3) If a ferry district is formed under RCW 36.54.110 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that

qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the national labor relations act, as applicable;

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

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

(4) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service. [2019 c 230 § 19; 2011 1st sp.s. c 16 § 25. Prior: 2003 c 373 § 3; 2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090; prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

Findings—Intent—2003 c 373: "The legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the legislature." [2003 c 373 § 1.]

Contingent effective date—2003 c 91: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 23, 2003], but

only if Engrossed Substitute House Bill No. 1853 has become law. If Engrossed Substitute House Bill No. 1853 has not become law by June 30, 2003, sections 1 and 2 of this act are null and void." [2003 c 91 § 4.] Engrossed Substitute House Bill No. 1853 became law as 2003 c 83, effective April 23, 2003.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

RCW 47.64.120 Scope of negotiations—Interest on retroactive compensation increases—Prohibitions—Agreement conflicts. (1) Except as otherwise provided in this chapter, the employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times to negotiate in good faith with respect to wages, hours, working conditions, and insurance, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Except as provided under RCW 47.64.270, the employer is not required to bargain over health care benefits. Any retirement system or retirement benefits shall not be subject to collective bargaining.

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

(3) The employer shall not bargain over the rights of management as identified in RCW 41.80.040.

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

(5) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable. [2011 1st sp.s. c 16 § 7; 2010 c 283 § 10; 2006 c 164 § 3; 1997 c 436 § 1; 1983 c 15 § 3.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.130 Unfair labor practices. (1) It is an unfair labor practice for the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the public employment relations commission pursuant to RCW 41.58.050, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit. [2011 1st sp.s. c 16 § 19; 2010 c 8 § 10021; 2006 c 164 § 4; 1983 c 15 § 4.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.132 Unfair labor practice procedures—Powers and duties of commission. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders; however, a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission or in superior court. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [2018 c 252 § 5; 2011 1st sp.s. c 16 § 26.]

Effective date—2011 1st sp.s. c 16 §§ 26-28: "Sections 26 through 28 of this act take effect July 1, 2013." [2011 1st sp.s. c 16 § 32.]

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

RCW 47.64.135 Representation—Elections—Rules. (1) The commission shall determine all questions pertaining to representation and shall administer all elections and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections. The commission shall adopt rules that provide for at least the following:

- (a) Secret balloting;
 - (b) Consulting with employee organizations;
 - (c) Access to lists of employees, job classification, work locations, and home mailing addresses;
 - (d) Absentee voting;
 - (e) Procedures for the greatest possible participation in voting;
 - (f) Campaigning on the employer's property during working hours;
- and
- (g) Election observers.

(2) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit.

(3) The certified exclusive bargaining representative is responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days and no less than ninety calendar days before the expiration of the contract. [2011 1st sp.s. c 16 § 27.]

Effective date—2011 1st sp.s. c 16 §§ 26-28: See note following RCW 47.64.132.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

RCW 47.64.137 Application of RCW 41.56.037—Bargaining representative access to new employees. RCW 41.56.037 applies to this chapter. [2018 c 250 § 6.]

RCW 47.64.140 Strikes, work stoppages, and lockouts prohibited.

(1) It is unlawful for any ferry system employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike or work stoppage against the ferry system.

(2) It is unlawful for the employer to authorize, consent to, or condone a strike or work stoppage; or to conduct a lockout; or to pay or agree to pay any ferry system employee for any day in which the employee participates in a strike or work stoppage; or to pay or agree to pay any increase in compensation or benefits to any ferry system employee in response to or as a result of any strike or work stoppage or any act that violates subsection (1) of this section. It is unlawful for any official, director, or representative of the ferry system to authorize, ratify, or participate in any violation of this subsection. Nothing in this subsection prevents new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time. No collective bargaining agreement provision regarding suspension or modification of any court-ordered penalty provided in this section is binding on the courts.

(3) In the event of any violation or imminently threatened violation of subsection (1) or (2) of this section, any citizen domiciled within the jurisdictional boundaries of the state may petition the superior court for Thurston county for an injunction restraining the violation or imminently threatened violation. Rules of civil procedure regarding injunctions apply to the action. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him or her; and no bond may be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary

or permanent injunction granted under this section is a contempt of court as provided in chapter 7.21 RCW. The court may impose a penalty of up to ten thousand dollars for an employee organization or the ferry system, for each day during which the failure to comply continues. The sanctions for a ferry employee found to be in contempt shall be as provided in chapter 7.21 RCW. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

(4) The right of ferry system employees to engage in strike or work slowdown or stoppage is not granted and nothing in this chapter may be construed to grant such a right.

(5) Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty.

(6) In addition to the remedies and penalties provided by this section the successful litigant is entitled to recover reasonable attorney fees and costs incurred in the litigation.

(7) Notwithstanding the provisions of chapter 88.04 RCW and chapter 88.08 RCW, the department of transportation shall adopt rules allowing vessels, as defined in RCW 88.04.015, as well as other watercraft, to engage in emergency passenger service on the waters of Puget Sound in the event ferry employees engage in a work slowdown or stoppage. Such emergency rules shall allow emergency passenger service on the waters of Puget Sound within seventy-two hours following a work slowdown or stoppage. Such rules that are adopted shall give due consideration to the needs and the health, safety, and welfare of the people of the state of Washington. [2006 c 164 § 5; 1989 c 373 § 25; 1983 c 15 § 5.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.160 Employee authorization of membership dues and other payments—Revocation. (1) A collective bargaining agreement may include a provision for members of the bargaining unit to authorize the deduction of membership dues from their salary, and the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership. An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer shall as soon as practicable forward the request to the exclusive bargaining representative.

(2)(a) Upon receiving notice of the employee's authorization from the exclusive bargaining representative, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(b) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(c) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(d) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction no later than the second payroll after receipt of the confirmation.

(e) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions. [2019 c 230 § 20; 1983 c 15 § 7.]

RCW 47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

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

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

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

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

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

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

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement

should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by *RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect. After the expiration date of a collective bargaining agreement negotiated under this chapter, except to the extent provided in subsection (11) of this section and RCW 47.64.270(4), all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration.

(9) Except as provided in subsection (11) of this section:

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

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

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

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

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

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

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and

award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

(10) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(11)(a) For the collective bargaining agreements negotiated for the 2011-2013 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement even if the request for funds was not received by the office of financial management by October 1st and was not transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

(b) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(c) For the collective bargaining agreements negotiated for the 2013-2015 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement reached after October 1st after a determination of financial infeasibility by the director of the office of financial management if the request for funds is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. [2015 3rd sp.s. c 1 § 305; 2015 1st sp.s. c 10 § 707; 2013 c 306 § 521; 2011 c 367 § 712; 2010 c 283 § 11; 2007 c 160 § 1; 2006 c 164 § 6; 1983 c 15 § 8.]

***Reviser's note:** RCW 43.88.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (9).

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2013 c 306: "Except for sections 702 and 709 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2013]." [2013 c 306 § 1402.]

Effective date—2011 c 367: See note following RCW 47.29.170.

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.175 Collective bargaining agreement negotiation. (1)

For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee.

(2) Two or more ferry employee organizations may, upon agreement of the parties, negotiate, as a coalition with the employer representative as designated in subsection (1) of this section, a multiunion collective bargaining agreement on behalf of all the employees in ferry employee organization bargaining units that the exclusive bargaining representatives represent. The coalition shall bargain for a multiunion collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of bargaining unit-specific issues for inclusion in or as an addendum to the multiunion collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. Nothing in this section impairs the right of each ferry employee organization to negotiate a collective bargaining agreement exclusive to the bargaining unit it represents. [2006 c 164 § 2.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.200 Impasse procedures. As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel shall issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320. [2010 c 283 § 12; 2006 c 164 § 7; 1983 c 15 § 11.]

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.210 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by August 1st in the even-numbered year preceding the biennium, either party may request the commission to appoint an impartial and disinterested person to act as mediator. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree. [2007 c 160 § 2; 2006 c 164 § 8; 1983 c 15 § 12.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.230 Waiver of mediation. By mutual agreement, the parties may waive mediation and proceed with binding arbitration as provided for in the impasse procedures agreed to under RCW 47.64.200 or in 47.64.300 through 47.64.320, as applicable. The waiver shall be in writing and be signed by the representatives of the parties. Regardless of the status of mediation, the parties must comply with the interest arbitration agreement under RCW 47.64.170(6)(a), absent any subsequent agreement to the contrary. [2007 c 160 § 3; 2006 c 164 § 11; 1983 c 15 § 14.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.250 Legal actions. (1) Any ferry employee organization and the department of transportation may sue or be sued as an entity under this chapter. Service upon any party shall be in accordance with law or the rules of civil procedure. Nothing in this chapter may be construed to make any individual or his or her assets liable for any judgment against the department of transportation or a ferry employee organization if the individual was acting in his or her official capacity.

(2) Any legal action by any ferry employee organization or the department of transportation under this chapter shall be filed in Thurston county superior court within ten days of when the cause of action arose. The court shall consider those actions on a priority basis and determine the merits of the actions within thirty days of filing. [2010 c 8 § 10022; 1983 c 15 § 16.]

RCW 47.64.260 Notice and service. Any notice required under this chapter shall be in writing, but service thereof is sufficient if mailed by certified mail, return receipt requested, addressed to the last known address of the parties, or sent by electronic facsimile transmission with transaction report verification and same-day United States postal service mailing of copies or service as specified in Title 316 WAC, unless otherwise provided in this chapter. Refusal of certified mail by any party shall be considered service. Prescribed time periods commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice. [2001 c 19 § 1; 1983 c 15 § 17.]

RCW 47.64.270 Insurance and health care. (1) The employer and one coalition of all the exclusive bargaining representatives subject to this chapter and chapter 41.80 RCW shall conduct negotiations regarding the dollar amount expended on behalf of each employee for health care benefits.

(2) Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW.

(3) The employer and employee organizations may collectively bargain for insurance plans other than health care benefits, and

employer contributions may exceed that of other state agencies as provided in RCW 41.05.050.

(4) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. [2013 c 306 § 522; 2011 c 367 § 713; 2010 c 283 § 13; 2006 c 164 § 17; 1995 1st sp.s. c 6 § 6; 1993 c 492 § 224; 1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: See note following RCW 47.29.170.

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Savings—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Effective date—1987 c 78: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 78 § 3.]

RCW 47.64.290 Toll bridge employees subject to civil service. Notwithstanding any other provisions of this chapter, toll bridge employees of the marine transportation division are subject to chapter 41.06 RCW. [1984 c 48 § 2.]

RCW 47.64.300 Interest arbitration—Procedures. (1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, upon the recommendation of the assigned mediator that the parties remain at impasse or, with respect to biennial bargaining, in compliance with the interest arbitration agreement under RCW 47.64.170(6)(a), all impasse items shall be submitted to arbitration under this section. The issues for

arbitration shall be limited to the issues certified by the executive director.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section, except with respect to biennial bargaining described under RCW 47.64.170(6). The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the executive director, each party shall, absent an agreement to the contrary, name one person to serve as its arbitrator on the arbitration panel. Except with respect to biennial bargaining described under RCW 47.64.170(6), the two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or, with the consent of the parties, the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence

presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2011 1st sp.s. c 16 § 21; 2007 c 160 § 4; 2006 c 164 § 12.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.060.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.060.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.310 Interest arbitration—Function. An interest arbitration proceeding under RCW 47.64.300 exercises a state function and is, for the purposes of this chapter, functioning as a state agency. Chapter 34.05 RCW does not apply to an interest arbitration proceeding under this chapter. [2006 c 164 § 13.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.320 Parties not bound by arbitration—Arbitration factors. (1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter, except that health care benefits are not subject to interest arbitration.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The financial ability of the department to pay for the compensation and fringe benefit provisions of a collective bargaining agreement;

(b) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(c) The constitutional and statutory authority of the employer;

(d) Stipulations of the parties;

(e) The results of the salary survey as required in RCW 47.64.170(8);

(f) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United

States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

(g) Changes in any of the foregoing circumstances during the pendency of the proceedings;

(h) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature;

(i) The ability of the state to retain ferry employees;

(j) The overall compensation presently received by the ferry employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits, and all other direct or indirect monetary benefits received; and

(k) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter.

(4) This section applies to any matter before the respective mediator, arbitrator, or arbitration panel. [2010 c 283 § 15; 2006 c 164 § 14.]

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.330 Collective bargaining limitations. Collective bargaining under chapter 164, Laws of 2006 may not be for the purposes of making a collective bargaining agreement take effect before July 1, 2007. No party may engage in collective bargaining under chapter 164, Laws of 2006 to amend a collective bargaining agreement in effect on March 21, 2006. A collective bargaining agreement or amendment thereto entered into under chapter 164, Laws of 2006 shall not be effective before July 1, 2007, and may not have any retroactive effect. [2006 c 164 § 15.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

RCW 47.64.340 Ferry vessel captains—Authority, responsibilities—Collective bargaining. (1) The captain of a Washington state ferry vessel, also known as the master of a vessel or the commanding officer, is the ultimate authority on, manager of, and has responsibility for the entire vessel and its Washington state ferries personnel while it is in service. The captain's responsibilities include, but are not limited to:

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

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

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

(d) Overseeing all aspects of vessel operations;

(e) Ensuring that the vessel operations and its Washington state ferries personnel satisfy performance expectations set forth by the department; and

(f) Managing vessel arrivals and departures, as well as all other vessel operations while the vessel is in service.

(3) [(2)] Effective July 1, 2013, the public employment relations commission shall sever from the masters, mates, and pilots bargaining unit all captains. By August 31, 2011, if a majority of the captains in the masters, mates, and pilots bargaining unit indicate by vote that they desire to be included in a newly formed captains-only bargaining unit, the public employment relations commission shall certify a captains-only bargaining unit, to be effective July 1, 2013. For the vote described in this subsection, a union seeking to represent captains does not have to demonstrate a showing of interest to be included on a ballot. Notwithstanding the results of a vote, captains shall remain a part of the masters, mates, and pilots bargaining unit through June 30, 2013.

(4) [(3)] If a new captains-only bargaining unit is created, the employer and the exclusive bargaining representative for the captains-only bargaining unit must negotiate a collective bargaining agreement exclusive to the captains-only bargaining unit.

(5) [(4)] Beginning with negotiations covering the 2013-2015 biennium, the employer and the exclusive bargaining representative of the captains-only bargaining unit must negotiate agreements that are consistent with this section.

(6) [(5)] A collective bargaining agreement may not contain any provision that extends the term of an existing collective bargaining agreement or applicability of items incompatible with this section in an existing collective bargaining agreement. [2011 1st sp.s. c 16 § 8.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

RCW 47.64.350 Ferry system performance measures and targets—Definitions. For the purposes of this section and *sections 10 through 15 of this act:

(1) "Management" means an employee at the Washington state ferries who is part of Washington management services or is exempt.

(2) "Performance measure" means measurable standards to be used by the department to evaluate the sufficiency of the services being provided to ferry riders.

(3) "Performance report" means a report that summarizes ferry system performance using the performance measures identified in RCW 47.64.355 and *section 11 of this act.

(4) "Performance target" means the desired outcome of a performance measure. [2011 1st sp.s. c 16 § 9.]

***Reviser's note:** Sections 10 and 12 of this act were codified as RCW 47.64.355 and 47.64.360, respectively. Sections 11, 13, 14, and 15 of this act were vetoed by the governor.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

RCW 47.64.355 Ferry system performance measures and targets—Ad hoc committee. Performance targets must be established by an ad hoc committee with members from and designated by the office of the governor, which must include at least one member from labor. The committee may not consist of more than eleven members. By December 31, 2011, the committee shall present performance targets to the representatives of the legislative transportation committees and the joint transportation committee for review of the performance measures listed under this section. The committee may also develop performance measures in addition to the following:

(1) Safety performance as measured by passenger injuries per one million passenger miles and by injuries per ten thousand revenue service hours that are recordable by standards of the federal occupational safety and health administration and related to standard operating procedures;

(2) Service effectiveness measures including, but not limited to, passenger satisfaction of interactions with ferry employees, cleanliness and comfort of vessels and terminals, and satisfactory response to requests for assistance. Passenger satisfaction must be measured by an evaluation that is created by a contracted market research company and conducted by the Washington state transportation commission as part of the ferry riders' opinion group survey. The Washington state transportation commission shall, to the extent possible, integrate the passenger satisfaction evaluation into the ferry user data survey described in RCW 47.60.286;

(3) Cost-containment measures including, but not limited to, operating cost per passenger mile, operating cost per revenue service mile, discretionary overtime as a percentage of straight time, and gallons of fuel consumed per revenue service mile; and

(4) Maintenance and capital program effectiveness measures including, but not limited to: Project delivery rate as measured by the number of projects completed on time and within the omnibus transportation appropriations act; vessel and terminal design and engineering costs as measured by a percentage of the total capital program, including measurement of the ongoing operating and maintenance costs; and total vessel out-of-service time.

The ad hoc committee described in subsection (1) of this section expires December 31, 2011. [2011 1st sp.s. c 16 § 10.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

RCW 47.64.360 Ferry system performance measures and targets—Reports. (1) The department of transportation shall complete a government management and accountability performance report that provides a baseline assessment of current performance on the performance measures identified in RCW 47.64.355 using final 2009-2011 data. This report must be presented to the legislature by November 1, 2011, through the attainment report required in RCW 47.04.285 and 47.04.280.

(2) By December 31, 2012, and each year thereafter, the department of transportation shall complete a performance report for the prior fiscal year. This report must be reviewed by the office of financial management, which must provide comment on the report, and

the joint transportation committee, prior to submitting the report to the legislature and governor.

(3) Management shall lead implementation of the performance measures in RCW 47.64.355. [2016 c 35 § 4; 2015 3rd sp.s. c 1 § 306; 2011 1st sp.s. c 16 § 12.]

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

RCW 47.64.370 Certain communications—Privilege from examination and disclosure. The privilege established by RCW 5.60.060(11) shall apply to all collective bargaining representatives covered by this chapter and in all proceedings authorized by this chapter. [2023 c 202 § 8.]

Findings—2023 c 202: See note following RCW 5.60.060.

RCW 47.64.900 Section captions not part of law—1983 c 15. Section captions used in this act constitute no part of the law. [1983 c 15 § 29.]