

# PSSB 6049

1 AN ACT Relating to public collective bargaining; amending RCW  
2 41.40.023 and 74.39A.270; and adding a new section to chapter 41.80  
3 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.80  
6 RCW to read as follows:

7 (1) The joint committee on employment relations created in RCW  
8 41.80.010(5) must meet six times each year, generally every two  
9 months, for the purpose of consulting with the governor or the  
10 governor's designee and institutions of higher education on matters  
11 related to collective bargaining conducted under the authority of  
12 chapters 41.80, 41.56, 47.64, and 74.39A RCW. Meetings must be  
13 scheduled to provide the joint committee with the opportunity to  
14 review the collective bargaining agreements submitted to the office  
15 of financial management by October 1st and to review information to  
16 be used by the office of financial management to determine the  
17 financial feasibility of submitted collective bargaining agreements.

18 (2) The purpose of the meetings shall include, but not be limited  
19 to:

20 (a) Informing the joint committee of the elements of master,  
21 supplemental, or modified collective bargaining agreements reached

1 with the governor and institutions of higher education with their  
2 employee bargaining representatives;

3 (b) Informing the joint committee of the elements of any interest  
4 arbitration awards requiring the submission of a request for funds to  
5 the legislature;

6 (c) Informing the joint committee of the appropriations necessary  
7 to implement the compensation and fringe benefit provisions of  
8 collective bargaining agreements and on any legislation necessary to  
9 implement the agreement; and

10 (d) Other matters related to state government collective  
11 bargaining as determined by the committee.

12 (3) The joint committee, upon majority vote of its members  
13 present, may meet more or less frequently. A quorum of the joint  
14 committee is not required for the meeting to take place. Meetings may  
15 take place by conference telephone or similar communications  
16 equipment so that all persons participating in the meeting can hear  
17 each other at the same time. Participation by that method constitutes  
18 presence in person at a meeting.

19 (4) A meeting must be held within ten working days of a  
20 determination of the director of the office of financial management  
21 that a collective bargaining agreement cannot be certified as  
22 financially feasible.

23 (5) Staff of the appropriate labor and fiscal committees of the  
24 house and senate must schedule and staff the meetings. The governor  
25 or the governor's designee, and institutions of higher education who  
26 negotiate collective bargaining agreements, must attend, participate,  
27 and provide information as directed by the joint committee.

28 **Sec. 2.** RCW 41.40.023 and 2010 c 80 s 1 are each amended to read  
29 as follows:

30 Membership in the retirement system shall consist of all  
31 regularly compensated employees and appointive and elective officials  
32 of employers, as defined in this chapter, with the following  
33 exceptions:

34 (1) Persons in ineligible positions;

35 (2) Employees of the legislature except the officers thereof  
36 elected by the members of the senate and the house and legislative  
37 committees, unless membership of such employees be authorized by the  
38 said committee;

1           (3)(a) Persons holding elective offices or persons appointed  
2 directly by the governor: PROVIDED, That such persons shall have the  
3 option of applying for membership during such periods of employment:  
4 AND PROVIDED FURTHER, That any persons holding or who have held  
5 elective offices or persons appointed by the governor who are members  
6 in the retirement system and who have, prior to becoming such  
7 members, previously held an elective office, and did not at the start  
8 of such initial or successive terms of office exercise their option  
9 to become members, may apply for membership to be effective during  
10 such term or terms of office, and shall be allowed to establish the  
11 service credit applicable to such term or terms of office upon  
12 payment of the employee contributions therefor by the employee with  
13 interest as determined by the director and employer contributions  
14 therefor by the employer or employee with interest as determined by  
15 the director: AND PROVIDED FURTHER, That all contributions with  
16 interest submitted by the employee under this subsection shall be  
17 placed in the employee's individual account in the employee's savings  
18 fund and be treated as any other contribution made by the employee,  
19 with the exception that any contributions submitted by the employee  
20 in payment of the employer's obligation, together with the interest  
21 the director may apply to the employer's contribution, shall not be  
22 considered part of the member's annuity for any purpose except  
23 withdrawal of contributions;

24           (b) A member holding elective office who has elected to apply for  
25 membership pursuant to (a) of this subsection and who later wishes to  
26 be eligible for a retirement allowance shall have the option of  
27 ending his or her membership in the retirement system. A member  
28 wishing to end his or her membership under this subsection must file,  
29 on a form supplied by the department, a statement indicating that the  
30 member agrees to irrevocably abandon any claim for service for future  
31 periods served as an elected official. A member who receives more  
32 than fifteen thousand dollars per year in compensation for his or her  
33 elective service, adjusted annually for inflation by the director, is  
34 not eligible for the option provided by this subsection (3)(b);

35           (4) Employees holding membership in, or receiving pension  
36 benefits under, any retirement plan operated wholly or in part by an  
37 agency of the state or political subdivision thereof, or who are by  
38 reason of their current employment contributing to or otherwise  
39 establishing the right to receive benefits from any such retirement  
40 plan except as follows:

1 (a) In any case where the retirement system has in existence an  
2 agreement with another retirement system in connection with exchange  
3 of service credit or an agreement whereby members can retain service  
4 credit in more than one system, such an employee shall be allowed  
5 membership rights should the agreement so provide;

6 (b) An employee shall be allowed membership if otherwise eligible  
7 while receiving survivor's benefits;

8 (c) An employee shall not either before or after June 7, 1984, be  
9 excluded from membership or denied service credit pursuant to this  
10 subsection solely on account of: (i) Membership in the plan created  
11 under chapter 2.14 RCW; or (ii) enrollment under the relief and  
12 compensation provisions or the pension provisions of the volunteer  
13 firefighters' relief and pension fund under chapter 41.24 RCW;

14 (d) Except as provided in RCW 41.40.109, on or after July 25,  
15 1999, an employee shall not be excluded from membership or denied  
16 service credit pursuant to this subsection solely on account of  
17 participation in a defined contribution pension plan qualified under  
18 section 401 of the internal revenue code;

19 (e) Employees who have been reported in the retirement system  
20 prior to July 25, 1999, and who participated during the same period  
21 of time in a defined contribution pension plan qualified under  
22 section 401 of the internal revenue code and operated wholly or in  
23 part by the employer, shall not be excluded from previous retirement  
24 system membership and service credit on account of such  
25 participation;

26 (5) Patient and inmate help in state charitable, penal, and  
27 correctional institutions;

28 (6) "Members" of a state veterans' home or state soldiers' home;

29 (7) Persons employed by an institution of higher learning or  
30 community college, primarily as an incident to and in furtherance of  
31 their education or training, or the education or training of a  
32 spouse;

33 (8) Employees of an institution of higher learning or community  
34 college during the period of service necessary to establish  
35 eligibility for membership in the retirement plans operated by such  
36 institutions;

37 (9) Persons rendering professional services to an employer on a  
38 fee, retainer, or contract basis or when the income from these  
39 services is less than fifty percent of the gross income received from  
40 the person's practice of a profession;

1 (10) Persons appointed after April 1, 1963, by the liquor control  
2 board as contract liquor store managers;

3 (11) Employees of a labor guild, association, or organization:  
4 PROVIDED, That elective officials and employees of a labor guild,  
5 association, or organization which qualifies as an employer within  
6 this chapter shall have the option of applying for membership;

7 (12) Retirement system retirees: PROVIDED, That following  
8 reemployment in an eligible position, a retiree may elect to  
9 prospectively become a member of the retirement system if otherwise  
10 eligible;

11 (13) Persons employed by or appointed or elected as an official  
12 of a first class city that has its own retirement system: PROVIDED,  
13 That any member elected or appointed to an elective office on or  
14 after April 1, 1971, shall have the option of continuing as a member  
15 of this system in lieu of becoming a member of the city system. A  
16 member who elects to continue as a member of this system shall pay  
17 the appropriate member contributions and the city shall pay the  
18 employer contributions at the rates prescribed by this chapter. The  
19 city shall also transfer to this system all of such member's  
20 accumulated contributions together with such further amounts as  
21 necessary to equal all employee and employer contributions which  
22 would have been paid into this system on account of such service with  
23 the city and thereupon the member shall be granted credit for all  
24 such service. Any city that becomes an employer as defined in RCW  
25 41.40.010(13) as the result of an individual's election under this  
26 subsection shall not be required to have all employees covered for  
27 retirement under the provisions of this chapter. Nothing in this  
28 subsection shall prohibit a city of the first class with its own  
29 retirement system from: (a) Transferring all of its current employees  
30 to the retirement system established under this chapter, or (b)  
31 allowing newly hired employees the option of continuing coverage  
32 under the retirement system established by this chapter.

33 Notwithstanding any other provision of this chapter, persons  
34 transferring from employment with a first class city of over four  
35 hundred thousand population that has its own retirement system to  
36 employment with the state department of agriculture may elect to  
37 remain within the retirement system of such city and the state shall  
38 pay the employer contributions for such persons at like rates as  
39 prescribed for employers of other members of such system;

1 (14) Employees who (a) are not citizens of the United States, (b)  
2 do not reside in the United States, and (c) perform duties outside of  
3 the United States;

4 (15) Employees who (a) are not citizens of the United States, (b)  
5 are not covered by chapter 41.48 RCW, (c) are not excluded from  
6 membership under this chapter or chapter 41.04 RCW, (d) are residents  
7 of this state, and (e) make an irrevocable election to be excluded  
8 from membership, in writing, which is submitted to the director  
9 within thirty days after employment in an eligible position;

10 (16) Employees who are citizens of the United States and who  
11 reside and perform duties for an employer outside of the United  
12 States: PROVIDED, That unless otherwise excluded under this chapter  
13 or chapter 41.04 RCW, the employee may apply for membership (a)  
14 within thirty days after employment in an eligible position and  
15 membership service credit shall be granted from the first day of  
16 membership service, and (b) after this thirty-day period, but  
17 membership service credit shall be granted only if payment is made  
18 for the noncredited membership service under RCW 41.50.165(2),  
19 otherwise service shall be from the date of application;

20 (17) The city manager or chief administrative officer of a city  
21 or town, other than a retiree, who serves at the pleasure of an  
22 appointing authority: PROVIDED, That such persons shall have the  
23 option of applying for membership within thirty days from date of  
24 their appointment to such positions. Persons serving in such  
25 positions as of April 4, 1986, shall continue to be members in the  
26 retirement system unless they notify the director in writing prior to  
27 December 31, 1986, of their desire to withdraw from membership in the  
28 retirement system. A member who withdraws from membership in the  
29 system under this section shall receive a refund of the member's  
30 accumulated contributions.

31 Persons serving in such positions who have not opted for  
32 membership within the specified thirty days, may do so by paying the  
33 amount required under RCW 41.50.165(2) for the period from the date  
34 of their appointment to the date of acceptance into membership;

35 (18) Persons serving as: (a) The chief administrative officer of  
36 a public utility district as defined in RCW 54.16.100; (b) the chief  
37 administrative officer of a port district formed under chapter 53.04  
38 RCW; or (c) the chief administrative officer of a county who serves  
39 at the pleasure of an appointing authority: PROVIDED, That such  
40 persons shall have the option of applying for membership within

1 thirty days from the date of their appointment to such positions.  
2 Persons serving in such positions as of July 25, 1999, shall continue  
3 to be members in the retirement system unless they notify the  
4 director in writing prior to December 31, 1999, of their desire to  
5 withdraw from membership in the retirement system. A member who  
6 withdraws from membership in the system under this section shall  
7 receive a refund of the member's accumulated contributions upon  
8 termination of employment or as otherwise consistent with the plan's  
9 tax qualification status as defined in internal revenue code section  
10 401.

11 Persons serving in such positions who have not opted for  
12 membership within the specified thirty days, may do so at a later  
13 date by paying the amount required under RCW 41.50.165(2) for the  
14 period from the date of their appointment to the date of acceptance  
15 into membership;

16 (19) Persons enrolled in state-approved apprenticeship programs,  
17 authorized under chapter 49.04 RCW, and who are employed by local  
18 governments to earn hours to complete such apprenticeship programs,  
19 if the employee is a member of a union-sponsored retirement plan and  
20 is making contributions to such a retirement plan or if the employee  
21 is a member of a Taft-Hartley retirement plan;

22 (20) Beginning on July 22, 2001, persons employed exclusively as  
23 trainers or trainees in resident apprentice training programs  
24 operated by housing authorities authorized under chapter 35.82 RCW,  
25 (a) if the trainer or trainee is a member of a union-sponsored  
26 retirement plan and is making contributions to such a retirement plan  
27 or (b) if the employee is a member of a Taft-Hartley retirement plan;

28 (21) Employees who are removed from membership under RCW  
29 41.40.823 or 41.40.633; (~~and~~)

30 (22) Persons employed as the state director of fire protection  
31 under RCW 43.43.938 who were previously members of the law  
32 enforcement officers' and firefighters' retirement system plan 2  
33 under chapter 41.26 RCW may continue as a member of the law  
34 enforcement officers' and firefighters' retirement system in lieu of  
35 becoming a member of this system; and

36 (23) Persons employed as individual providers under chapter  
37 74.39A RCW and any other persons who are public employees solely for  
38 the purposes of collective bargaining are not eligible for coverage  
39 in the retirement plans provided pursuant to this chapter.

1       **Sec. 3.** RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each  
2 amended to read as follows:

3       (1) Solely for the purposes of collective bargaining and as  
4 expressly limited under subsections (2) and (3) of this section, the  
5 governor is the public employer, as defined in chapter 41.56 RCW, of  
6 individual providers, who, solely for the purposes of collective  
7 bargaining, are public employees as defined in chapter 41.56 RCW. To  
8 accommodate the role of the state as payor for the community-based  
9 services provided under this chapter and to ensure coordination with  
10 state employee collective bargaining under chapter 41.80 RCW and the  
11 coordination necessary to implement RCW 74.39A.300, the public  
12 employer shall be represented for bargaining purposes by the governor  
13 or the governor's designee appointed under chapter 41.80 RCW. The  
14 governor or governor's designee shall periodically consult with the  
15 authority during the collective bargaining process to allow the  
16 authority to communicate issues relating to the long-term in-home  
17 care services received by consumers. The department shall solicit  
18 input from the developmental disabilities council, the governor's  
19 committee on disability issues and employment, the state council on  
20 aging, and other consumer advocacy organizations to obtain informed  
21 input from consumers on their interests, including impacts on  
22 consumer choice, for all issues proposed for collective bargaining  
23 under subsections (5) and (6) of this section.

24       (2) Chapter 41.56 RCW governs the collective bargaining  
25 relationship between the governor and individual providers, except as  
26 otherwise expressly provided in this chapter and except as follows:

27       (a) The only unit appropriate for the purpose of collective  
28 bargaining under RCW 41.56.060 is a statewide unit of all individual  
29 providers;

30       (b) The showing of interest required to request an election under  
31 RCW 41.56.060 is ten percent of the unit, and any intervener seeking  
32 to appear on the ballot must make the same showing of interest;

33       (c) The mediation and interest arbitration provisions of RCW  
34 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

35       (i) With respect to commencement of negotiations between the  
36 governor and the bargaining representative of individual providers,  
37 negotiations shall be commenced by May 1st of any year prior to the  
38 year in which an existing collective bargaining agreement expires;  
39 and

1 (ii) The decision of the arbitration panel is not binding on the  
2 legislature and, if the legislature does not approve the request for  
3 funds necessary to implement the compensation and fringe benefit  
4 provisions of the arbitrated collective bargaining agreement, is not  
5 binding on the authority or the state;

6 (d) Individual providers do not have the right to strike; and

7 (e) Individual providers who are related to, or family members  
8 of, consumers or prospective consumers are not, for that reason,  
9 exempt from this chapter or chapter 41.56 RCW.

10 (3) Individual providers who are public employees solely for the  
11 purposes of collective bargaining under subsection (1) of this  
12 section are not, for that reason, employees of the state, its  
13 political subdivisions, or an area agency on aging for any purpose.  
14 Chapter 41.56 RCW applies only to the governance of the collective  
15 bargaining relationship between the employer and individual providers  
16 as provided in subsections (1) and (2) of this section.

17 (4) Consumers and prospective consumers retain the right to  
18 select, hire, supervise the work of, and terminate any individual  
19 provider providing services to them. Consumers may elect to receive  
20 long-term in-home care services from individual providers who are not  
21 referred to them by the authority.

22 (5) Except as expressly limited in this section and RCW  
23 74.39A.300, the wages, hours, and working conditions of individual  
24 providers are determined solely through collective bargaining as  
25 provided in this chapter. No agency or department of the state may  
26 establish policies or rules governing the wages or hours of  
27 individual providers. However, this subsection does not modify:

28 (a) The department's authority to establish a plan of care for  
29 each consumer or its core responsibility to manage long-term in-home  
30 care services under this chapter, including determination of the  
31 level of care that each consumer is eligible to receive. However, at  
32 the request of the exclusive bargaining representative, the governor  
33 or the governor's designee appointed under chapter 41.80 RCW shall  
34 engage in collective bargaining, as defined in RCW 41.56.030(4), with  
35 the exclusive bargaining representative over how the department's  
36 core responsibility affects hours of work for individual providers.  
37 This subsection shall not be interpreted to require collective  
38 bargaining over an individual consumer's plan of care;

1 (b) The department's authority to terminate its contracts with  
2 individual providers who are not adequately meeting the needs of a  
3 particular consumer, or to deny a contract under RCW 74.39A.095(8);

4 (c) The consumer's right to assign hours to one or more  
5 individual providers selected by the consumer within the maximum  
6 hours determined by his or her plan of care;

7 (d) The consumer's right to select, hire, terminate, supervise  
8 the work of, and determine the conditions of employment for each  
9 individual provider providing services to the consumer under this  
10 chapter;

11 (e) The department's obligation to comply with the federal  
12 medicaid statute and regulations and the terms of any community-based  
13 waiver granted by the federal department of health and human services  
14 and to ensure federal financial participation in the provision of the  
15 services; and

16 (f) The legislature's right to make programmatic modifications to  
17 the delivery of state services under this title, including standards  
18 of eligibility of consumers and individual providers participating in  
19 the programs under this title, and the nature of services provided.  
20 The governor shall not enter into, extend, or renew any agreement  
21 under this chapter that does not expressly reserve the legislative  
22 rights described in this subsection (5)(f).

23 (6) At the request of the exclusive bargaining representative,  
24 the governor or the governor's designee appointed under chapter 41.80  
25 RCW shall engage in collective bargaining, as defined in RCW  
26 41.56.030(4), with the exclusive bargaining representative over  
27 employer contributions to the training partnership for the costs of:  
28 (a) Meeting all training and peer mentoring required under this  
29 chapter; and (b) other training intended to promote the career  
30 development of individual providers.

31 (7) The state, the department, the area agencies on aging, or  
32 their contractors under this chapter may not be held vicariously or  
33 jointly liable for the action or inaction of any individual provider  
34 or prospective individual provider, whether or not that individual  
35 provider or prospective individual provider was included on the  
36 referral registry or referred to a consumer or prospective consumer.  
37 The existence of a collective bargaining agreement, the placement of  
38 an individual provider on the referral registry, or the development  
39 or approval of a plan of care for a consumer who chooses to use the  
40 services of an individual provider and the provision of case

1 management services to that consumer, by the department or an area  
2 agency on aging, does not constitute a special relationship with the  
3 consumer.

4 (8) Nothing in this section affects the state's responsibility  
5 with respect to unemployment insurance for individual providers.  
6 However, individual providers are not to be considered, as a result  
7 of the state assuming this responsibility, employees of the state.

8 (9) Collective bargaining agreements, including agreements  
9 reached by interest arbitration, may not include a provision for any  
10 type of defined benefit retirement plan.

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