

FINAL BILL REPORT

SHB 1268

PARTIAL VETO

C 354 L 02

Synopsis as Enacted

Brief Description: Enacting the civil service reform act of 2002.

Sponsors: By House Committee on State Government (originally sponsored by Representatives Romero, Campbell, Conway, Kenney, Kessler, Hurst, Keiser, Simpson, Ogden, Lovick, McIntire, Ruderman, O'Brien, Schual-Berke, Poulsen, Kagi, Cody, Edmonds, Wood and Haigh; by request of Governor Locke).

House Committee on State Government

House Committee on Appropriations

Senate Committee on Labor, Commerce & Financial Institutions

Senate Committee on Ways & Means

Background:

I. Civil Service:

The Washington Personnel Resources Board (WPRB) is responsible for adopting civil service rules regarding:

- classification of all state positions;
- exams;
- certification of names for vacancies using the seven people that have the highest score on the eligibility list (the "Rule of 7");
- suspensions, demotions, dismissals, transfers, hours of work, sick leave, vacation; and
- layoff criteria (layoffs must be by seniority).

Employees of institutions of higher education may "opt out" of the civil service rules and instead have their employment governed exclusively by a collective bargaining agreement.

The Department of Personnel (DOP) is responsible for administering the civil service system. The DOP must conduct periodic salary and fringe benefit surveys. The surveys are subject to certain deadlines and the DOP must furnish specific supporting documents along with the surveys. The Washington Management Service (WMS) is governed under the DOP rules separate from the rules governing other classified employees.

The Personnel Appeals Board (PAB) has jurisdiction to decide appeals in most personnel actions, including dismissals, demotions, allocation of positions, and violations of civil

service rules.

II. Contracting Out:

Because of a 1978 decision of the Washington Supreme Court, agencies and institutions of higher education may not contract out for services regularly and historically provided by classified state employees. The Legislature responded the year after the decision by clarifying that agencies and institutions of higher education may purchase services by contract if the services were regularly purchased by contract prior to 1979. However, a contract may not be executed or renewed if it would have the effect of terminating classified state employees.

III. Collective Bargaining:

Collective bargaining for classified state employees is governed by the WPRB rules and administered by the DOP. Classified state employees have the right to bargain over grievance procedures and over personnel matters over which the agency or institution may lawfully exercise discretion. Agencies and institutions of higher education may not exercise discretion over subjects covered by statute or by the WPRB rules, including recruitment, hiring, discipline, sick leave, vacations, and wages.

Bargaining units are determined by the WPRB rules. Supervisors and non-supervisors may be in the same unit. The WPRB conducts elections and certifies exclusive bargaining representatives.

Bargaining units bargain with their employing agency or institution of higher education. The civil service law does not grant classified state employees the right to strike. The DOP mediates disputes and the WPRB conducts impasse arbitration. Employees in a bargaining unit may be required to pay periodic dues if a majority of the employees in the bargaining unit vote for union security.

Summary:

I. Civil Service:

Effective July 1, 2004, the authority to adopt civil service rules, including rules pertaining to job classifications and layoff criteria, are transferred from the WPRB to the DOP. Certain rules, including rules pertaining to discipline, leave, and hours of work, may be superseded by collective bargaining agreements. The "Rule of 7" and layoffs by seniority are no longer required. Institutions of higher education may locally administer the rules adopted by the DOP.

The WPRB must review the current classification system and adopt new classifications by March 15, 2004. The DOP must begin to implement the new classification system by

January 1, 2005. Employees of institutions of higher education may not "opt out" of the civil service rules after July 1, 2003, and the "opt out" provisions are repealed July 1, 2005.

The specific requirements for salary and fringe benefit surveys are removed. However, the DOP must still conduct the surveys. On July 1, 2006, the PAB is abolished, and its powers, duties, and functions are transferred to the WPRB. Personnel appeals filed after June 30, 2005, must be to the WPRB.

II. Contracting Out:

A state agency or institution of higher education may contract out for services, including services traditionally and historically provided by state employees, if the following are met:

- The contract contains performance measures.
- Classified employees are allowed to provide alternative solutions to purchasing the services by contract, and, in the event those solutions are not approved, bid for the contract using competitive bidding procedures.
- The contract contains provisions requiring the contracting entity to consider employing displaced classified employees.
- The agency or institution has established contract monitoring and termination procedures.
- The agency or institution has demonstrated that the contract would lead to savings or efficiencies, taking into account the possibility of improper performance.

The following competitive bidding procedures are specified:

- The agency or institution must inform the affected classified employees 90 days prior to sending out bids for contracts; the employees then have 60 days to offer alternatives to purchasing the services by contract.
- Employees must inform the agency or institution if they intend to submit a bid.
- The DOP and the Department of General Administration (GA) must provide training in the bidding process and in bid preparation.
- The GA must establish procedures to ensure that bids are submitted and evaluated fairly, and that there exists a competitive market for the service.
- The employees' bid must contain the full cost of providing the service.
- The agency or institution may contract with the GA to perform the bidding process.

If employees decide to compete for the contract, they must form an employee business unit to submit the bid. An employee business unit is defined as a group of employees who performs services to be contracted, and who submits a competitive bid for the performance of those services.

Contracts that were authorized by law prior to the effective date of the act, including contracts and agreements between public entities, and contracts expressly mandated by the

Legislature are not subject to the new criteria and requirements for contracting out. The Joint Legislative Audit and Review Committee must conduct a performance audit to evaluate the effectiveness of contracting out by January 1, 2007.

III. Collective Bargaining:

Effective July 1, 2004, collective bargaining will be administered by the Public Employment Relations Commission (PERC). The PERC must determine representation issues, determine appropriate bargaining units, administer elections for exclusive bargaining representatives, process and adjudicate disputes that arise from the elections or unfair labor practices, and certify exclusive bargaining representatives. For purposes of negotiating collective bargaining agreements, the agency employer is represented by the Governor, except for institutions of higher education, which may be represented by either their governing boards or the Governor. Existing bargaining units and exclusive bargaining representatives are "grandfathered." Members of the WMS may not be included in a collective bargaining unit.

If an exclusive bargaining representative represents more than one bargaining unit, it must negotiate one master collective bargaining agreement covering all of the bargaining units it represents. Except for higher education employees, exclusive bargaining representatives representing fewer than 500 employees must bargain in one coalition. The coalition must bargain for a master collective bargaining agreement covering all employees represented. If the parties fail to reach an agreement during negotiations, either party may initiate mediation. If no agreement is reached within 100 days of the expiration of the previous agreement, the PERC must appoint an independent fact-finder.

When negotiating collective bargaining agreements, the Governor must consult with the new Joint Select Committee on Employee Relations. Collective bargaining agreements may not exceed one fiscal biennium, must be submitted to the Office of Financial Management by October 1, and must be submitted to the Legislature as part of the Governor's budget proposal. The Legislature must accept or reject the request for funds necessary to implement the agreements as a whole. If a significant revenue shortfall occurs, as declared by either the Governor or the Legislature, modifications to the agreements must be negotiated. The terms of an expired collective bargaining agreement remain in effect until a new agreement is negotiated, not to exceed one year. After one year, the employer may unilaterally implement according to law.

The matters subject to bargaining include wages, hours, and terms and conditions of employment. Employers are not required to, but may, bargain over health care benefits or other employee insurance benefits, any retirement system or retirement benefits, and certain civil service rules regarding examinations, appointments, job classifications and affirmative action. The parties are prohibited from bargaining over management rights, which include, but are not limited to, powers and duties established by statute or the state constitution, the functions and programs of the employer, the use of technology, the

structure of the organization, the employer's budget, the size of the agency work force, the right to direct and supervise employees, and retirement plans and benefits. Bargaining over health care dollar amounts must be conducted in one statewide coalition. Except for institutions of higher education, this is also true for the number of names to be certified for vacancies and promotional preferences.

A provision of a collective bargaining agreement that conflicts with a statute is invalid and unenforceable. However, if a provision of a collective bargaining agreement conflicts with an executive order, administrative rule or agency policy relating to wages, hours and terms, and conditions of employment, the collective bargaining agreement prevails. Collective bargaining that affects the state's right to contract out for services is not prohibited. The right to strike is not granted.

Collective bargaining agreements may contain a union security provision requiring employees to pay agency shop fees as a condition of employment. Employees who assert the right of non-association based on religious beliefs may pay the fee to the employee organization for a program within the organization that is in harmony with the employee's conscience.

Votes on Final Passage:

House 54 43
Senate 29 19 (Senate amended)
House 56 40 (House concurred)

Effective: June 13, 2002

July 1, 2004 (Sections 203, 204, 213-223, 227, 229-231, 241, 243, 246, 248, 301-307, 309-316, 318, 319, 402)
March 15, 2005 (Section 224)
July 1, 2005 (Sections 208, 234-238, 403)
July 1, 2006 (Sections 225, 226, 233, 404)

Partial Veto Summary: The Governor vetoed a provision of law that was repealed in another bill.