

CHAPTER 53

[Substitute House Bill No. 1226]

PUBLIC EMPLOYEES—CIVIL SERVICE REVISIONS

AN ACT Relating to public employees; amending section 1, chapter 12, Laws of 1970 ex. sess. as amended by section 2, chapter 118, Laws of 1980 and RCW 41.06.020; amending section 1, chapter 11, Laws of 1972 ex. sess. as last amended by section 2, chapter 225, Laws of 1981 and RCW 41.06.070; amending section 13, chapter 1, Laws of 1961 and RCW 41.06.130; reenacting and amending section 15, chapter 1, Laws of 1961 as last amended by section 18, chapter 311, Laws of 1981 and by section 1, chapter 79, Laws of 1982 and RCW 41.06.150; amending section 6, chapter 152, Laws of 1977 ex. sess. and RCW 41.06.169; amending section 2, chapter 36, Laws of 1969 ex. sess. as amended by section 41, chapter 169, Laws of 1977 ex. sess. and RCW 28B.16.020; amending section 4, chapter 36, Laws of 1969 ex. sess. as amended by section 1, chapter 94, Laws of 1977 ex. sess. and RCW 28B.16.040; amending section 10, chapter 36, Laws of 1969 ex. sess. as last amended by section 15, chapter 151, Laws of 1979 and RCW 28B.16.100; amending section 13, chapter 152, Laws of 1977 ex. sess. and RCW 28B.16.105; amending section 9, chapter 152, Laws of 1977 ex. sess. and RCW 28B.16.101; amending section 28B.50.030, chapter 223, Laws of 1969 ex. sess. as last amended by section 12, chapter 62, Laws of 1973 and RCW 28B.50.030; adding new sections to chapter 28B.10 RCW; adding new sections to chapter 28B.16 RCW; adding new sections to chapter 28B.50 RCW; adding new sections to chapter 28B.80 RCW; adding new sections to chapter 41.06 RCW; creating a new section; repealing section 5, chapter 36, Laws of 1969 ex. sess. and RCW 28B.16.050; repealing section 10, chapter 1, Laws of 1961 and RCW 41.06.100; and providing expiration dates.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 12, Laws of 1970 ex. sess. as amended by section 2, chapter 118, Laws of 1980 and RCW 41.06.020 are each amended to read as follows:

Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section.

(1) "Agency" means an office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(2) "Board" means the state personnel board established under the provisions of RCW 41.06.110, except that this definition does not apply to the words "board" or "boards" when used in RCW 41.06.070.

(3) "Classified service" means all positions in the state service subject to the provisions of this chapter.

(4) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

(5) "Management employees" means those employees:

(a) Who are classified under this chapter and who are exempt employees under this chapter and have their salary and fringe benefits determined under RCW 41.06.070; and

(b) Who are specified as management by the state personnel board; but the board shall not go below range 49, as established in the October 1981 state personnel board compensation plan, or its equivalent range in a subsequent compensation plan publication.

(6) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required.

~~((6))~~ (7) "Department" means an agency of government that has as its governing officer a person, or combination of persons such as a commission, board, or council, by law empowered to operate the agency responsible either to ~~((+))~~ (a) no other public officer or ~~((2))~~ (b) the governor.

~~((7))~~ (8) "Career development" means the progressive development of employee capabilities to facilitate productivity, job satisfaction, and upward mobility through work assignments as well as education and training that are both state-sponsored and are achieved by individual employee efforts, all of which shall be consistent with the needs and obligations of the state and its agencies.

~~((8))~~ (9) "Training" means activities designed to develop job-related knowledge and skills of employees.

~~((9))~~ (10) "Director" means the director of personnel appointed under the provisions of RCW 41.06.130.

Sec. 2. Section 1, chapter 11, Laws of 1972 ex. sess. as last amended by section 2, chapter 225, Laws of 1981 and RCW 41.06.070 are each amended to read as follows:

The provisions of this chapter do not apply to:

(1) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, legislative budget committee, statute law committee, and any interim committee of the legislature;

(2) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(3) Officers, academic personnel, and employees of state institutions of higher education, the state board for community college education, and the higher education personnel board;

(4) The officers of the Washington state patrol;

(5) Elective officers of the state;

(6) The chief executive officer of each agency;

(7) In the departments of employment security, fisheries, social and health services, the director and his confidential secretary; in all other departments, the executive head of which is an individual appointed by the

governor, the director, his confidential secretary, and his statutory assistant directors;

(8) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(a) All members of such boards, commissions, or committees;

(b) If the members of the board, commission, or committee serve on a part time basis and there is a statutory executive officer: (i) The secretary of the board, commission, or committee; (ii) the chief executive officer of the board, commission, or committee; and (iii) the confidential secretary of the chief executive officer of the board, commission, or committee;

(c) If the members of the board, commission, or committee serve on a full time basis: (i) The chief executive officer or administrative officer as designated by the board, commission, or committee; and (ii) a confidential secretary to the chairman of the board, commission, or committee;

(d) If all members of the board, commission, or committee serve ex officio: (i) The chief executive officer; and (ii) the confidential secretary of such chief executive officer;

(9) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(10) Assistant attorneys general;

(11) Commissioned and enlisted personnel in the military service of the state;

(12) Inmate, student, part time, or temporary employees, and part time professional consultants, as defined by the state personnel board or the board having jurisdiction;

(13) The public printer or to any employees of or positions in the state printing plant;

(14) Officers and employees of the Washington state fruit commission;

(15) Officers and employees of the Washington state apple advertising commission;

(16) Officers and employees of the Washington state dairy products commission;

(17) Officers and employees of the Washington tree fruit research commission;

(18) Officers and employees of the Washington state beef commission;

(19) Officers and employees of any commission formed under the provisions of chapter 191, Laws of 1955, and chapter 15.66 RCW;

(20) Officers and employees of the state wheat commission formed under the provisions of chapter 87, Laws of 1961 (chapter 15.63 RCW);

(21) Officers and employees of agricultural commissions formed under the provisions of chapter 256, Laws of 1961 (chapter 15.65 RCW);

(22) Liquor vendors appointed by the Washington state liquor control board pursuant to RCW 66.08.050: PROVIDED, HOWEVER, That rules

and regulations adopted by the state personnel board pursuant to RCW 41-.06.150 regarding the basis for, and procedures to be followed for, the dismissal, suspension, or demotion of an employee, and appeals therefrom shall be fully applicable to liquor vendors except those part time agency vendors employed by the liquor control board when, in addition to the sale of liquor for the state, they sell goods, wares, merchandise, or services as a self-sustaining private retail business;

(23) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(24) In addition to the exemptions specifically provided by this chapter, the state personnel board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the personnel board stating the reasons for requesting such exemptions. The personnel board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the personnel board shall grant the request and such determination shall be final. The total number of additional exemptions permitted under this subsection shall not exceed one hundred seventy-five for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor. The state personnel board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted pursuant to the provisions of this subsection, together with the reasons for such exemptions.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (10) through (21) of this section, shall be determined by the state personnel board.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary, within four years from the date of appointment to the exempt position. However, (a) upon the prior request of the appointing authority of the exempt position, the personnel board may approve one extension of no more than four years; and (b) if an appointment was accepted prior to the effective date of this amendatory section, then the four-year period shall begin on the effective date of this amendatory section.

Sec. 3. Section 13, chapter 1, Laws of 1961 and RCW 41.06.130 are each amended to read as follows:

The office of director of personnel is hereby established.

(1) Within ninety days after December 8, 1960, a director of personnel shall be appointed. The merit system director then serving under RCW 50.12.030, whose position is terminated by this chapter, may serve as director of personnel hereunder until a permanent director of personnel is appointed as herein provided, and may be appointed as director of personnel by the governor alone; or the governor may fill the position in the manner hereinafter provided for subsequent vacancies therein on the basis of competitive examination, in conformance with board rules for competitive examinations, for which examinations ~~((said))~~ the merit system director ~~((shall be))~~ is eligible.

(2) The director of personnel shall be appointed by the governor from a list of three names submitted to him by the board with its recommendations~~((;))~~. The names on such list shall be those of the three standing highest upon competitive examination conducted by a committee of three persons ~~((which shall be))~~ appointed by the board solely for that purpose whenever the position is vacant. Only persons with substantial experience in the field of personnel management ~~((shall be))~~ are eligible to take such examination.

(3) The director of personnel ~~((shall be))~~ is removable for cause by the governor with the approval of a majority of the board or by a majority of the board.

(4) The director of personnel shall direct and supervise all the department of personnel's administrative and technical activities in accordance with the provisions of this chapter and the rules and regulations approved and promulgated thereunder. He shall prepare for consideration by the board proposed rules and regulations required by this chapter. His salary shall be fixed by the board.

(5) The director of personnel may delegate to any agency the authority to perform administrative and technical personnel activities if the agency requests such authority and the director of personnel is satisfied that the agency has the personnel management capabilities to effectively perform the delegated activities. The director of personnel shall prescribe standards and

guidelines for the performance of delegated activities. If the director of personnel determines that an agency is not performing delegated activities within the prescribed standards and guidelines, the director shall withdraw the authority from the agency to perform such activities.

Sec. 4. Section 15, chapter 1, Laws of 1961 as last amended by section 18, chapter 311, Laws of 1981 and by section 1, chapter 79, Laws of 1982 and RCW 41.06.150 are each reenacted and amended to read as follows:

The board shall adopt rules, consistent with the purposes and provisions of this chapter, as now or hereafter amended, and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

- (1) The reduction, dismissal, suspension, or demotion of an employee;
- (2) Certification of names for vacancies, including departmental promotions and reemployment from layoff, with the number of names equal to ~~((two))~~ four more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists;
- (3) Examinations for all positions in the competitive and noncompetitive service;
- (4) Appointments;
- (5) Training and career development;
- (6) Probationary periods of six to twelve months and rejections therein, depending on the job requirements of the class, except that entry level state park rangers shall serve a probationary period of twelve months;
- (7) Transfers;
- (8) Sick leaves and vacations;
- (9) Hours of work;
- (10) Layoffs when necessary and subsequent reemployment(~~((both according to seniority))~~);
- (11) Determination of appropriate bargaining units within any agency: PROVIDED, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees;
- (12) Certification and decertification of exclusive bargaining representatives: PROVIDED, That after certification of an exclusive bargaining representative and upon ~~((said))~~ the representative's request, the director shall hold an election among employees in a bargaining unit to determine by a majority whether to require as a condition of employment membership in the certified exclusive bargaining representative on or after the thirtieth day following the beginning of employment or the date of such election, whichever is the later, and the failure of an employee to comply with such a condition of employment ~~((shall))~~ constitutes cause for dismissal: PROVIDED FURTHER, That no more often than once in each twelve-month period

after expiration of twelve months following the date of the original election in a bargaining unit and upon petition of thirty percent of the members of a bargaining unit the director shall hold an election to determine whether a majority wish to rescind such condition of employment: PROVIDED FURTHER, That for purposes of this clause, membership in the certified exclusive bargaining representative (~~((shall be))~~) is satisfied by the payment of monthly or other periodic dues and (~~((shall))~~) does not require payment of initiation, reinstatement, or any other fees or fines and (~~((shall))~~) includes full and complete membership rights: AND PROVIDED FURTHER, That in order to safeguard the right of nonassociation of public employees, based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member, such public employee shall pay to the union, for purposes within the program of the union as designated by such employee that would be in harmony with his individual conscience, an amount of money equivalent to regular union dues minus any included monthly premiums for union-sponsored insurance programs, and such employee shall not be a member of the union but (~~((shall be))~~) is entitled to all the representation rights of a union member;

(13) Agreements between agencies and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion;

(14) Written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization: PROVIDED, That nothing contained herein (~~((shall))~~) permits or grants to any employee the right to strike or refuse to perform his official duties;

(15) Adoption and revision of a comprehensive classification plan for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position;

(16) Allocation and reallocation of positions within the classification plan;

(17) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units, such adoption and revision subject to approval by the director of financial management in accordance with the provisions of chapter 43.88 RCW;

(18) Increment or merit increases within the series of steps for each pay grade (~~((based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service))~~);

(19) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their widows by giving such eligible veterans and their widows additional credit in computing their seniority by adding to their unbroken state service, as defined by the board, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given: PROVIDED, HOWEVER, That the widow of a veteran (~~shall be~~) is entitled to the benefits of this section regardless of the veteran's length of active military service: PROVIDED FURTHER, That for the purposes of this section "veteran" (~~shall~~) does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month;

(20) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the board may not authorize such delegation to any position lower than the head of a major subdivision of the agency.

Sec. 5. Section 6, chapter 152, Laws of 1977 ex. sess. and RCW 41.06-.169 are each amended to read as follows:

After consultation with state agency heads, employee organizations, and other interested parties, the state personnel director shall develop standardized employee performance evaluation procedures and forms which shall be used by state agencies for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual agencies may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. Performance evaluation procedures shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling state agency and job objectives. (~~A standardized performance evaluation procedure shall be instituted not later than July 1, 1978, for all employees.~~) This section shall expire June 30, 1985. This section shall not apply to management employees after June 30, 1984.

*NEW SECTION. Sec. 6. There is added to chapter 41.06 RCW a new section to read as follows:

(1) After consultation with state agency heads, employee organizations, and other interested parties, the state personnel director shall develop employee performance evaluation standards, procedures, and forms which shall be used by state agencies for the appraisal of employee job performance at least annually. The performance evaluation procedures shall include means whereby individual agencies may develop special performance factors peculiar to the organizational needs of particular employing agencies. Performance evaluation standards shall not include detailed work expectations, which shall be developed by the employing agency.

(2) The standardized performance evaluation shall measure employee performance within at least five performance rating categories as established by the board. Such evaluation shall be given to classified employees and those exempt employees whose salary and fringe benefits are determined by the board pursuant to RCW 41.06.070.

(3) The board shall, **subject to legislative approval under section 30 of this act**, adopt rules designed to insure that performance evaluations of employees do not result in unrealistic concentration in any performance rating category.

(4) This section shall apply to:

(a) Management employees beginning July 1, 1984; and

(b) All other employees beginning July 1, 1985.

(5) A classified employee may appeal his or her performance evaluation under RCW 41.06.170(2) only to the extent the evaluation violates this chapter or rules promulgated under this chapter, or if the performance rating category received in the performance evaluation would result in a withdrawal of the increment increase previously received other than the increment increase received under section 8(3) of this act, **subject to legislative approval under section 30 of this act**.

*Sec. 6 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 7. There is added to chapter 41.06 RCW a new section to read as follows:

(1) The board shall, **subject to legislative approval under section 30 of this act**, develop rules by January 1, 1984, which will assure that whenever an agency makes a layoff of classified management employees after June 30, 1985, or other classified employees after June 30, 1986, the decision on which employees to lay off shall be based on performance and seniority.

(2) From the effective date of this section until the provisions of subsection (1) of this section are implemented, the decision on which employees to lay off shall be based on seniority. However, where seniority is equal, performance shall be used as the determining factor.

*Sec. 7 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 8. There is added to chapter 41.06 RCW a new section to read as follows:

(1) Beginning July 1, 1985, the performance of each nonmanagement employee shall be evaluated prior to the date on which the nonmanagement employee would be eligible to receive an increment or merit increase in salary. In the conduct of the evaluation, the agency shall use the evaluation procedure and forms adopted under section 6 of this act.

(2) After June 30, 1985, increment or merit increases for these employees may be awarded only as follows:

(a) To the midstep of the salary range based on seniority if the employee receives other than the lowest performance rating category; and

(b) From the midstep of the salary range based on satisfactory performance, but if the employee in the performance evaluation receives a performance rating category of less than satisfactory, the increase granted as a result of the prior performance evaluation shall be withdrawn.

(3) A nonmanagement employee at the top of the salary range may only be granted an additional increase if the performance of the nonmanagement employee is rated in the highest performance rating category. Such increase shall be withdrawn if any subsequent performance evaluation is less than the highest performance rating category.

***NEW SECTION.** Sec. 9. There is added to chapter 41.06 RCW a new section to read as follows:

Beginning on July 1, 1984, management employees of an agency shall be subject to performance evaluation using the procedures developed under section 6 of this act. Such management employees may only be granted increment and merit increases in salary, based on performance, under the rules promulgated by the board, *subject to legislative approval under section 30 of this act.*

***Sec. 9 was partially vetoed, see message at end of chapter.**

NEW SECTION. Sec. 10. There is added to chapter 41.06 RCW a new section to read as follows:

Whenever an employee has been laid off, the employee's rights in respect to reemployment from layoff shall be based on seniority and subject to RCW 41.06.150(2). Certification from the layoff lists may be augmented by names from other lists if necessary to complete the certification.

NEW SECTION. Sec. 11. There is added to chapter 28B.10 RCW a new section to read as follows:

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Management employees" mean administrative exempt personnel of each institution of higher education who are specified by each institution as management.

***NEW SECTION.** Sec. 12. There is added to chapter 28B.10 RCW a new section to read as follows:

(1) The state and regional universities and The Evergreen State College shall develop performance evaluation procedures and forms which shall be used for the appraisal of management employees.

(2) The performance evaluation shall measure management employees' performance within at least five performance rating categories.

(3) Each of these institutions shall, *subject to legislative approval under section 30 of this act*, adopt rules designed to insure that performance evaluations of management employees do not result in unrealistic concentration in any performance rating category.

*Sec. 12 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 13. There is added to chapter 28B.10 RCW a new section to read as follows:

Beginning on July 1, 1984, management employees shall be subject to performance evaluation using the procedures developed under section 12 of this act. Such employees may be granted merit increases in salary, based on performance, as determined by each institution for its employees.

Sec. 14. Section 2, chapter 36, Laws of 1969 ex. sess. as amended by section 41, chapter 169, Laws of 1977 ex. sess. and RCW 28B.16.020 are each amended to read as follows:

Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section.

(1) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges;

(2) "Board" means the higher education personnel board established under the provisions of RCW 28B.16.060;

(3) "Related boards" means the state board for community college education and the higher education personnel board; and such other boards, councils and commissions related to higher education as may be established;

(4) "Classified service" means all positions at the institutions of higher education subject to the provisions of this chapter;

(5) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment;

(6) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required;

(7) "Management employees" mean those classified employees under this chapter specified as management by the higher education personnel board, but the board shall not go below range 49, as established in the October 1981 higher education personnel board compensation plan, or its equivalent range in a subsequent compensation plan publication.

Sec. 15. Section 4, chapter 36, Laws of 1969 ex. sess. as amended by section 1, chapter 94, Laws of 1977 ex. sess. and RCW 28B.16.040 are each amended to read as follows:

The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(1) Members of the governing board of each institution and related boards, all presidents, vice presidents and their confidential secretaries, administrative and personal assistants; deans, directors, and chairmen; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington.

(2) Student, part time, or temporary employees, and part time professional consultants, as defined by the higher education personnel board, employed by institutions of higher education and related boards.

(3) The director, his confidential secretary, assistant directors, and professional education employees of the state board for community college education.

(4) The personnel director of the higher education personnel board and his confidential secretary.

(5) The governing board of each institution, and related boards, may also exempt from this chapter, subject to the employees right of appeal to the higher education personnel board, classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training, and principal assistants to executive heads of major administrative or academic divisions, as determined by the higher education personnel board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the higher education personnel board under this provision.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary, within four years from the date of appointment to the exempt position. However, (a) upon the prior request of the appointing authority of the exempt position, the board may approve one extension of no more than four years; and (b) if an appointment was accepted prior to the effective date of this amendatory section, then the four-year period shall begin on the effective date of this amendatory section.

Sec. 16. Section 10, chapter 36, Laws of 1969 ex. sess. as last amended by section 15, chapter 151, Laws of 1979 and RCW 28B.16.100 are each amended to read as follows:

The higher education personnel board shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) The dismissal, suspension, or demotion of an employee, and appeals therefrom;

(2) Certification of names for vacancies, including promotions and re-employment from layoff, with the number of names equal to ~~((two))~~ four more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists;

(3) Examination for all positions in the competitive and noncompetitive service;

(4) Appointments;

(5) Probationary periods of six ~~((months and rejections therein))~~ to twelve months and rejections therein, depending on the job requirements of the class;

(6) Transfers;

(7) Sick leaves and vacations;

(8) Hours of work;

(9) Layoffs when necessary and subsequent reemployment ~~((both according to seniority))~~;

(10) Determination of appropriate bargaining units within any institution or related boards: PROVIDED, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees;

(11) Certification and decertification of exclusive bargaining representatives: PROVIDED, That after certification of an exclusive bargaining representative and upon ~~((said))~~ the representative's request, the director shall hold an election among employees in a bargaining unit to determine by a majority whether to require as a condition of employment membership in the certified exclusive bargaining representative on or after the thirtieth day following the beginning of employment or the date of such election, whichever is the later, and the failure of an employee to comply with such condition of employment ~~((shall))~~ constitutes cause for dismissal: PROVIDED FURTHER, That no more often than once in each ~~twelve-month~~ twelve-month period after expiration of twelve months following the date of the original election in a bargaining unit and upon petition of thirty percent of the members of a bargaining unit the director shall hold an election to determine whether a

majority wish to rescind such condition of employment: PROVIDED FURTHER, That for purposes of this clause, membership in the certified exclusive bargaining representative (~~(shall be)~~) is satisfied by the payment of monthly or other periodic dues and (~~(shall)~~) does not require payment of initiation, reinstatement, or any other fees or fines and (~~(shall)~~) includes full and complete membership rights: AND PROVIDED FURTHER, That in order to safeguard the right of nonassociation of public employees, based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member, such public employee shall pay to the union, for purposes within the program of the union as designated by such employee that would be in harmony with his individual conscience, an amount of money equivalent to regular union dues minus any included monthly premiums for union-sponsored insurance programs, and such employee shall not be a member of the union but (~~(shall be)~~) is entitled to all the representation rights of a union member;

(12) Agreements between institutions or related boards and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters over which the institution or the related board may lawfully exercise discretion;

(13) Written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the institution and the employee organization: PROVIDED, That nothing contained herein (~~(shall)~~) permits or grants to any employee the right to strike or refuse to perform his official duties;

(14) Adoption and revision of comprehensive classification plans for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position;

(15) Allocation and reallocation of positions within the classification plan;

(16) Adoption and revision of salary schedules and compensation plans which reflect the prevailing rates in Washington state private industries and other governmental units for positions of a similar nature and which shall be competitive in the state or the locality in which the institution or related boards are located, such adoption, revision, and implementation subject to approval as to availability of funds by the director of financial management in accordance with the provisions of chapter 43.88 RCW, and after consultation with the chief financial officer of each institution or related board for that institution or board, or in the case of community colleges, by the chief financial officer of the state board for community college education for the various community colleges;

(17) Training programs including in-service, promotional, and supervisory;

(18) ~~Increment or merit increases within the series of steps for each pay grade ((based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service)); and~~

(19) Providing for veteran's preference as provided by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their widows by giving such eligible veterans and their widows additional credit in computing their seniority by adding to their unbroken higher education service, as defined by the board, the veteran's service in the military not to exceed five years of such service. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given: PROVIDED, HOWEVER, That the widow of a veteran (~~shall be~~) is entitled to the benefits of this section regardless of the veteran's length of active military service: PROVIDED FURTHER, That for the purposes of this section "veteran" (~~shall~~) does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

Sec. 17. Section 13, chapter 152, Laws of 1977 ex. sess. and RCW 28B.16.105 are each amended to read as follows:

After consultation with institution heads, employee organizations, and other interested parties, the board shall develop standardized employee performance evaluation procedures and forms which shall be used by institutions of higher learning for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual institutions may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. This evaluation procedure shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling institution and job objectives. (~~A standardized performance evaluation procedure shall be instituted not later than July 1, 1978, for all employees.)) This section shall expire June 30, 1985. This section shall not apply to management employees after June 30, 1984.~~

***NEW SECTION.** Sec. 18. There is added to chapter 28B.16 RCW a new section to read as follows:

(1) After consultation with institution heads, employee organizations, and other interested parties, the personnel director shall develop employee

performance evaluation standards, procedures, and forms which shall be used by institutions of higher education for the appraisal of employee job performance at least annually. The performance evaluation procedures shall include means whereby individual institutions and related boards may develop special performance factors peculiar to the organizational needs of particular employing institutions. Performance evaluation standards shall not include detailed work expectations, which shall be developed by the employing institution.

(2) The standardized performance evaluation shall measure classified employee performance within at least five performance rating categories as established by the board.

(3) The board shall, *subject to legislative approval under section 30 of this act*, adopt rules designed to insure that performance evaluations of employees do not result in unrealistic concentration in any performance rating category.

(4) This section shall apply to:

- (a) Management employees beginning July 1, 1984; and
- (b) All other employees beginning July 1, 1985.

(5) A classified employee may appeal his or her performance evaluation within thirty days to the board only to the extent the evaluation violates this chapter or rules adopted under this chapter, or if the performance rating category received in the performance evaluation would result in a withdrawal of the increment increase previously received other than the increment increase received under section 21(3) of this act, *subject to legislative approval under section 30 of this act*.

*Sec. 18 was partially vetoed, see message at end of chapter.

Sec. 19. Section 9, chapter 152, Laws of 1977 ex. sess. and RCW 28B-16.101 are each amended to read as follows:

Rules adopted by the higher education personnel board shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the board, of the following:

- (1) Appointment, promotion, and transfer of employees;
- (2) Dismissal, suspension, or demotion of an employee;
- (3) Examinations for all positions in the competitive and noncompetitive service;
- (4) Probationary periods of six to twelve months and rejections therein;
- (5) Sick leaves and vacations;
- (6) Hours of work;
- (7) Layoffs when necessary and subsequent reemployment;
- (8) Allocation and reallocation of positions within the classification plans;
- (9) Training programs; and
- (10) Maintenance of personnel records.

***NEW SECTION.** Sec. 20. There is added to chapter 28B.16 RCW a new section to read as follows:

(1) The board shall, *subject to legislative approval under section 30 of this act*, develop rules by January 1, 1984, which will assure that whenever an institution of higher education makes a layoff of classified management employees after June 30, 1985, or other classified employees after June 30, 1986, the decision on which employees to lay off shall be based on performance and seniority.

(2) From the effective date of this section until the provisions of subsection (1) of this section are implemented, the decision on which employees to lay off shall be based on seniority. However, where seniority is equal, performance shall be used as the determining factor.

***Sec. 20 was partially vetoed, see message at end of chapter.**

NEW SECTION. Sec. 21. There is added to chapter 28B.16 RCW a new section to read as follows:

(1) Beginning July 1, 1985, the performance of each nonmanagement employee shall be evaluated prior to the date on which the nonmanagement employee would be eligible to receive an increment or merit increase in salary. In conduct of the evaluation, the institution shall use the evaluation procedure and forms adopted under section 18 of this act.

(2) After June 30, 1985, increment or merit increases for these employees may be awarded only as follows:

(a) To the midstep of the salary range based on seniority if the employee receives other than the lowest performance rating category; and

(b) From the midstep of the salary range based on satisfactory performance, but if the nonmanagement employee in the performance evaluation receives a performance rating category of less than satisfactory, the increase granted as a result of the prior performance evaluation shall be withdrawn.

(3) A nonmanagement employee at the top of the salary range may only be granted an additional increase if the performance of the nonmanagement employee is rated in the highest performance rating category. Such increase shall be withdrawn if any subsequent performance evaluation is less than the highest performance rating category.

***NEW SECTION.** Sec. 22. There is added to chapter 28B.16 RCW a new section to read as follows:

Beginning on July 1, 1984, classified management employees shall be subject to performance evaluation using the procedures developed under section 18 of this act. Such classified management employees may only be granted increment and merit increases in salary, based on performance, under the rules promulgated by the board, *subject to legislative approval under section 30 of this act*.

***Sec. 22. was partially vetoed, see message at end of chapter.**

NEW SECTION. Sec. 23. There is added to chapter 28B.16 RCW a new section to read as follows:

Whenever an employee has been laid off, the employee's rights, in respect to reemployment from layoff shall be based on seniority and subject to RCW 28B.16.100(2). Certification from the layoff lists may be augmented by names from other lists if necessary to complete the certification.

Sec. 24. Section 28B.50.030, chapter 223, Laws of 1969 ex. sess. as last amended by section 12, chapter 62, Laws of 1973 and RCW 28B.50.030 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community colleges, which shall be a system of higher education;

(2) "College board" shall mean the state board for community college education created by this chapter;

(3) "Director" shall mean the administrative director for the state system of community colleges;

(4) "District" shall mean any one of the community college districts created by this chapter;

(5) "Board of trustees" shall mean the local community college board of trustees established for each community college district within the state;

(6) "Council" shall mean the coordinating council for occupational education;

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree;

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade;

(9) "Common school board" shall mean a public school district board of directors;

(10) "Community college" shall include where applicable, vocational-technical and adult education programs conducted by community colleges and vocational-technical institutes whose major emphasis is in post-high school education;

(11) "Adult education" shall mean all education or instruction, including academic, vocational education or training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate: PROVIDED, That "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate: PROVIDED, FURTHER, That "adult education" shall not include education or instruction provided by any four year public institution of higher education: AND PROVIDED FURTHER,

That adult education shall not include education or instruction provided by a vocational-technical institute;

(12) "Management employees" shall mean administrative exempt personnel of each community college who are specified by each community college as management.

*NEW SECTION. Sec. 25. There is added to chapter 28B.50 RCW a new section to read as follows:

(1) The community colleges and the college board shall develop performance evaluation procedures and forms which shall be used for the appraisal of their respective management employees.

(2) The performance evaluation shall measure management employees' performance within at least five performance rating categories.

(3) Each community college and the college board shall, *subject to legislative approval under section 30 of this act*, adopt rules designed to insure that performance evaluations of their respective management employees do not result in unrealistic concentration in any performance rating category.

*Sec. 25 was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 26. There is added to chapter 28B.50 RCW a new section to read as follows:

Beginning on July 1, 1984, management employees shall be subject to performance evaluation using the procedures developed under section 25 of this 1982 act. Such employees may be granted merit increases in salary, based on performance, as determined by each community college and the college board for their respective employees.

NEW SECTION. Sec. 27. There is added to chapter 28B.80 RCW a new section to read as follows:

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Management employees" mean administrative exempt personnel of the council for postsecondary education who are specified by the council as management.

NEW SECTION. Sec. 28. There is added to chapter 28B.80 RCW a new section to read as follows:

(1) The council shall develop performance evaluation procedures and forms which shall be used for the appraisal of management employees.

(2) The performance evaluation shall measure management employees' performance within at least five performance rating categories.

(3) The council shall adopt rules designed to insure that performance evaluations of management employees do not result in unrealistic concentration in any performance rating category.

NEW SECTION. Sec. 29. There is added to chapter 28B.80 RCW a new section to read as follows:

Beginning on July 1, 1984, management employees of the council shall be subject to performance evaluation using the procedures developed under section 28 of this act. Such employees may be granted merit increases in salary based on performance as determined by the council for its employees.

***NEW SECTION. Sec. 30.** *The director of the department of personnel, the director of the higher education personnel board, and the institutions of higher education shall present to the legislature by April 1, 1983, a report containing its proposed rules to implement the performance evaluation process by July 1, 1984, for management employees and by April 1, 1984, a report containing its proposed rules to implement the performance evaluation process by July 1, 1985, for other employees. Such reports shall include, but not be limited to:*

- (1) The elements of the evaluation;*
- (2) Training programs;*
- (3) Application of the performance evaluation to merit increases;*
- (4) Application to layoff for classified employees; and*
- (5) Methods to insure that performance evaluation ratings will not be unrealistically concentrated in any category.*

For the purposes of this section the proposed rules and regulations relating to employee performance evaluations presented to the legislature as provided herein shall not become effective nor shall any employee be subject to written evaluation thereunder prior to approval of such rules and regulations by the senate and house of representatives in the form of a concurrent resolution. Such rules and regulations shall not become effective until a minimum of thirty days after approval by the legislature in the form of a concurrent resolution. If the legislature fails to adopt such concurrent resolution before July 1, 1986, sections 6 through 9, 11 through 13, 18, 20 through 22, and 25 through 29 of this act are null and void and without further force or effect.

The rules and regulations as approved herein shall become effective as provided herein and thereafter may be amended or revised by the state personnel board pursuant to the terms and conditions of chapter 41.06 RCW and by the higher education personnel board as provided in chapter 28B.16 RCW, but such rules and regulations shall not be amended or revised by the state personnel board or the higher education personnel board within one hundred eighty days from the effective date of the initial approval by the legislature. In addition to submission of any amendment or revision to the joint legislative rules review committee pursuant to chapter 34.04 RCW, any such amendment or revision shall be submitted to the senate and house of representatives committees on ways and means and state government.

**Sec. 30 was vetoed, see message at end of chapter.*

NEW SECTION. Sec. 31. *The following acts or parts of acts are each repealed:*

- (1) Section 5, chapter 36, Laws of 1969 ex. sess. and RCW 28B.16.050; and*

(2) Section 10, chapter 1, Laws of 1961 and RCW 41.06.100.

NEW SECTION. Sec. 32. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 5, 1982.

Passed the Senate April 4, 1982.

Approved by the Governor April 20, 1982 with the exceptions of Section 30, and all references to it, which are vetoed.

Filed in Office of Secretary of State April 20, 1982.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to Section 30 of Substitute House Bill No. 1226, entitled:

"AN ACT Relating to public employees"

I have vetoed Section 30 on pages 27 and 28, and all references to Section 30 on pages 13, 15, 23, 24, 25, and 27.

Section 30 calls for legislative review and approval of the proposed administrative rules for implementing the act. Failure of the legislature to approve the rules would void several sections of the act. In addition to presenting some constitutional issues relating to the functions of the legislative and executive branches, implementation of this section creates too much uncertainty as to when or whether the law will become effective.

With the exception of Section 30 and the references to it, which I have vetoed, Substitute House Bill No. 1226 is approved."

CHAPTER 54

[Second Substitute House Bill No. 124]

PUBLIC EMPLOYEES—EARLY RETIREMENT

AN ACT Relating to public employment; amending section 128, chapter 340, Laws of 1981 (uncodified); adding a new section to chapter 28B.10 RCW; adding a new section to chapter 41.04 RCW; adding new sections to chapter 41.32 RCW; adding new sections to chapter 41.40 RCW; adding a new section to chapter 43.43 RCW; creating new sections; making an appropriation; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature has determined it is in the best interest of the state to temporarily provide a special early retirement benefit which would enable certain employees to leave state service. It is the intent of the legislature that the resulting lower level of employment achieved through the utilization of this special early retirement be maintained by the agency or political subdivision for whom the retiring employee was employed.