

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2017

Chapter 77, Laws of 2020

66th Legislature
2020 Regular Session

ADMINISTRATIVE LAW JUDGES--COLLECTIVE BARGAINING

EFFECTIVE DATE: March 19, 2020

Passed by the House February 13, 2020
Yeas 57 Nays 40

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2020
Yeas 29 Nays 18

CYRUS HABIB

President of the Senate

Approved March 19, 2020 2:31 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2017** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 19, 2020

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2017

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By House Appropriations (originally sponsored by Representatives Frame, Dolan, Fitzgibbon, Stanford, Kilduff, Macri, Ryu, Valdez, Tarleton, and Pollet)

READ FIRST TIME 02/04/20.

1 AN ACT Relating to collective bargaining for administrative law
2 judges; amending RCW 34.12.030 and 34.12.100; reenacting and amending
3 RCW 41.80.005 and 41.80.010; adding a new section to chapter 41.80
4 RCW; creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the independent
7 adjudication services provided by administrative law judges of the
8 office of administrative hearings are crucial to the due process
9 rights of the citizens of this state and the just functioning of the
10 government. Administrative law judges of the office of administrative
11 hearings are exempt from civil service under RCW 34.12.030(5). These
12 administrative law judges currently have no mechanism through which
13 to collectively bargain for salary increases. The legislature finds
14 the office of administrative hearings has experienced increased
15 difficulty recruiting and retaining administrative law judges due to
16 the disparity in wages paid to administrative law judges as compared
17 to similar public sector positions. This type of turnover is costly
18 to the office of administrative hearings, negatively impacts morale,
19 interferes with the ability of the office to develop a succession
20 plan, and ultimately harms the citizens of this state. Therefore, it
21 is the legislature's intent to empower these administrative law

1 judges to collectively bargain for fair wages that will foster job
2 satisfaction and the highest standards of professional competence
3 among administrative law judges.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.80
5 RCW to read as follows:

6 (1) In addition to the agencies defined in RCW 41.80.005 and
7 subject to the provisions of this section, this chapter applies to
8 administrative law judges of the office of administrative hearings
9 appointed under RCW 34.12.030(1).

10 (2) Administrative law judges of the office of administrative
11 hearings who are not otherwise excluded from bargaining under
12 subsection (3) of this section are granted the right to collectively
13 bargain.

14 (3) The following administrative law judges of the office of
15 administrative hearings are excluded from this section and do not
16 have the right to collectively bargain:

17 (a) Administrative law judges in manager positions as defined in
18 RCW 41.06.022, including deputy chief administrative law judges,
19 division chief administrative law judges, and assistant chief
20 administrative law judges;

21 (b) Administrative law judges serving on a contractual basis
22 under RCW 34.12.030(2);

23 (c) Confidential employees as defined in RCW 41.80.005; and

24 (d) Any administrative law judge who reports directly to the
25 chief administrative law judge.

26 (4) The only unit appropriate for the purpose of collective
27 bargaining under this chapter is a statewide unit of all
28 administrative law judges of the office of administrative hearings
29 not otherwise excluded from bargaining.

30 **Sec. 3.** RCW 41.80.005 and 2019 c 234 s 1 and 2019 c 145 s 3 are
31 each reenacted and amended to read as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

34 (1) "Agency" means any agency as defined in RCW 41.06.020 and
35 covered by chapter 41.06 RCW. "Agency" also includes the assistant
36 attorneys general of the attorney general's office and the
37 administrative law judges of the office of administrative hearings,

1 regardless of whether those employees are exempt under chapter 41.06
2 RCW.

3 (2) "Collective bargaining" means the performance of the mutual
4 obligation of the representatives of the employer and the exclusive
5 bargaining representative to meet at reasonable times and to bargain
6 in good faith in an effort to reach agreement with respect to the
7 subjects of bargaining specified under RCW 41.80.020. The obligation
8 to bargain does not compel either party to agree to a proposal or to
9 make a concession, except as otherwise provided in this chapter.

10 (3) "Commission" means the public employment relations
11 commission.

12 (4) "Confidential employee" means an employee who, in the regular
13 course of his or her duties, assists in a confidential capacity
14 persons who formulate, determine, and effectuate management policies
15 with regard to labor relations or who, in the regular course of his
16 or her duties, has authorized access to information relating to the
17 effectuation or review of the employer's collective bargaining
18 policies, or who assists or aids a manager. "Confidential employee"
19 also includes employees who assist assistant attorneys general who
20 advise and represent managers or confidential employees in personnel
21 or labor relations matters, or who advise or represent the state in
22 tort actions.

23 (5) "Director" means the director of the public employment
24 relations commission.

25 (6) "Employee" means any employee, including employees whose work
26 has ceased in connection with the pursuit of lawful activities
27 protected by this chapter, covered by chapter 41.06 RCW. "Employee"
28 includes assistant attorneys general of the office of the attorney
29 general and administrative law judges of the office of administrative
30 hearings, regardless of their exemption under chapter 41.06 RCW.
31 "Employee" does not include:

32 (a) Employees covered for collective bargaining by chapter 41.56
33 RCW;

34 (b) Confidential employees;

35 (c) Members of the Washington management service;

36 (d) Internal auditors in any agency; or

37 (e) Any employee of the commission, the office of financial
38 management, or the office of risk management within the department of
39 enterprise services.

1 (7) "Employee organization" means any organization, union, or
2 association in which employees participate and that exists for the
3 purpose, in whole or in part, of collective bargaining with
4 employers.

5 (8) "Employer" means the state of Washington.

6 (9) "Exclusive bargaining representative" means any employee
7 organization that has been certified under this chapter as the
8 representative of the employees in an appropriate bargaining unit.

9 (10) "Institutions of higher education" means the University of
10 Washington, Washington State University, Central Washington
11 University, Eastern Washington University, Western Washington
12 University, The Evergreen State College, and the various state
13 community colleges.

14 (11) "Labor dispute" means any controversy concerning terms,
15 tenure, or conditions of employment, or concerning the association or
16 representation of persons in negotiating, fixing, maintaining,
17 changing, or seeking to arrange terms or conditions of employment
18 with respect to the subjects of bargaining provided in this chapter,
19 regardless of whether the disputants stand in the proximate relation
20 of employer and employee.

21 (12) "Manager" means "manager" as defined in RCW 41.06.022.

22 (13) "Supervisor" means an employee who has authority, in the
23 interest of the employer, to hire, transfer, suspend, lay off,
24 recall, promote, discharge, direct, reward, or discipline employees,
25 or to adjust employee grievances, or effectively to recommend such
26 action, if the exercise of the authority is not of a merely routine
27 nature but requires the consistent exercise of individual judgment.
28 However, no employee who is a member of the Washington management
29 service may be included in a collective bargaining unit established
30 under this section.

31 (14) "Unfair labor practice" means any unfair labor practice
32 listed in RCW 41.80.110.

33 (15) "Uniformed personnel" means duly sworn police officers
34 employed as members of a police force established pursuant to RCW
35 28B.10.550.

36 **Sec. 4.** RCW 41.80.010 and 2019 c 415 s 961 and 2019 c 145 s 4
37 are each reenacted and amended to read as follows:

38 (1) For the purpose of negotiating collective bargaining
39 agreements under this chapter, the employer shall be represented by

1 the governor or governor's designee, except as provided for
2 institutions of higher education in subsection (4) of this section.

3 (2) (a) (i) Except as otherwise provided, if an exclusive
4 bargaining representative represents more than one bargaining unit,
5 the exclusive bargaining representative shall negotiate with each
6 employer representative as designated in subsection (1) of this
7 section one master collective bargaining agreement on behalf of all
8 the employees in bargaining units that the exclusive bargaining
9 representative represents.

10 (ii) For those exclusive bargaining representatives who represent
11 fewer than a total of five hundred employees each, negotiation shall
12 be by a coalition of all those exclusive bargaining representatives.
13 The coalition shall bargain for a master collective bargaining
14 agreement covering all of the employees represented by the coalition.
15 The governor's designee and the exclusive bargaining representative
16 or representatives are authorized to enter into supplemental
17 bargaining of agency-specific issues for inclusion in or as an
18 addendum to the master collective bargaining agreement, subject to
19 the parties' agreement regarding the issues and procedures for
20 supplemental bargaining. Exclusive bargaining representatives that
21 represent employees covered under chapter 41.06 RCW and exclusive
22 bargaining representatives that represent employees exempt under
23 chapter 41.06 RCW shall constitute separate coalitions and must
24 negotiate separate master collective bargaining agreements. This
25 ~~((section))~~ subsection does not prohibit cooperation and coordination
26 of bargaining between two or more exclusive bargaining
27 representatives.

28 (b) This subsection ~~((2))~~ does not apply to exclusive
29 bargaining representatives who represent employees of institutions of
30 higher education, except when the institution of higher education has
31 elected to exercise its option under subsection (4) of this section
32 to have its negotiations conducted by the governor or governor's
33 designee under the procedures provided for general government
34 agencies in subsections (1) through (3) of this section.

35 (c) If five hundred or more employees of an independent state
36 elected official listed in RCW 43.01.010 are organized in a
37 bargaining unit or bargaining units under RCW 41.80.070, the official
38 shall be consulted by the governor or the governor's designee before
39 any agreement is reached under (a) of this subsection concerning

1 supplemental bargaining of agency specific issues affecting the
2 employees in such bargaining unit.

3 (d) For assistant attorneys general, the governor or the
4 governor's designee and an exclusive bargaining representative shall
5 negotiate one master collective bargaining agreement.

6 (3) The governor shall submit a request for funds necessary to
7 implement the compensation and fringe benefit provisions in the
8 master collective bargaining agreement or for legislation necessary
9 to implement the agreement. Requests for funds necessary to implement
10 the provisions of bargaining agreements shall not be submitted to the
11 legislature by the governor unless such requests:

12 (a) Have been submitted to the director of the office of
13 financial management by October 1 prior to the legislative session at
14 which the requests are to be considered; and

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

17 The legislature shall approve or reject the submission of the
18 request for funds as a whole. The legislature shall not consider a
19 request for funds to implement a collective bargaining agreement
20 unless the request is transmitted to the legislature as part of the
21 governor's budget document submitted under RCW 43.88.030 and
22 43.88.060. If the legislature rejects or fails to act on the
23 submission, either party may reopen all or part of the agreement or
24 the exclusive bargaining representative may seek to implement the
25 procedures provided for in RCW 41.80.090.

26 (4) (a) (i) For the purpose of negotiating agreements for
27 institutions of higher education, the employer shall be the
28 respective governing board of each of the universities, colleges, or
29 community colleges or a designee chosen by the board to negotiate on
30 its behalf.

31 (ii) A governing board of a university or college may elect to
32 have its negotiations conducted by the governor or governor's
33 designee under the procedures provided for general government
34 agencies in subsections (1) through (3) of this section, except that:

35 (A) The governor or the governor's designee and an exclusive
36 bargaining representative shall negotiate one master collective
37 bargaining agreement for all of the bargaining units of employees of
38 a university or college that the representative represents; or

39 (B) If the parties mutually agree, the governor or the governor's
40 designee and an exclusive bargaining representative shall negotiate

1 one master collective bargaining agreement for all of the bargaining
2 units of employees of more than one university or college that the
3 representative represents.

4 (iii) A governing board of a community college may elect to have
5 its negotiations conducted by the governor or governor's designee
6 under the procedures provided for general government agencies in
7 subsections (1) through (3) of this section.

8 (b) Prior to entering into negotiations under this chapter, the
9 institutions of higher education or their designees shall consult
10 with the director of the office of financial management regarding
11 financial and budgetary issues that are likely to arise in the
12 impending negotiations.

13 (c)(i) In the case of bargaining agreements reached between
14 institutions of higher education other than the University of
15 Washington and exclusive bargaining representatives agreed to under
16 the provisions of this chapter, if appropriations are necessary to
17 implement the compensation and fringe benefit provisions of the
18 bargaining agreements, the governor shall submit a request for such
19 funds to the legislature according to the provisions of subsection
20 (3) of this section, except as provided in (c)(iii) of this
21 subsection.

22 (ii) In the case of bargaining agreements reached between the
23 University of Washington and exclusive bargaining representatives
24 agreed to under the provisions of this chapter, if appropriations are
25 necessary to implement the compensation and fringe benefit provisions
26 of a bargaining agreement, the governor shall submit a request for
27 such funds to the legislature according to the provisions of
28 subsection (3) of this section, except as provided in this subsection
29 (4)(c)(ii) and as provided in (c)(iii) of this subsection.

30 (A) If appropriations of less than ten thousand dollars are
31 necessary to implement the provisions of a bargaining agreement, a
32 request for such funds shall not be submitted to the legislature by
33 the governor unless the request has been submitted to the director of
34 the office of financial management by October 1 prior to the
35 legislative session at which the request is to be considered.

36 (B) If appropriations of ten thousand dollars or more are
37 necessary to implement the provisions of a bargaining agreement, a
38 request for such funds shall not be submitted to the legislature by
39 the governor unless the request:

1 (I) Has been submitted to the director of the office of financial
2 management by October 1 prior to the legislative session at which the
3 request is to be considered; and

4 (II) Has been certified by the director of the office of
5 financial management as being feasible financially for the state.

6 (C) If the director of the office of financial management does
7 not certify a request under (c)(ii)(B) of this subsection as being
8 feasible financially for the state, the parties shall enter into
9 collective bargaining solely for the purpose of reaching a mutually
10 agreed upon modification of the agreement necessary to address the
11 absence of those requested funds. The legislature may act upon the
12 compensation and fringe benefit provisions of the modified collective
13 bargaining agreement if those provisions are agreed upon and
14 submitted to the office of financial management and legislative
15 budget committees before final legislative action on the biennial or
16 supplemental operating budget by the sitting legislature.

17 (iii) In the case of a bargaining unit of employees of
18 institutions of higher education in which the exclusive bargaining
19 representative is certified during or after the conclusion of a
20 legislative session, the legislature may act upon the compensation
21 and fringe benefit provisions of the unit's initial collective
22 bargaining agreement if those provisions are agreed upon and
23 submitted to the office of financial management and legislative
24 budget committees before final legislative action on the biennial or
25 supplemental operating budget by the sitting legislature.

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

32 (6) After the expiration date of a collective bargaining
33 agreement negotiated under this chapter, all of the terms and
34 conditions specified in the collective bargaining agreement remain in
35 effect until the effective date of a subsequently negotiated
36 agreement, not to exceed one year from the expiration date stated in
37 the agreement. Thereafter, the employer may unilaterally implement
38 according to law.

39 (7)(a) For the 2019-2021 fiscal biennium, the legislature may
40 approve funding for a collective bargaining agreement negotiated by a

1 higher education institution and the Washington federation of state
2 employees and ratified by the exclusive bargaining representative
3 before final legislative action on the omnibus appropriations act by
4 the sitting legislature.

5 (b) Subsection (3)(a) and (b) of this section do not apply to
6 requests for funding made pursuant to this subsection.

7 **Sec. 5.** RCW 34.12.030 and 1981 c 67 s 3 are each amended to read
8 as follows:

9 (1) The chief administrative law judge shall appoint
10 administrative law judges to fulfill the duties prescribed in this
11 chapter. All administrative law judges shall have a demonstrated
12 knowledge of administrative law and procedures. The chief
13 administrative law judge may establish different levels of
14 administrative law judge positions.

15 (2) The chief administrative law judge may also contract with
16 qualified individuals to serve as administrative law judges for
17 specified hearings. Such individuals shall be compensated for their
18 services on a contractual basis for each hearing, in accordance with
19 chapter 43.88 RCW. The chief administrative law judge may not
20 contract with any individual who is at that time an employee of the
21 state.

22 (3) The chief administrative law judge may appoint such clerical
23 and other specialized or technical personnel as may be necessary to
24 carry on the work of this chapter.

25 (4) ~~((The))~~ Subject to any collective bargaining agreement, the
26 administrative law judges appointed under subsection (1) of this
27 section are subject to discipline and termination, for cause, by the
28 chief administrative law judge. Upon written request by the person so
29 disciplined or terminated, the chief administrative law judge shall
30 forthwith put the reasons for such action in writing. The person
31 affected has a right of review by the superior court of Thurston
32 county on petition for reinstatement or other remedy filed within
33 thirty days of receipt of such written reasons.

34 (5) All employees of the office except the chief administrative
35 law judge and the administrative law judges are subject to chapter
36 41.06 RCW.

37 (6) Administrative law judges appointed under subsection (1) of
38 this section have the right to collectively bargain under chapter
39 41.80 RCW, regardless of their exemption from chapter 41.06 RCW.

1 (7) The office may adopt rules for its own operation and in
2 furtherance of this chapter in accordance with chapter 34.05 RCW.

3 **Sec. 6.** RCW 34.12.100 and 2015 3rd sp.s. c 1 s 310 are each
4 amended to read as follows:

5 The chief administrative law judge shall be paid a salary fixed
6 by the governor after recommendation of the director of financial
7 management. (~~The~~) Subject to any collective bargaining agreement,
8 the salaries of administrative law judges appointed under the terms
9 of this chapter shall be determined by the chief administrative law
10 judge after recommendation of the director of financial management.

11 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect immediately.

Passed by the House February 13, 2020.
Passed by the Senate March 4, 2020.
Approved by the Governor March 19, 2020.
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