

There is hereby appropriated from the general fund to the superintendent of public instruction for the biennium ending June 30, 1983, ~~((two))~~ one million ~~((two))~~ one hundred thousand dollars, or so much thereof as may be necessary, solely for the purposes of paying interest costs associated with section 2 ~~((of this act))~~, chapter 136, Laws of 1982 as amended by section 1 of this 1983 act.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 7, 1983.

Passed the House March 24, 1983.

Approved by the Governor March 25, 1983.

Filed in Office of Secretary of State March 25, 1983.

CHAPTER 15

[Engrossed Substitute Senate Bill No. 3108]

FERRY SYSTEM—COLLECTIVE BARGAINING—ARBITRATION

AN ACT Relating to transportation; amending section 9, chapter ... (SB 3036), Laws of 1983 and RCW 41.05.050; amending section 1, chapter 11, Laws of 1972 ex. sess. as last amended by section 2, chapter 53, Laws of 1982 1st ex. sess. and RCW 41.06.070; amending section 46.68.030, chapter 12, Laws of 1961 as last amended by section 9, chapter 342, Laws of 1981 and RCW 46.68.030; amending section 47.60.310, chapter 13, Laws of 1961 as last amended by section 137, chapter 3, Laws of 1983 and RCW 47.60.310; amending section 5, chapter 344, Laws of 1981 and RCW 47.60.326; amending section 47.64.090, chapter 13, Laws of 1961 and RCW 47.64.090; amending section 9, chapter 344, Laws of 1981 (uncodified); adding a new section to chapter 41.58 RCW; adding a new section to chapter 47.60 RCW; adding new sections to chapter 47.64 RCW; repealing section 7, chapter 344, Laws of 1981 and RCW 41.06.166; repealing section 8, chapter 24, Laws of 1972 ex. sess., section 10, chapter 342, Laws of 1981 and RCW 47.60.325; repealing section 47.64.010, chapter 13, Laws of 1961, section 33, chapter 296, Laws of 1975 1st ex. sess., section 1, chapter 344, Laws of 1981 and RCW 47.64.010; [repealing] section 2, chapter 344, Laws of 1981 and RCW 47.64.031; repealing section 3, chapter 344, Laws of 1981 and RCW 47.64.100; repealing section 4, chapter 344, Laws of 1981 and RCW 47.64.110; repealing section 47.64.040, chapter 13, Laws of 1961, section 35, chapter 296, Laws of 1975 1st ex. sess., section 1, chapter 73, Laws of 1979 ex. sess. and RCW 47.64.040; providing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. PUBLIC POLICY. The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all

strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote equality in compensation, benefits, and working conditions between ferry system employees, private sector employees within the state, and other Washington state employees in directly comparable positions.

NEW SECTION. Sec. 2. **DEFINITIONS.** As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

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

(2) "Arbitrator" means either a single arbitrator or a panel of three arbitrators as provided in section 15 of this act.

(3) "Collective bargaining representative" means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(4) "Department of transportation" means the department as defined in RCW 47.01.021.

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

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

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

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

(9) "Marine employees' commission" means the commission created in section 19 of this act.

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

(11) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her wilful absence from his or her position, or his or her stoppage or slowdown of work, or his

or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter.

(12) "Transportation commission" means the commission as defined in RCW 47.01.021.

NEW SECTION. Sec. 3. SCOPE OF NEGOTIATIONS. Ferry system management and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by section 18 of this act, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

NEW SECTION. Sec. 4. UNFAIR LABOR PRACTICES FOR EMPLOYER, EMPLOYEE ORGANIZATION, ENUMERATED. (1) It is an unfair labor practice for ferry system management or its representatives:

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

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules made by the commission pursuant to section 19 of this act, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to section 7 of this act: PROVIDED, That nothing prohibits ferry system management from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

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

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

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

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

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

(c) To refuse to bargain collectively with an employer, when it is the representative of its employees subject to section 8 of this act.

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

NEW SECTION. Sec. 5. STRIKES, WORK STOPPAGES, AND LOCKOUTS PROHIBITED. (1) It is unlawful for any ferry system employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike or work stoppage against the ferry system.

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

(3) In the event of any violation or imminently threatened violation of subsection (1) or (2) of this section, any citizen domiciled within the jurisdictional boundaries of the state may petition the superior court for Thurston county for an injunction restraining the violation or imminently threatened violation. Rules of civil procedure regarding injunctions apply to the action. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would

greatly or irreparably injure him or her; and no bond may be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted under this section constitutes a punishable contempt. The punishment shall not exceed ten thousand dollars for an employee organization or the ferry system, for each day during which the failure to comply continues, or imprisonment in a county jail for officials thereof not exceeding six months, or both such fine and imprisonment. The punishment for a ferry employee found to be in contempt shall be as provided in chapter 7.20 RCW. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

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

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

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

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

NEW SECTION. Sec. 6. GRIEVANCE PROCEDURES. An agreement with a ferry employee organization that is the exclusive representative of ferry employees in an appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement. The procedures shall provide for the invoking of arbitration only with the approval of the employee organization. The costs of arbitrators shall be shared equally by the parties.

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievances to the marine employees' commission as provided in section 19 of this act.

NEW SECTION. Sec. 7. UNION SECURITY PROVISIONS—SCOPE—AGENCY SHOP PROVISION, COLLECTION OF DUES OR FEES. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions shall safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization.

NEW SECTION. Sec. 8. COLLECTIVE BARGAINING PROCEDURES. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

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

(3) Negotiating sessions, including strategy meetings of ferry system management or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties. Any meeting of the transportation commission, during which a collective bargaining agreement is subject to ratification, shall be open to the public.

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

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with a member of the transportation commission if the commission has appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative, unless the member of the commission is the designated bargaining representative of the ferry system.

(6) The negotiation of a proposed collective bargaining agreement by representatives of ferry system management and a ferry employee organization shall commence in each odd-numbered year immediately following adoption by the legislature and approval by the governor of the biennial budget.

(7) Until a new collective bargaining agreement is negotiated, or until an award is made by the arbitrator, the terms and conditions of the previous collective bargaining agreement shall remain in force. The wage and benefit provisions of any collective bargaining agreement, or arbitrator's award in lieu thereof, that is concluded after July 1st of an odd-numbered year shall be retroactive to July 1st. It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical.

(8) Any ferry union contract terminating before July 1, 1983, shall, with the agreement of the parties, remain in effect until a contract can be concluded under sections 1 through 19 of this act. The contract may be retroactive to the expiration date of the prior contract, and the cost to the department of three months retroactive compensation and benefits for this 1983 contract negotiation only shall not be included in calculating the limitation imposed by section 9 of this act. If the parties cannot agree to contract extension, any increase agreed to for the three-month period shall be included in calculating the limit imposed by section 9 of this act.

(9) Any ferry union contract which would terminate after July 1, 1983, may, by agreement of the parties, be terminated as of July 1, 1983, and a new contract concluded pursuant to sections 1 through 19 of this act. Any contract terminating after July 1, 1983, is subject to this chapter only upon its expiration and shall not be renewed for a period beyond July 1, 1985.

NEW SECTION. Sec. 9. AGREEMENTS AND AWARDS LIMITED BY APPROPRIATION. (1) No collective bargaining agreement or arbitrator's award is valid or enforceable if its implementation would be inconsistent with any statutory limitation on the department of transportation's funds, spending, or budget. The department of transportation shall, in good faith, exercise its administrative discretion with full public participation as required by section 25 of this act, subject only to legislative limitations and conditions, to implement the terms of any collective bargaining agreement or arbitrator's award.

(2) In no event may the transportation commission or the department of transportation authorize an increase in tolls after the enactment of the budget that is in excess of the Seattle consumer price index for the preceding twelve months for the purpose of providing revenue to fund a collective bargaining agreement or arbitrator's award. The commission or the department may increase tolls after the first fiscal year of the biennium by the

amount that the Seattle consumer price index increased after the previous toll increase. This subsection shall not be construed to prevent increases due to items that are not labor-related and that are beyond the direct control of the department.

NEW SECTION. Sec. 10. MARINE EMPLOYEES' COMMISSION REVIEW FOR COMPLIANCE WITH FISCAL LIMITATIONS—EFFECTIVE DATE OF AGREEMENTS AND ARBITRATION ORDERS.

(1) No negotiated agreement or arbitration order may become effective and in force until five calendar days after an agreement has been negotiated or an arbitration order entered for each and every ferry employee bargaining unit.

(2) Upon the conclusion of negotiations or arbitration procedures with all ferry employee bargaining units, the secretary shall ascertain whether the cumulative fiscal requirements of all such agreements and arbitration orders are within the limitations imposed by section 9 of this act.

(3) If the secretary finds that budgetary or fare restrictions will be exceeded, he shall, within five calendar days of completion of negotiations or arbitration with the last bargaining unit to conclude an agreement, submit all agreements and arbitration awards to the marine employees' commission for a binding determination whether the limitations of section 9 of this act have been exceeded.

(4) The marine employees' commission shall review all negotiated agreements and arbitration orders, and may take written or oral testimony from the parties, regarding compliance with section 9 of this act. Within fifteen calendar days of receiving the secretary's request for review, the commission shall determine by a majority vote of its members whether or not the cumulative effect of all such agreements and orders exceeds the limitations of section 9 of this act.

(5) If the marine employees' commission determines that the limitations of section 9 of this act would be exceeded if all agreements and arbitration orders were given full force and effect, it shall order the minimum percentage reduction in straight time wage provisions applied equally across the board to all agreements or arbitration orders which will result in compliance with section 9 of this act.

(6) Whenever the secretary requests a determination by the marine employees' commission pursuant to this section, the effect of all agreements and arbitration orders shall be stayed, pending the commission's final determination.

NEW SECTION. Sec. 11. IMPASSE PROCEDURES. As the first step in the performance of their duty to bargain, ferry system management and the employee organization shall endeavor to agree upon impasse procedures. The agreement shall provide for implementation of these impasse procedures not later than July 1st in each odd-numbered year following enactment of the biennial budget. If the parties fail to agree upon impasse

procedures under this section, the impasse procedures provided in sections 12 through 14 of this act apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in sections 12 through 14 of this act.

NEW SECTION. Sec. 12. MEDIATION. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by August 1st in each odd-numbered year, the marine employees' commission shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator pursuant to section 19 of this act. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree.

NEW SECTION. Sec. 13. FACT-FINDING. Prior to collective bargaining, the marine employees' commission shall conduct a salary survey which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of private sector employees within the state and Washington state employees doing directly comparable work, giving consideration to factors peculiar to the area and the classifications involved. The commission shall make such other findings of fact as the parties may request during bargaining or impasse.

NEW SECTION. Sec. 14. WAIVER OF MEDIATION AND FACT-FINDING. By mutual agreement, the parties may waive mediation and fact-finding, as provided for in sections 12 and 13 of this act, and proceed with binding arbitration as provided for in section 15 of this act. The waiver shall be in writing and be signed by the representatives of the parties.

NEW SECTION. Sec. 15. BINDING ARBITRATION. (1) If impasse persists fourteen days after the mediator has been appointed, or beyond any other date mutually agreed to by the parties, all impasse items shall be submitted to arbitration pursuant to this section, and that arbitration shall be binding upon the parties.

(2) Each party shall submit to the other within four days of request, a final offer on the impasse items with proof of service of a copy upon the other party. Each party shall also submit a copy of a draft of the proposed collective bargaining agreement to the extent to which agreement has been reached and the name of its selected arbitrator. The parties may continue to negotiate all offers until an agreement is reached or a decision rendered by the panel of arbitrators.

As an alternative procedure, the two parties may agree to submit the dispute to a single arbitrator. If the parties cannot agree on the arbitrator within four days, the selection shall be made pursuant to subsection (5) of this section. The full costs of arbitration under this provision shall be shared equally by the parties to the dispute.

(3) The submission of the impasse items to the arbitrators shall be limited to those issues upon which the parties have not reached agreement. With respect to each such item, the arbitration panel award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board on each impasse item.

(4) The panel of arbitrators shall consist of three members appointed in the following manner:

(a) One member shall be appointed by the secretary of transportation;

(b) One member shall be appointed by the ferry employee organization;

(c) One member shall be appointed mutually by the members appointed by the secretary of transportation and the employee organization. The last member appointed shall be the chairman of the panel of arbitrators. No member appointed may be an employee of the parties;

(d) Ferry system management and the employee organization shall each pay the fees and expenses incurred by the arbitrator each selected. The fee and expenses of the chairman of the panel shall be shared equally by each party.

(5) If the third member has not been selected within four days of notification as provided in subsection (2) of this section, a list of seven arbitrators shall be submitted to the parties by the marine employees' commission. The two arbitrators selected by ferry system management and the ferry employee organization shall determine by lot which arbitrator shall remove the first name from the list submitted by the marine employees' commission. The second arbitrator and the first arbitrator shall alternately remove one additional name until only one name remains. The person whose name remains shall become the chairman of the panel of arbitrators and shall call a meeting within thirty days, or at such time mutually agreed to by the parties, at a location designated by him or her. In lieu of a list of seven nominees for the third member being submitted by the marine employees' commission, the parties may mutually agree to have either the Federal Mediation and Conciliation Service or the American Arbitration Association submit a list of seven nominees.

(6) If a vacancy occurs on the panel of arbitrators, the selection for replacement of that member shall be in the same manner and within the same time limits as the original member was chosen. No final award under subsection (3) of this section may be made by the panel until three arbitrators have been chosen.

(7) The panel of arbitrators shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

(8) From the time of appointment until such time as the panel of arbitrators makes its final determination, there shall be no discussion concerning recommendations for settlement of the dispute by the members of the panel of arbitrators with parties other than those who are direct parties to the

dispute. The panel of arbitrators may conduct formal or informal hearings to discuss offers submitted by both parties.

(9) The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

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

(b) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of private sector employees within the state and Washington state employees doing directly comparable work, giving consideration to factors peculiar to the area and the classifications involved;

(c) The interests and welfare of the public, the ability of the ferry system to finance economic adjustments, and the effect of the adjustments on the normal standard of services;

(d) The right of the legislature to appropriate and to limit funds for the conduct of the ferry system; and

(e) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature.

(10) The chairman of the panel of arbitrators may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such powers to other members of the panel of arbitrators. The chairman of the panel of arbitrators may petition the superior court in Thurston county, or any county in which any hearing is held, to enforce the order of the chairman compelling the attendance of witnesses and the production of records.

(11) A majority of the panel of arbitrators shall within thirty days after its first meeting select the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties.

(12) The selections by the panel of arbitrators and items agreed upon by the ferry system management and the employee organization shall be deemed to be the collective bargaining agreement between the parties.

(13) The determination of the panel of arbitrators shall be by majority vote and shall be final and binding, subject to sections 9 and 10 of this act. The panel of arbitrators shall give written explanation for its selection and inform the parties of its decision.

NEW SECTION. Sec. 16. LEGAL ACTIONS. (1) Any ferry employee organization and the department of transportation may sue or be sued as an entity under this chapter. Service upon any party shall be in accordance with law or the rules of civil procedure. Nothing in this chapter may be construed to make any individual or his assets liable for any judgment against the department of transportation or a ferry employee organization if the individual was acting in his official capacity.

(2) Any legal action by any ferry employee organization or the department of transportation under this chapter shall be filed in Thurston county superior court within ten days of when the cause of action arose. The court shall consider those actions on a priority basis and determine the merits of the actions within thirty days of filing.

NEW SECTION. Sec. 17. NOTICE AND SERVICE. Any notice required under this chapter shall be in writing, but service thereof is sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last known address of the parties, unless otherwise provided in this chapter. Refusal of restricted certified mail by any party shall be considered service. Prescribed time periods commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice.

NEW SECTION. Sec. 18. INSURANCE AND HEALTH CARE. Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state employees' insurance board, under chapter 41.05 RCW. The ferry system management and employee organizations may collectively bargain for other insurance and health care plans, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050, subject to section 9 of this act. However, after July 1, 1984, any amount by which the employer contribution for ferry system employees' and dependents' insurance and health care plans exceeds that provided for other state agencies shall reduce the funds available for compensation purposes, pursuant to section 9 of this act.

NEW SECTION. Sec. 19. MARINE EMPLOYEES' COMMISSION. (1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chairman of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated and receive reimbursement for official travel and other expenses at the

same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

(2) The marine employees' commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in section 6 of this act; (b) provide for impasse mediation as required in section 12 of this act; (c) conduct fact-finding and provide salary surveys as required in section 13 of this act; and (d) provide for the selection of an impartial arbitrator as required in section 15(5) of this act.

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

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

The commission shall adopt rules of procedure under chapter 34.04 RCW.

The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter.

Sec. 20. Section 9, chapter ... (SB 3036). Laws of 1983 and RCW 41-.05.050 are each amended to read as follows:

(1) Every department, division, or separate agency of state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the state employees insurance board. Such contributions, which shall be paid by the county, the municipality, or other political subdivision for their employees, shall include an amount determined by the state employee's insurance board to pay the administrative expenses of the board and the salaries and wages and expenses of the benefits supervisor and other necessary personnel: PROVIDED, That this administrative service charge for state employees shall not result in an employer contribution in excess of

the amount authorized by the governor and the legislature as prescribed in RCW 41.05.050(2), and that the sum of an employee's insurance premiums and administrative service charge in excess of such employer contribution shall be paid by the employee. All such contributions will be paid into the state employees insurance fund to be expended in accordance with RCW 41.05.030.

(2) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the state employees insurance board, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose: PROVIDED, That provision for school district personnel shall not be made under this chapter: PROVIDED FURTHER, That insurance and health care contributions for ferry employees shall be governed by section 18 of this act.

(3) The trustee with the assistance of the department of personnel shall survey private industry and public employers in the state of Washington to determine the average employer contribution and the average level of benefits for group insurance programs under the jurisdiction of the state employees insurance board. Such survey shall be conducted during each even-numbered year but may be conducted more frequently. The survey shall be reported to the board for its use in setting the amount of the recommended employer contribution to the employee insurance benefit program covered by this chapter. The board shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature.

Sec. 21. Section 1, chapter 11, Laws of 1972 ex. sess. as last amended by section 2, chapter 53, Laws of 1982 1st ex. sess. 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) All employees of the marine employees' commission;

(25) 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 exempt 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 July 10, 1982, then the four-year period shall begin on July 10, 1982.

NEW SECTION. Sec. 22. There is added to chapter 41.58 RCW a new section to read as follows:

For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the provisions of chapter 47.64 RCW shall govern.

Sec. 23. Section 46.68.030, chapter 12, Laws of 1961 as last amended by section 9, chapter 342, Laws of 1981 and RCW 46.68.030 are each amended to read as follows:

All fees received by the director for vehicle licenses under the provisions of chapter 46.16 RCW shall be forwarded to the state treasurer, accompanied by a proper identifying detailed report, and be by him deposited to the credit of the motor vehicle fund, except that the proceeds from the vehicle license fee and renewal license fee shall be deposited by the state treasurer as hereinafter provided. After July 1, 1981, that portion of each vehicle license fee in excess of \$7.40 and that portion of each renewal license fee in excess of \$3.40 shall be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal license fees, and all other funds in the state patrol highway account shall be for the sole use of the Washington state patrol for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations therefor, for any fiscal biennium after June 30, 1981, and twenty-seven and three-tenths percent of the proceeds from \$7.40 of each vehicle license fee and \$3.40 of each renewal license fee shall be deposited each biennium in the Puget Sound ferry operations account to partially finance, together with other funds in the account, any budgeted state ferry system maintenance and operating deficit for that biennium. The deficit shall be calculated by subtracting from total costs the sum of all unappropriated funds available to the state ferry system, including revenues from tolls that are adjusted ((annually)) by the transportation commission ((to correspond

~~with changes in the consumer price index for the city of Seattle pursuant to RCW 47.60.325)). Any remaining amounts of vehicle license fees and renewal license fees that are not deposited in the Puget Sound ferry operations account shall be deposited in the motor vehicle fund.~~

Sec. 24. Section 47.60.310, chapter 13, Laws of 1961 as last amended by section 137, chapter 3, Laws of 1983 and RCW 47.60.310 are each amended to read as follows:

(1) The department is further directed to conduct such review by soliciting and obtaining expressions from local community groups in order to be properly informed as to problems being experienced within the area served by the Washington state ferries. In order that local representation may be established, the department shall give prior notice of the review to the legislative authority ((of each county wherein a terminal of the Washington state ferries is located and the legislative authority of any other county adjacent to Puget Sound or the Strait of Juan de Fuca which by resolution has notified the department of its intent to participate in the reviews)) of Clallam, Island, Jefferson, King, Kitsap, Pierce, San Juan, Skagit, and Snohomish counties.

(2) Each such county legislative authority ((is hereby directed to)) shall appoint a committee to consist of ((no more than)) five members to serve as an advisory committee to the department or its designated representative in such review.

(3) The members of each county ferry advisory committee shall be appointed for four-year terms. The initial terms shall commence on July 1, 1982, and end on June 30, 1986. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. At least one person appointed to each advisory committee shall be representative of an established ferry-user group or of frequent users of the ferry system, at least one shall be representative of persons or firms using or depending upon the ferry system for commerce, and one member shall be representative of a local government transportation planning body or its staff. Every member shall be a resident of the county upon whose advisory committee he or she sits, and not more than three members shall at the time of their appointment be members of the same major political party.

(4) The committees to be appointed by the county legislative authorities shall serve without fee or compensation. ((It is not the intent of RCW 47.60.290 through 47.60.310 that any powers or duties now prescribed and delegated to the department shall be assumed by any other board or committee:))

Sec. 25. Section 5, chapter 344, Laws of 1981 and RCW 47.60.326 are each amended to read as follows:

(1) In order to maintain an adequate, fair, and economically sound schedule of charges for the transportation of passengers, vehicles, and commodities on the Washington state ferries, including the Hood Canal bridge,

the department of transportation each year shall conduct a full review of such charges.

(2) Prior to February 1st of each odd-numbered year the department shall transmit to the transportation commission a report of its review together with its recommendations for the revision of a schedule of charges for the ensuing ~~((fiscal-year))~~ biennium. The commission on or before ~~((April))~~ July 1st of that year shall adopt as a rule, in the manner provided by the Washington administrative procedure act, a schedule of charges for the Washington state ferries for the ensuing ~~((twelve-month-period))~~ biennium commencing ~~((May))~~ July 1st. The schedule may initially be adopted as an emergency rule if necessary to take effect on, or as near as possible to, ~~((May))~~ July 1st.

(3) The department in making its review and formulating recommendations and the commission in adopting a schedule of charges may consider any of the following factors:

(a) The amount of subsidy available to the ferry system for maintenance and operation;

(b) The time and distance of ferry runs;

(c) The maintenance and operation costs for ferry runs with a proper adjustment for higher costs of operating outmoded or less efficient equipment;

(d) The efficient distribution of traffic between cross-sound routes;

(e) The desirability of reasonable commutation rates for persons using the ferry system to commute daily to work;

(f) The effect of proposed fares in increasing walk-on and vehicular passenger use;

(g) The effect of proposed fares in promoting all types of ferry use during nonpeak periods;

(h) Such other factors as prudent managers of a major ferry system would consider.

(4) If at any time during the biennium it appears that projected toll revenues from the ferry system, together with the appropriation from the Puget Sound ferry operations account and any other operating subsidy available to the Washington state ferries, will be less than the projected total cost of maintenance and operation of the Washington state ferries for the biennium, the department shall forthwith undertake a review of its schedule of charges to ascertain whether or not the schedule of charges should be revised. The department shall, upon completion of its review report, submit its recommendation to the transportation commission which may in its sound discretion revise the schedule of charges as required to meet necessary maintenance and operation expenditures of the ferry system for the biennium or may defer action until the regular annual review and revision of ferry charges as provided in subsection (2) of this section.

(5) The provisions of section 25 of this act relating to public participation shall apply to the process of revising ferry tolls under this section.

NEW SECTION. Sec. 26. There is added to chapter 47.60 RCW a new section to read as follows:

PUBLIC PARTICIPATION. (1) Before a substantial expansion or curtailment in the level of service provided to ferry users, or a revision in the schedule of ferry tolls or charges, the department of transportation shall consult with affected ferry users. The consultation shall be: (a) By public hearing in affected local communities; (b) by review with the affected ferry advisory committees pursuant to RCW 47.60.310; (c) by conducting a survey of affected ferry users; or (d) by any combination of (a) through (c).

(2) There is created a ferry system productivity council consisting of a representative of each ferry advisory committee empanelled under RCW 47.60.310, elected by the members thereof, and two representatives of employees of the ferry system appointed by mutual agreement of all of the unions representing ferry employees, which shall meet from time to time with ferry system management to discuss means of improving ferry system productivity.

(3) Before increasing ferry tolls the department of transportation shall consider all possible cost reductions with full public participation as provided in subsection (1) of this section and, consistent with public policy, shall consider adapting service levels equitably on a route-by-route basis to reflect trends in and forecasts of traffic usage. Forecasts of traffic levels shall be developed by the bond covenant traffic engineering firm appointed under the provisions of RCW 47.60.450. Provisions of this section shall not alter obligations under RCW 47.60.450. Before including any toll increase in a budget proposal by the commission, the department of transportation shall consult with affected ferry users in the manner prescribed in (1)(b) of this section plus the procedure of either (1) (a) or (c) of this section.

Sec. 27. Section 47.64.090, chapter 13, Laws of 1961 and RCW 47.64.090 are each amended to read as follows:

~~((Should))~~ If any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the ((Washington toll bridge authority)) department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the ((Washington toll bridge authority)) department shall provide that the wages to be paid, hours of employment, working conditions and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated ((by the marine employees commission)) in accordance with chapter 47.64 RCW.

Sec. 28. Section 9, chapter 344, Laws of 1981 (uncodified) is amended to read as follows:

There is appropriated to the (~~department of personnel~~) marine employees' commission for the biennium ending June 30, 1983, from the motor vehicle fund, the sum of twenty thousand dollars or so much thereof as may be necessary, to prepare recommendations (~~to the state personnel board~~) for the classification of the positions of employees of the Washington state ferries in accordance with section (~~7~~) 13 of this 1983 act.

NEW SECTION. Sec. 29. Section captions used in this act constitute no part of the law.

NEW SECTION. Sec. 30. If any provision of this 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.

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

- (1) Section 7, chapter 344, Laws of 1981 and RCW 41.06.166;
- (2) Section 8, chapter 24, Laws of 1972 ex. sess., section 10, chapter 342, Laws of 1981 and RCW 47.60.325;
- (3) Section 47.64.010, chapter 13, Laws of 1961, section 33, chapter 296, Laws of 1975 1st ex. sess., section 1, chapter 344, Laws of 1981 and RCW 47.64.010;
- (4) Section 2, chapter 344, Laws of 1981 and RCW 47.64.031;
- (5) Section 3, chapter 344, Laws of 1981 and RCW 47.64.100;
- (6) Section 4, chapter 344, Laws of 1981 and RCW 47.64.110; and
- (7) Section 47.64.040, chapter 13, Laws of 1961, section 35, chapter 296, Laws of 1975 1st ex. sess., section 1, chapter 73, Laws of 1979 ex. sess. and RCW 47.64.040.

NEW SECTION. Sec. 32. Sections 1 through 19 of this act shall be added to chapter 47.64 RCW.

NEW SECTION. Sec. 33. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 25, 1983.

Passed the House March 21, 1983.

Approved by the Governor March 28, 1983.

Filed in Office of Secretary of State March 28, 1983.