
SUBSTITUTE HOUSE BILL 3178

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Murray and Woods; by request of Department of Transportation)

READ FIRST TIME 02/13/06.

1 AN ACT Relating to collective bargaining by state ferry employees;
2 amending RCW 47.64.011, 47.64.120, 47.64.130, 47.64.140, 47.64.170,
3 47.64.200, 47.64.210, 47.64.220, 47.64.220, 47.64.230, 47.64.270, and
4 47.64.280; adding new sections to chapter 47.64 RCW; repealing RCW
5 47.64.180, 47.64.190, and 47.64.240; providing an effective date;
6 providing an expiration date; and declaring an emergency.

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

8 **Sec. 1.** RCW 47.64.011 and 1983 c 15 s 2 are each amended to read
9 as follows:

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

12 (1) (~~"Arbitration" means the procedure whereby the parties~~
13 ~~involved in an impasse submit their differences to a third party for a~~
14 ~~final and binding decision or as provided in this chapter.~~

15 (2) ~~"Arbitrator" means either a single arbitrator or a panel of~~
16 ~~three arbitrators as provided in RCW 47.64.240.~~

17 (3)) "Collective bargaining representative" means the persons
18 designated by the (~~secretary of transportation~~) governor and employee

1 organizations to be the exclusive representatives during collective
2 bargaining negotiations.

3 ~~((4))~~ (2) "Commission" means the marine employees' commission
4 created in RCW 47.64.280.

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

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

8 (5) "Ferry employee" means any employee of the marine
9 transportation division of the department of transportation who is a
10 member of a collective bargaining unit represented by a ferry employee
11 organization and does not include an exempt employee pursuant to RCW
12 41.06.079.

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

16 ~~(7) ("Ferry system management" means those management personnel of~~
17 ~~the marine transportation division of the department of transportation~~
18 ~~who have been vested with the day to day management responsibilities of~~
19 ~~the Washington state ferry system by the transportation commission and~~
20 ~~who are not members of a collective bargaining unit represented by a~~
21 ~~ferry employee organization.~~

22 ~~(8))~~ "Lockout" means the refusal of ~~((ferry system management))~~
23 the employer to furnish work to ferry employees in an effort to get
24 ferry employee organizations to make concessions during collective
25 bargaining, grievance, or other labor relation negotiations.
26 Curtailment of employment of ferry employees due to lack of work
27 resulting from a strike or work stoppage~~((, as defined in subsection~~
28 ~~(11) of this section,))~~ shall not be considered a lockout.

29 ~~((9) "Marine employees' commission" means the commission created~~
30 ~~in RCW 47.64.280.~~

31 ~~(10))~~ (8) "Office of financial management" means the office as
32 created in RCW 43.41.050.

33 ~~((11))~~ (9) "Strike or work stoppage" means a ferry employee's
34 refusal, in concerted action with others, to report to duty, or his or
35 her willful absence from his or her position, or his or her stoppage or
36 slowdown of work, or his or her abstinence in whole or in part from the
37 full, faithful, and proper performance of the duties of employment, for
38 the purpose of inducing, influencing, or coercing a change in

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

7 ((+12+)) (10) "Transportation commission" means the commission as
8 defined in RCW 47.01.021.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.64 RCW
10 to read as follows:

11 (1) For the purpose of negotiating collective bargaining agreements
12 under this chapter, the employer shall be represented by the governor
13 or governor's designee.

14 (2) Two or more ferry employee organizations may, upon agreement of
15 the parties, negotiate, as a coalition with the employer representative
16 as designated in subsection (1) of this section, a multiunion
17 collective bargaining agreement on behalf of all the employees in ferry
18 employee organization bargaining units that the exclusive bargaining
19 representatives represent. The coalition shall bargain for a
20 multiunion collective bargaining agreement covering all of the
21 employees represented by the coalition. The governor's designee and
22 the exclusive bargaining representative or representatives are
23 authorized to enter into supplemental bargaining of bargaining unit-
24 specific issues for inclusion in or as an addendum to the multiunion
25 collective bargaining agreement, subject to the parties' agreement
26 regarding the issues and procedures for supplemental bargaining.
27 Nothing in this section impairs the right of each ferry employee
28 organization to negotiate a collective bargaining agreement exclusive
29 to the bargaining unit it represents.

30 **Sec. 3.** RCW 47.64.120 and 1997 c 436 s 1 are each amended to read
31 as follows:

32 (1) ((~~Ferry system management~~)) The employer and ferry system
33 employee organizations, through their collective bargaining
34 representatives, shall meet at reasonable times, to negotiate in good
35 faith with respect to wages, hours, working conditions, insurance, and
36 health care benefits as limited by RCW 47.64.270, and other matters

1 mutually agreed upon. Employer funded retirement benefits shall be
2 provided under the public employees retirement system under chapter
3 41.40 RCW and shall not be included in the scope of collective
4 bargaining.

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

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

26 **Sec. 4.** RCW 47.64.130 and 1983 c 15 s 4 are each amended to read
27 as follows:

28 (1) It is an unfair labor practice for ((~~ferry system management~~))
29 the employer or its representatives:

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

32 (b) To dominate or interfere with the formation or administration
33 of any employee organization or contribute financial or other support
34 to it(~~:- PROVIDED, That~~). However, subject to rules made by the
35 commission pursuant to RCW 47.64.280, an employer shall not be
36 prohibited from permitting employees to confer with it or its

1 representatives or agents during working hours without loss of time or
2 pay;

3 (c) To encourage or discourage membership in any employee
4 organization by discrimination in regard to hiring, tenure of
5 employment, or any term or condition of employment, but nothing
6 contained in this subsection prevents an employer from requiring, as a
7 condition of continued employment, payment of periodic dues and fees
8 uniformly required to an exclusive bargaining representative pursuant
9 to RCW 47.64.160(~~(:—PROVIDED, That)~~). However, nothing prohibits
10 (~~(ferry system management)~~) the employer from agreeing to obtain
11 employees by referral from a lawful hiring hall operated by or
12 participated in by a labor organization;

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

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

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

18 (a) To restrain or coerce (i) employees in the exercise of the
19 rights guaranteed by this chapter(~~(:—PROVIDED, That this paragraph)~~).
20 However, this subsection does not impair the right of an employee
21 organization to prescribe its own rules with respect to the acquisition
22 or retention of membership therein, or (ii) an employer in the
23 selection of his representatives for the purposes of collective
24 bargaining or the adjustment of grievances;

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

27 (c) To refuse to bargain collectively with an employer(~~(, when it~~
28 ~~is the representative of its employees subject to RCW 47.64.170)~~).

29 (3) The expression of any view, argument, or opinion, or the
30 dissemination thereof to the public, whether in written, printed,
31 graphic, or visual form, shall not constitute or be evidence of an
32 unfair labor practice under any of the provisions of this chapter, if
33 the expression contains no threat of reprisal or force or promise of
34 benefit.

35 **Sec. 5.** RCW 47.64.140 and 1989 c 373 s 25 are each amended to read
36 as follows:

37 (1) It is unlawful for any ferry system employee or any employee

1 organization, directly or indirectly, to induce, instigate, encourage,
2 authorize, ratify, or participate in a strike or work stoppage against
3 the ferry system.

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

19 (3) In the event of any violation or imminently threatened
20 violation of subsection (1) or (2) of this section, any citizen
21 domiciled within the jurisdictional boundaries of the state may
22 petition the superior court for Thurston county for an injunction
23 restraining the violation or imminently threatened violation. Rules of
24 civil procedure regarding injunctions apply to the action. However,
25 the court shall grant a temporary injunction if it appears to the court
26 that a violation has occurred or is imminently threatened; the
27 plaintiff need not show that the violation or threatened violation
28 would greatly or irreparably injure him or her; and no bond may be
29 required of the plaintiff unless the court determines that a bond is
30 necessary in the public interest. Failure to comply with any temporary
31 or permanent injunction granted under this section is a contempt of
32 court as provided in chapter 7.21 RCW. The court may impose a penalty
33 of up to ten thousand dollars for an employee organization or the ferry
34 system, for each day during which the failure to comply continues. The
35 sanctions for a ferry employee found to be in contempt shall be as
36 provided in chapter 7.21 RCW. An individual or an employee
37 organization which makes an active good faith effort to comply fully
38 with the injunction shall not be deemed to be in contempt.

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

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

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

10 (7) Notwithstanding the provisions of chapter 88.04 RCW and chapter
11 88.08 RCW, the department of transportation shall (~~promulgate~~) adopt
12 rules (~~and regulations~~) allowing vessels, as defined in RCW
13 (~~88.04.300~~) 88.04.015, as well as other watercraft, to engage in
14 emergency passenger service on the waters of Puget Sound in the event
15 ferry employees engage in a work slowdown or stoppage. Such emergency
16 rules (~~and regulations~~) shall allow emergency passenger service on
17 the waters of Puget Sound within seventy-two hours following a work
18 slowdown or stoppage. Such rules (~~and regulations~~) that are
19 (~~promulgated~~) adopted shall give due consideration to the needs and
20 the health, safety, and welfare of the people of the state of
21 Washington.

22 **Sec. 6.** RCW 47.64.170 and 1983 c 15 s 8 are each amended to read
23 as follows:

24 (1) Any ferry employee organization certified as the bargaining
25 representative shall be the exclusive representative of all ferry
26 employees in the bargaining unit and shall represent all such employees
27 fairly.

28 (2) A ferry employee organization or organizations and the
29 (~~secretary of transportation~~) governor may each designate any
30 individual as its representative to engage in collective bargaining
31 negotiations.

32 (3) Negotiating sessions, including strategy meetings of (~~ferry~~
33 ~~system management~~) the employer or employee organizations, mediation,
34 and the deliberative process of arbitrators are exempt from the
35 provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may
36 be open to the public by mutual consent of the parties. (~~Any meeting~~)

1 ~~of the transportation commission, during which a collective bargaining~~
2 ~~agreement is subject to ratification, shall be open to the public.))~~

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

6 (5) Ferry system employees or any employee organization shall not
7 negotiate or attempt to negotiate directly with ~~((a member of the~~
8 ~~transportation commission if the commission has))~~ anyone other than the
9 person who has been appointed or authorized a bargaining representative
10 for the purpose of bargaining with the ferry employees or their
11 representative(~~(, unless the member of the commission is the designated~~
12 ~~bargaining representative of the ferry system))~~).

13 (6)(a) The negotiation of a proposed collective bargaining
14 agreement by representatives of ~~((ferry system management))~~ the
15 employer and a ferry employee organization shall commence ~~((in each~~
16 ~~odd-numbered year immediately following adoption by the legislature and~~
17 ~~approval by the governor of the biennial budget))~~ on or about September
18 1st of every odd-numbered year. However, negotiations for the 2007-
19 2009 biennial agreements may commence at any time after the effective
20 date of this section. Negotiations for agreements pertaining to the
21 2009-2011 biennium and all subsequent negotiations must conclude on or
22 about April 1st of the year following the year in which the
23 negotiations commence. If negotiations are not concluded by April 1st,
24 the parties shall be deemed to be at impasse and shall proceed to
25 mediation under RCW 47.64.230 and sections 12 through 14 of this act.

26 (b) For negotiations covering the 2009-2011 biennium and subsequent
27 biennia, the time periods specified in this section, and in RCW
28 47.64.210 and sections 12 through 14 of this act, must ensure
29 conclusion of all agreements on or before September 1st of the even-
30 numbered year next preceding the biennial budget period during which
31 the agreement should take effect. These time periods may only be
32 altered by mutual agreement of the parties in writing. Any such
33 agreement and any impasse procedures agreed to by the parties under RCW
34 47.64.200 must include an agreement regarding the new time periods that
35 will allow final resolution by negotiations or arbitration by September
36 1st of each even-numbered year.

37 (7) Until a new collective bargaining agreement is ~~((negotiated, or~~
38 ~~until an award is made by the arbitrator))~~ in effect, the terms and

1 conditions of the previous collective bargaining agreement shall remain
2 in force. (~~The wage and benefit provisions of any collective~~
3 ~~bargaining agreement, or arbitrator's award in lieu thereof, that is~~
4 ~~concluded after July 1st of an odd-numbered year shall be retroactive~~
5 ~~to July 1st.~~) It is the intent of this section that the collective
6 bargaining agreement or arbitrator's award shall commence on July 1st
7 of each odd-numbered year and shall terminate on June 30th of the next
8 odd-numbered year to coincide with the ensuing biennial budget year, as
9 defined by RCW 43.88.020(7), to the extent practical. It is further
10 the intent of this section that all collective bargaining agreements be
11 concluded by September 1st of the even-numbered year before the
12 commencement of the biennial budget year during which the agreements
13 are to be in effect.

14 (8) (~~Any ferry union contract terminating before July 1, 1983,~~
15 ~~shall, with the agreement of the parties, remain in effect until a~~
16 ~~contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120~~
17 ~~through 47.64.280. The contract may be retroactive to the expiration~~
18 ~~date of the prior contract, and the cost to the department of three~~
19 ~~months retroactive compensation and benefits for this 1983 contract~~
20 ~~negotiation only shall not be included in calculating the limitation~~
21 ~~imposed by RCW 47.64.180. If the parties cannot agree to contract~~
22 ~~extension, any increase agreed to for the three-month period shall be~~
23 ~~included in calculating the limit imposed by RCW 47.64.180.~~

24 (9) ~~Any ferry union contract which would terminate after July 1,~~
25 ~~1983, may, by agreement of the parties, be terminated as of July 1,~~
26 ~~1983, and a new contract concluded pursuant to RCW 47.64.006,~~
27 ~~47.64.011, and 47.64.120 through 47.64.280. Any contract terminating~~
28 ~~after July 1, 1983, is subject to this chapter only upon its expiration~~
29 ~~and shall not be renewed for a period beyond July 1, 1985.)~~ (a) The
30 governor shall submit a request either for funds necessary to implement
31 the collective bargaining agreements including, but not limited to, the
32 compensation and fringe benefit provisions or for legislation necessary
33 to implement the agreement, or both. Requests for funds necessary to
34 implement the collective bargaining agreements shall not be submitted
35 to the legislature by the governor unless such requests:

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

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

3 (b) The governor shall submit a request either for funds necessary
4 to implement the arbitration awards or for legislation necessary to
5 implement the arbitration awards, or both. Requests for funds
6 necessary to implement the arbitration awards shall not be submitted to
7 the legislature by the governor unless such requests have been
8 submitted to the director of the office of financial management by
9 October 1st before the legislative session at which the requests are to
10 be considered.

11 (c) The legislature shall approve or reject the submission of the
12 request for funds necessary to implement the collective bargaining
13 agreements or arbitration awards as a whole for each agreement or
14 award. The legislature shall not consider a request for funds to
15 implement a collective bargaining agreement or arbitration award unless
16 the request is transmitted to the legislature as part of the governor's
17 budget document submitted under RCW 43.88.030 and 43.88.060. If the
18 legislature rejects or fails to act on the submission, either party may
19 reopen all or part of the agreement and award or the exclusive
20 bargaining representative may seek to implement the procedures provided
21 for in RCW 47.64.210 and section 12 of this act.

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

28 **Sec. 7.** RCW 47.64.200 and 1983 c 15 s 11 are each amended to read
29 as follows:

30 As the first step in the performance of their duty to bargain,
31 ~~((ferry system management))~~ the employer and the employee organization
32 shall endeavor to agree upon impasse procedures. ~~((The agreement shall~~
33 ~~provide for implementation of these impasse procedures not later than~~
34 ~~July 1st in each odd numbered year following enactment of the biennial~~
35 ~~budget.))~~ Unless otherwise agreed to by the employee organization and
36 the employer in their impasse procedures, the arbitrator or panel is
37 limited to selecting the most reasonable offer, in its judgment, of the

1 final offers on each impasse item submitted by the parties. The
2 employee organization and the employer may mutually agree to the
3 impasse procedure under which the arbitrator or panel may issue a
4 decision it deems just and appropriate with respect to each impasse
5 item. If the parties fail to agree upon impasse procedures under this
6 section, the impasse procedures provided in RCW 47.64.210 (~~through~~)
7 and 47.64.230 and sections 12 through 14 of this act apply. It is
8 unlawful for either party to refuse to participate in the impasse
9 procedures provided in RCW 47.64.210 (~~through~~) and 47.64.230 and
10 sections 12 through 14 of this act.

11 **Sec. 8.** RCW 47.64.210 and 1983 c 15 s 12 are each amended to read
12 as follows:

13 In the absence of an impasse agreement between the parties or the
14 failure of either party to utilize its procedures by (~~August~~) April
15 1st in (~~each odd numbered year, the marine employees' commission~~
16 shall, upon the request of either party,) the even-numbered year
17 preceding the biennium, either party may request the commission to
18 appoint an impartial and disinterested person to act as mediator
19 (~~pursuant to RCW 47.64.280~~). It is the function of the mediator to
20 bring the parties together to effectuate a settlement of the dispute,
21 but the mediator shall not compel the parties to agree.

22 **Sec. 9.** RCW 47.64.220 and 1999 c 256 s 1 are each amended to read
23 as follows:

24 (1) Prior to collective bargaining and for purposes of collective
25 bargaining and arbitration, the (~~marine employees'~~) commission shall
26 conduct a salary survey. The results of the survey shall be published
27 in a report which shall be a public document comparing wages, hours,
28 employee benefits, and conditions of employment of involved ferry
29 employees with those of public and private sector employees in states
30 along the west coast of the United States, including Alaska, and in
31 British Columbia doing directly comparable but not necessarily
32 identical work, giving consideration to factors peculiar to the area
33 and the classifications involved. Such survey report shall be for the
34 purpose of disclosing generally prevailing levels of compensation,
35 benefits, and conditions of employment. It shall be used to guide

1 generally but not to define or limit collective bargaining between the
2 parties. (~~The commission shall make such other findings of fact as
3 the parties may request during bargaining or impasse.~~)

4 (2) (~~Except as provided in subsection (3) of this section,~~)
5 Salary and employee benefit information collected from private
6 employers that identifies a specific employer with the salary and
7 employee benefit rates which that employer pays to its employees is not
8 subject to public disclosure under chapter 42.17 RCW.

9 (~~(3) A person or entity, having reason to believe that the salary
10 survey results are inaccurate, may submit a petition to the state
11 auditor requesting an audit of the data upon which the salary survey
12 results are based. The state auditor shall review and analyze all data
13 collected for the salary survey, including proprietary information, but
14 is prohibited from disclosing the salary survey data to any other
15 person or entity, except by court order.~~)

16 **Sec. 10.** RCW 47.64.220 and 2005 c 274 s 308 are each amended to
17 read as follows:

18 (1) Prior to collective bargaining and for purposes of collective
19 bargaining and arbitration, the (~~marine employees'~~) commission shall
20 conduct a salary survey. The results of the survey shall be published
21 in a report which shall be a public document comparing wages, hours,
22 employee benefits, and conditions of employment of involved ferry
23 employees with those of public and private sector employees in states
24 along the west coast of the United States, including Alaska, and in
25 British Columbia doing directly comparable but not necessarily
26 identical work, giving consideration to factors peculiar to the area
27 and the classifications involved. Such survey report shall be for the
28 purpose of disclosing generally prevailing levels of compensation,
29 benefits, and conditions of employment. It shall be used to guide
30 generally but not to define or limit collective bargaining between the
31 parties. (~~The commission shall make such other findings of fact as
32 the parties may request during bargaining or impasse.~~)

33 (2) (~~Except as provided in subsection (3) of this section,~~)
34 Salary and employee benefit information collected from private
35 employers that identifies a specific employer with the salary and
36 employee benefit rates which that employer pays to its employees is not
37 subject to public disclosure under chapter 42.56 RCW.

1 ~~((3) A person or entity, having reason to believe that the salary~~
2 ~~survey results are inaccurate, may submit a petition to the state~~
3 ~~auditor requesting an audit of the data upon which the salary survey~~
4 ~~results are based. The state auditor shall review and analyze all data~~
5 ~~collected for the salary survey, including proprietary information, but~~
6 ~~is prohibited from disclosing the salary survey data to any other~~
7 ~~person or entity, except by court order.))~~

8 **Sec. 11.** RCW 47.64.230 and 1983 c 15 s 14 are each amended to read
9 as follows:

10 By mutual agreement, the parties may waive mediation ~~((and fact-~~
11 ~~finding, as provided for in RCW 47.64.210 and 47.64.220,))~~ and proceed
12 with binding arbitration as provided for in ~~((RCW 47.64.240))~~ the
13 impasse procedures agreed to under RCW 47.64.200 or in sections 12
14 through 14 of this act, as applicable. The waiver shall be in writing
15 and be signed by the representatives of the parties.

16 NEW SECTION. **Sec. 12.** A new section is added to chapter 47.64 RCW
17 to read as follows:

18 (1) If an agreement has not been reached following a reasonable
19 period of negotiations and, when applicable, mediation, but in either
20 event by April 15th, upon the recommendation of the assigned mediator
21 that the parties remain at impasse, all impasse items shall be
22 submitted to arbitration under this section. The issues for
23 arbitration shall be limited to the issues certified by the commission.

24 (2) The parties may agree to submit the dispute to a single
25 arbitrator, whose authority and duties shall be the same as those of an
26 arbitration panel. If the parties cannot agree on the arbitrator
27 within five working days, the selection shall be made under subsection
28 (3) of this section. The full costs of arbitration under this section
29 shall be shared equally by the parties to the dispute.

30 (3) Within seven days following the issuance of the determination
31 of the commission, each party shall name one person to serve as its
32 arbitrator on the arbitration panel. The two members so appointed
33 shall meet within seven days following the appointment of the later
34 appointed member to attempt to choose a third member to act as the
35 neutral chair of the arbitration panel. Upon the failure of the
36 arbitrators to select a neutral chair within seven days, either party

1 may apply to the federal mediation and conciliation service, or the
2 American arbitration association to provide a list of five qualified
3 arbitrators from which the neutral chair shall be chosen. Each party
4 shall pay the fees and expenses of its arbitrator, and the fees and
5 expenses of the neutral chair shall be shared equally between the
6 parties.

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

33 (5) The neutral chair shall consult with the other members of the
34 arbitration panel, if a panel has been created. Within thirty days
35 following the conclusion of the hearing, the neutral chair shall make
36 written findings of fact and a written determination of the issues in
37 dispute, based on the evidence presented. A copy thereof shall be
38 served on each of the other members of the arbitration panel, and on

1 each of the parties to the dispute. That determination is final and
2 binding upon both parties, subject to review by the superior court upon
3 the application of either party solely upon the question of whether the
4 decision of the panel was arbitrary or capricious.

5 NEW SECTION. **Sec. 13.** A new section is added to chapter 47.64 RCW
6 to read as follows:

7 An interest arbitration proceeding under section 12 of this act
8 exercises a state function and is, for the purposes of this chapter,
9 functioning as a state agency. Chapter 34.05 RCW does not apply to an
10 interest arbitration proceeding under this chapter.

11 NEW SECTION. **Sec. 14.** A new section is added to chapter 47.64 RCW
12 to read as follows:

13 (1) The mediator, arbitrator, or arbitration panel may consider
14 only matters that are subject to bargaining under this chapter.

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

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

26 (a) Past collective bargaining contracts between the parties
27 including the bargaining that led up to the contracts;

28 (b) The constitutional and statutory authority of the employer;

29 (c) Stipulations of the parties;

30 (d) The results of the salary survey as required in RCW 47.64.220;

31 (e) Comparison of wages, hours, employee benefits, and conditions
32 of employment of the involved ferry employees with those of public and
33 private sector employees in states along the west coast of the United
34 States, including Alaska, and in British Columbia doing directly
35 comparable but not necessarily identical work, giving consideration to
36 factors peculiar to the area and the classifications involved;

1 (f) Changes in any of the foregoing circumstances during the
2 pendency of the proceedings;

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

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

8 NEW SECTION. **Sec. 15.** A new section is added to chapter 47.64 RCW
9 to read as follows:

10 The transportation commission may increase tolls by no more than
11 the amount of the Seattle consumer price index for the purpose of
12 providing revenue to fund collective bargaining agreements and
13 arbitration awards under this chapter.

14 NEW SECTION. **Sec. 16.** A new section is added to chapter 47.64 RCW
15 to read as follows:

16 Collective bargaining under this act may not be for the purposes of
17 making a collective bargaining agreement take effect before July 1,
18 2007. No party may engage in collective bargaining under this act to
19 amend a collective bargaining agreement in effect on the effective date
20 of this section. A collective bargaining agreement or amendment
21 thereto entered into under this act shall not be effective before July
22 1, 2007, and may not have any retroactive effect.

23 NEW SECTION. **Sec. 17.** A new section is added to chapter 47.64 RCW
24 to read as follows:

25 (1) This act applies prospectively only and not retroactively. It
26 applies to collective bargaining agreements, the negotiations of
27 collective bargaining agreements, mediations, arbitrations, and other
28 actions under this act that arise or are commenced on or after the
29 effective date of this section.

30 (2) This act does not apply to collective bargaining agreements,
31 either in effect or for which the negotiations have begun, or
32 mediations and arbitrations that arose or commenced under this chapter
33 before the effective date of this section. Such collective bargaining
34 agreements and related proceedings are to be administered in accordance
35 with the authorities, rules, and procedures that were established under

1 this chapter as it existed before the effective date of this section.
2 The repealers in section 20 of this act do not affect any existing
3 right acquired or liability or obligation incurred under the statutes
4 repealed or under any rule or order adopted under those statutes, nor
5 do they affect any proceeding instituted under them.

6 **Sec. 18.** RCW 47.64.270 and 1995 1st sp.s. c 6 s 6 are each amended
7 to read as follows:

8 Absent a collective bargaining agreement to the contrary, the
9 department of transportation shall provide contributions to insurance
10 and health care plans for ferry system employees and dependents, as
11 determined by the state health care authority, under chapter 41.05 RCW;
12 and the ((~~ferry system management~~)) employer and employee organizations
13 may collectively bargain for other insurance and health care plans, and
14 employer contributions may exceed that of other state agencies as
15 provided in RCW 41.05.050((~~, subject to RCW 47.64.180~~)). To the extent
16 that ferry employees by bargaining unit have absorbed the required
17 offset of wage increases by the amount that the employer's contribution
18 for employees' and dependents' insurance and health care plans exceeds
19 that of other state general government employees in the 1985-87 fiscal
20 biennium, employees shall not be required to absorb a further offset
21 except to the extent the differential between employer contributions
22 for those employees and all other state general government employees
23 increases during any subsequent fiscal biennium. If such differential
24 increases in the 1987-89 fiscal biennium or the 1985-87 offset by
25 bargaining unit is insufficient to meet the required deduction, the
26 amount available for compensation shall be reduced by bargaining unit
27 by the amount of such increase or the 1985-87 shortage in the required
28 offset. Compensation shall include all wages and employee benefits.

29 **Sec. 19.** RCW 47.64.280 and 1984 c 287 s 95 are each amended to
30 read as follows:

31 (1) There is created the marine employees' commission. The
32 governor shall appoint the commission with the consent of the senate.
33 The commission shall consist of three members: One member to be
34 appointed from labor, one member from industry, and one member from the
35 public who has significant knowledge of maritime affairs. The public
36 member shall be ((~~chairman~~)) chair of the commission. One of the

1 original members shall be appointed for a term of three years, one for
2 a term of four years, and one for a term of five years. Their
3 successors shall be appointed for terms of five years each, except that
4 any person chosen to fill a vacancy shall be appointed only for the
5 unexpired term of the member whom he or she succeeds. Commission
6 members are eligible for reappointment. Any member of the commission
7 may be removed by the governor, upon notice and hearing, for neglect of
8 duty or malfeasance in office, but for no other cause. Commission
9 members are not eligible for state retirement under chapter 41.40 RCW
10 by virtue of their service on the commission. Members of the
11 commission shall be compensated in accordance with RCW 43.03.250 and
12 shall receive reimbursement for official travel and other expenses at
13 the same rate and on the same terms as provided for the transportation
14 commission by RCW 47.01.061. The payments shall be made from the Puget
15 Sound ferry operations account.

16 (2) The (~~marine employees~~) commission shall: (a) Adjust all
17 complaints, grievances, and disputes between labor and management
18 arising out of the operation of the ferry system as provided in RCW
19 47.64.150; (b) provide for impasse mediation as required in RCW
20 47.64.210; (c) (~~conduct fact finding and~~) provide salary surveys as
21 required in RCW 47.64.220; (~~and (d) provide for the selection of an~~
22 ~~impartial arbitrator as~~) (d) conduct fact-finding as requested by the
23 parties; and (e) perform those duties required in (~~RCW 47.64.240(5)~~)
24 section 12 of this act.

25 (3)(a) In adjudicating all complaints, grievances, and disputes,
26 the party claiming labor disputes shall, in writing, notify the
27 (~~marine employees~~) commission, which shall make careful inquiry into
28 the cause thereof and issue an order advising the ferry employee, or
29 the ferry employee organization representing him or her, and the
30 department of transportation, as to the decision of the commission.

31 (b) The parties are entitled to offer evidence relating to disputes
32 at all hearings conducted by the commission. The orders and awards of
33 the commission are final and binding upon any ferry employee or
34 employees or their representative affected thereby and upon the
35 department.

36 (c) The commission shall adopt rules of procedure under chapter
37 34.05 RCW.

1 (d) The commission has the authority to subpoena any ferry employee
2 or employees, or their representatives, and any member or
3 representative of the department, and any witnesses. The commission
4 may require attendance of witnesses and the production of all pertinent
5 records at any hearings held by the commission. The subpoenas of the
6 commission are enforceable by order of any superior court in the state
7 of Washington for the county within which the proceeding may be
8 pending.

9 (4) The commission may hire staff as necessary, appoint
10 consultants, enter into contracts, and conduct studies as reasonably
11 necessary to carry out this chapter.

12 NEW SECTION. **Sec. 20.** The following acts or parts of acts are
13 each repealed:

14 (1) RCW 47.64.180 (Agreements and awards limited by appropriation)
15 and 1983 c 15 s 9;

16 (2) RCW 47.64.190 (Marine employees' commission review for
17 compliance with fiscal limitations--Effective date of agreements and
18 arbitration orders) and 1983 c 15 s 10; and

19 (3) RCW 47.64.240 (Binding arbitration) and 1989 c 327 s 3 & 1983
20 c 15 s 15.

21 NEW SECTION. **Sec. 21.** Section 9 of this act expires July 1, 2006.

22 NEW SECTION. **Sec. 22.** Except for section 10 of this act which
23 takes effect July 1, 2006, this act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 immediately.

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