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NO. 82551-3
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SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

SEIU HEALTHCARE 775NW,

Petitioner,

v.

GOVERNOR CHRISTINE GREGOIRE,

Respondent.

SEIU LOCAL 925,

Petitioner,

v.

GOVERNOR CHRISTINE GREGOIRE,

Respondent.

BRIEF OF RESPONDENT

ROBERT M. MCKENNA
Attorney General

MAUREEN HART, WSBA No. 7831
Solicitor General
STEWART JOHNSTON, WSBA No. 8774
Senior Counsel
JANETTA SHEEHAN, WSBA No. 22575
Assistant Attorney General
Labor and Personnel Division
PO Box 40145
(360) 664-4167
Attorneys for Respondent

ORIGINAL

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I. INTRODUCTION

The State faces a projected \$5.7 billion operating budget deficit for the upcoming biennium, the full magnitude of which was not projected until November 18, 2008. Based on this projected deficit and relevant statutory authority, the Governor's budget document for the 2009-2011 biennium does not include a request for increases in pay or fringe benefits for state employees, family child care providers,¹ or individual providers,² whose services are paid for by the State.

The Petitioners bring this case as an original action in mandamus against the Governor, alleging that the Governor has a ministerial duty enforceable in mandamus to include in the budget document that she prepares pursuant to RCW 43.88.030 funding for pay raises and increased benefits for approximately 35,000 individual providers and family child care providers represented by Petitioners.³ Those pay raises and benefit increases were awarded, in part, as the result of interest arbitration

¹ "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the State under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

² Individual providers are workers who independently contract with the State Department of Social and Health Services to provide personal care services to Medicaid-eligible clients. RCW 74.39A.250(4).

³ RCW 43.88.030 requires the Governor to submit this budget document to the Legislature no later than December 20 in the year preceding the session during which the budget is to be considered.

decisions issued on or before October 1, 2008, prior to the unprecedented financial crisis that struck global markets a few weeks later and contributed to a severe reduction in the State's revenue forecast.

This severe and sudden economic downturn in projected State revenues led the director of the State of Washington Office of Financial Management (OFM) to conclude that it was not financially feasible to fund pay raises and related increases in compensation and fringe benefits for state employees, child care providers, and home care workers for the 2009-2011 biennium. Simply put, those compensation increases were based on earlier revenue estimates which plainly were no longer valid.

Based on the conclusion of the director of OFM, and in recognition of the State's projected deficit of \$5.7 billion for the 2009-2011 biennium, the Governor exercised her discretion not to include funding for pay raises and fringe benefit increases in her budget document submitted to the Legislature on December 18, 2008.

Despite the extraordinary changes in the State's financial circumstances that occurred after the interest arbitration award was issued, Petitioners seek to have this Court order the Governor to issue a revised budget document that includes funding for pay raises and increased benefit payments for individual providers and family child care providers in accordance with the arbitrators' awards that fail to take the State's current

financial circumstances into account. Based on selected labor statutes, Petitioners argue that the Governor lacks discretion to exclude these compensation increases from the budget documents prepared under RCW 43.88.030.⁴

II. STATEMENT OF ISSUE

Does the Governor have a duty enforceable in mandamus to submit a proposed biennial budget document to the Legislature that includes a request for funding of compensation and benefit increases awarded through interest arbitration for individual providers and family child care providers?

III. STATEMENT OF THE CASE

A. SEIU Local 925

Petitioner, SEIU Local 925 (Local 925), is the exclusive bargaining representative for approximately 9,000 family child care providers (FCCP), who are both licensed and license exempt. Agreed

⁴ Although the statutes upon which Petitioner SEIU Healthcare 775NW and SEIU Local 925 rely for their respective claims are separately codified, their language is identical in all relevant respects. SEIU Healthcare 775NW relies on RCW 74.39A.300(1) and (2). Br. Pet'r SEIU Healthcare 775NW at 5-6. SEIU Local 925 relies on RCW 41.56.028(5) and (6). Br. Pet'r SEIU Local 925 at 13-16. These statutes, and all other statutes referenced in this brief, are set forth in full, in numerical order, in Appendix A.

Statement of Facts ¶ 1 (ASF925)⁵. Pursuant to RCW 41.56.028(1) and (3), FCCPs are considered public employees solely for the purposes of collective bargaining; they are not employees of the State. ASF925 ¶ 1.

The Washington State Labor Relations Office (LRO), a division of the State Office of Financial Management (OFM) and Local 925 began bargaining the 2009-2011 labor contract on January 22, 2008. ASF925 ¶ 4. The parties reached tentative agreement on most issues by July 18, 2008. ASF925, Ex. 2. The parties agreed on several economic issues without interest arbitration. ASF925, Ex. 10, at 286-290.

With certain exceptions, the mediation and interest arbitration provisions of RCW 41.56.430-.470 and RCW 41.56.480 apply to FCCP pursuant to RCW 41.56.028(2)(d), providing for interest arbitration on mandatory subjects of bargaining in the event the parties are unable to successfully negotiate agreement on those issues. After the parties reached impasse, and following mediation, seven issues were certified for interest arbitration by the Public Employment Relations Commission (PERC) pursuant to RCW 41.56.450. ASF925, Ex. 1. At the interest

⁵ At the direction of the Court, each of these consolidated cases is submitted on an Agreed Statement of Facts. Agreed Statement of Facts in SEIU Local 925 v. Gregoire will be referred to as "ASF925." Agreed Statement of Facts in SEIU Healthcare 775NW v. Gregoire will be referred to as "ASF775." Neither Agreed Statement of Facts includes any of the declarations attached to the petitions filed by SEIU Local 925 and SEIU Healthcare 775NW. The declarations therefore should not be considered by this Court and SEIU 775NW's references to them should be disregarded.

arbitration, however, only two of the seven issues were presented to the arbitrator for interest arbitration. ASF925, Ex. 9, at 235-236, 242-243.⁶ The interest arbitration hearing occurred on August 4-8, 2008, before Arbitrator Michael Cavanaugh. ASF925 ¶ 5. The two issues the arbitrator determined were related to economic compensation: rate differential for infant care, and across-the-board subsidy rate increases. ASF925, Ex. 9, at 242-243.

During the hearing, the State introduced testimony and exhibits relating to the financial condition of the State as based on then current information, through the testimony of OFM Deputy Director Wolfgang Opitz. ASF925, Ex. 3. All of the exhibits introduced and considered by the arbitrator as part of Mr. Opitz's testimony were from the most recent forecast at that time, prepared in June 2008, and included the *Washington Economic & Revenue Forecast* prepared by the Economic and Revenue Forecast Council; the Senate Ways and Means Committee *Estimated Six Year GF-S Outlook*; as well as the *Washington State Budget Process* published by OFM. ASF925, Exs. 5-8. Mr. Opitz testified about the Senate Ways and Means six-year general fund outlook, which included a

⁶ Before the interest arbitration, the parties agreed on several compensation and benefit provisions, including: registration fees, overtime and non-standard hour pay, and field trip fees and special needs care subsidies in Article 11, Fees and Differentials (ASF925, Ex. 10, at 286-287); the hourly rate for additional siblings in Article 12, Subsidy Rates, (ASF925, Ex. 10, at 287); health care contributions in Article 13; and training and incentive money in Article 14 (ASF925, Ex. 10, at 288-290).

\$2.684 billion gap that would be reduced to a \$1.956 billion shortfall if the “rainy day” fund was included. ASF925, Ex. 3, at 15, reference Ex. 6.

Mr. Opitz went on to testify in response to the question of whether the State could have that kind of shortfall:

No. The State must—and first the governor must propose a balanced budget in which there is no minus sign in this column at the bottom. Her budget has to be balanced going forward to the legislature, so by December 2008 on the way to the 2009 legislative session, we have to propose a budget that does not have this minus sign.

ASF925, Ex 3, at 16.

At arbitration, Local 925 was seeking an across-the-board increase in the subsidy rate of 7.8 percent in both 2009 and 2010; the State proposed an increase of 1.6 percent effective July 1, 2009 and 1.7 percent effective July 1, 2010. ASF925, Ex. 9, at 243. The State was seeking no change to the infant pay differential. Arbitrator Cavanaugh issued his arbitration award on August 25, 2008. In making his award, Arbitrator Cavanaugh commented “I recognize that . . . [the increases] will require the State to make some difficult choices regarding allocation of its scarce financial resources in a time of significant revenue shortages,” but he proceeded to order the State to create a new age category that would authorize a higher subsidy rate for children who are age 12–17 months old (who previously received the lower toddler subsidy rate); and increased

the across-the-board subsidy rates by 1.6 percent effective July 1, 2009 and 2 percent effective July 1, 2010. ASF925, Ex. 9, at 267-268. The Cavanaugh award and the tentatively agreed articles were timely submitted to OFM prior to the October 1, 2008, deadline and entitled *2009-2011 Tentative Collective Bargaining Agreement By and Between The State of Washington and SEIU Local 925*, effective July 1, 2009–June 30, 2011. ASF925, Ex. 10. Local 925 members voted to approve the 2009-2011 labor contract on September 27, 2008. ASF925 ¶ 10.

A summary of the costs of the arbitration award rendered pursuant to RCW 41.56.028, plus all costs associated with monetary issues successfully negotiated by the parties without requiring interest arbitration, was submitted by LRO to the director of OFM as part of the process for requesting funding for the labor contract. ASF925, Ex. 11. The combined cost of the contract provisions agreed to by the parties and decided by the arbitrator totaled \$10.3 million for the biennium. *Id.*

B. SEIU HealthCare 775NW

Petitioner SEIU Healthcare 775NW (SEIU 775NW) is the exclusive bargaining representative for approximately 25,000 individual providers who independently contract with the State Department of Social and Health Services to provide in-home personal care to Medicaid-eligible clients. Pursuant to RCW 74.39A.270, these workers are considered

public employees solely for the purposes of collective bargaining under RCW 41.56; they are not state employees.

The Washington State Labor Relations Office (LRO) and SEIU 775NW commenced bargaining for the 2009-2011 labor contract on April 4, 2008, and during the course of several days of bargaining in April and May, reached tentative agreement on a number of issues. ASF775, Ex 3, at 8-25. The parties reached impasse on several remaining issues, including wages and benefits.

RCW 74.39A.270 provides for interest arbitration on mandatory subjects of bargaining in the event the parties are unable to successfully negotiate agreement on those issues.⁷ After the parties reached impasse, 12 issues were certified by the Public Employment Relations Commission (PERC) for interest arbitration, pursuant to RCW 41.56.450. ASF775, Ex. 1, at 2-3. Some of the issues remaining to be resolved through arbitration were quite narrowly drawn. On other issues, the parties' differences were more pronounced. For example, the State proposed wage increases of 1.6 percent (16 cents per hour) for the first year of the biennium and 1.7 percent (17 cents per hour) for the second year of the biennium, while SEIU 775NW demanded substantially more (77 cents per hour increase

⁷ With certain exceptions, RCW 74.39A.270(2) provides that the mediation and interest arbitration provisions of RCW 41.56.430—.470, and RCW 41.56.480, apply to individual providers.

for the first year; 50 cents per hour increase for the second year). ASF775, Ex. 10, at 314-17.

The interest arbitration hearing occurred on August 18, 22, 25, 26, 28, and 29, and September 5, 2008. During the hearing, the State introduced testimony and exhibits relating to the financial condition of the State based on information available at that time.⁸ The State's primary witness on this issue was OFM Deputy Director Optiz, who testified on August 26, 2008. Mr. Optiz testified that based on the most recent Economic and Revenue Forecast Council report issued in June 2008, and upon projections prepared by the Senate Ways and Means Committee staff, the State would be facing a \$2.7 billion budget shortfall for the 2009-2011 biennium, and if that shortfall were offset by the "rainy day" fund, the budget shortfall would be reduced to \$1.956 billion. ASF775, Ex. 4, at 45; Ex. 8, at 280. Mr. Optiz testified:

Well, if nothing else changed between today — between this moment and December 20th when we write our budget, we will have to find a way to close a \$2.684 billion gap, assuming no additional spending pressures or savings, assuming no additional revenue or losses of revenue.

ASF775, Ex 4, at 46.

⁸ Under RCW 41.56.465(5)(a)(ii) the arbitrator is required to consider "the financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement."

Mr. Opitz also confirmed that due to reductions in consumer spending, the State was experiencing shortfalls in monthly revenue collections which he expected to continue. *Id.* He further explained that “there’s a September meeting of the Economic and Revenue Forecast Council and a November meeting, and we’re bound by law to balance our operating budget against the November Economic and Revenue Forecast Council product combined with an October Caseload Forecast Council product as we put a budget together in December.” ASF775, Ex. 4, at 47.

The arbitration hearing closed on September 5, 2008. On October 1, 2008, Arbitrator Williams issued his decision and award. In his written Preliminary Analysis, Arbitrator Williams set forth a list of general observations explaining the rationale underlying his decision as to each disputed issue, including the following:

Fourth, clearly the most significant problem faced by both the State and the Union with regard to completing the 09-11 collective bargaining agreement is the concern with the State’s ability to pay for any increased costs. The State provided evidence that it is looking at a 2.6 billion dollar shortfall for the 09-11 biennium. Worse, the Arbitrator takes note of the fact that this award is being written at a time when the front page of every newspaper carries the message that we are in the midst of one of the darkest times in the history of American financial markets. This cannot bode well for the financial well being of the State of Washington or any other State.

To put it bluntly, the award is not a rich one; it would not be professionally responsible for the Arbitrator

to be anything other than extremely conservative with regard to the expenditure of funds. The Arbitrator would have liked it to be otherwise because he found merit in many of the Union's proposals but ultimately he determined not to award the provision solely on the basis of cost. Throughout the award, the Arbitrator's thinking was around limiting the total amount of increased dollars and prioritizing how those dollars were to be spent.

Fifth, the Arbitrator wants to emphasize his understanding that there are two basic presumptions that are present in every interest arbitration proceeding. The first is the presumption that the Employer is able to financially support whatever it proposes. Thus, it is not the Arbitrator's job to question whether the Employer can pick up the financial tab on the offers it has made to the Union and the positions that the State has taken in these [stet] arbitration proceeding.

ASF775, Ex 10, at 304-305.

Arbitrator Williams recognized and appreciated the State's financial challenges as they were understood to exist at the time of the arbitration hearing, but also made it clear that he would not second-guess the financial feasibility of the State's proposed increases in compensation and benefits. Ultimately, Arbitrator Williams decided to award an approximate 2.4 percent wage increase (25 to 27 cents per hour) for the first year of the contract, effective July 1, 2009, and added a 2 percent increase in wages (21 to 23 cents per hour) for the second year, effective July 1, 2010. ASF775, Ex 10, at 318-19.

After the arbitration award was submitted to OFM on October 1, 2008, the director of OFM was provided with a summary detailing the increases contained in the new labor agreement. The total increased biennial cost of the arbitrator's award, combined with the cost of the State's training contributions as agreed to by the parties prior to arbitration, totaled \$87.3 million. On top of that amount, RCW 74.39A.310 requires that home care workers employed by home care agencies receive identical compensation and benefit increases (i.e. pay parity). The projected increased payments to home care agency vendors, as required under the above statute, added a cost of \$49.7 million for the biennium. Thus, the total cost of the compensation and benefit increases for individual and agency providers for the 2009-2011 biennium totaled \$137 million. ASF775, Ex 11, at 388. The State's share of this cost, to be paid out of state general funds, would be approximately \$72.5 million for the biennium.⁹

SEIU 775NW's membership voted to ratify the contract on November 14, 2008. ASF775 ¶ 11.

C. Severe Economic Crisis Hits Washington

⁹ Because in-home personal care for Medicaid-eligible clients is a recognized Medicaid waiver program, matching federal Medicaid funds would pay the difference.

In November 2008, the Economic and Revenue Forecasting Council issued its quarterly report, and the news regarding the financial condition of the State was far worse than anticipated:

Economic conditions in both the nation and the state have deteriorated sharply since the last Revenue Forecast in September. The credit crunch has knocked the wind out of an already weakening national economy. Consumer and business spending have stalled as access to credit has been choked off, and confidence has worsened. Our baseline U.S. economic forecast assumes a national recession that will last four quarters, into the middle of 2009, with the current quarter being the weakest. Very weak revenue collections since the September forecast confirm that Washington's economy is not immune to these headwinds. The downturn will be more muted—both in duration and depth—in our state, than for the nation, as a result of our aerospace and software publishing industries. However, unlike in the previous downturn in 2001, we expect a sharp decline in consumer spending this time, so the impact on state revenues will be more severe.

ASF775, Ex. 12, at 406.¹⁰

The council's November revenue forecast for the 2009-2011 biennium was \$30.1 billion; a staggering \$1.4 billion lower than the amount estimated barely two months earlier in the council's September revenue forecast, and \$1.65 billion lower than predicted in the council's June forecast. As the council observed in its Executive Summary, "[w]e

¹⁰ Exhibits 12–17 are common in both SEIU 775NW and Local 925 Agreed Statement of Facts. Although the bates numbering is different the exhibits and exhibit numbers are identical. For ease of reference only "ASF775" will be cited when referencing to these identical exhibits.

have been hit by the worst financial crisis in our lifetimes, and its effects have spilled over to the real economy.” ASF775, Ex 12, at 403.

On December 4, the Senate Ways and Means Committee staff produced a report titled “2009-11 Outlook” which describes the financial problems faced by the State for the upcoming biennium. The report identified the following salient problems:

- Since the 2008 session, projected general fund state revenues have declined by over \$2.6 billion, and under the November forecast, general fund revenue is expected to have its steepest decline in over twenty years; ASF775, Ex. 13, at 514-15.
- For the 2009-11 biennium, in order to maintain current services, near general fund spending is projected to increase by \$3.3 billion or 10 percent from current levels, to an estimated amount of \$36.6 billion; ASF775, Ex. 13, at 518.
- Policy level increases usually considered by the Legislature total over \$1 billion on top of the \$36.6 billion maintenance level spending; ASF775, Ex. 13, at 519.
- Near general fund spending could exceed projected revenues by \$4.4 to \$5.5 billion; ASF775, Ex. 13, at 520.
- Including the shortfall for the current biennium, the total budget problem could reach nearly \$6 billion, not including the \$700 million in the “rainy day” fund. ASF775, Ex. 13, at 521

The report also summarized budget solutions implemented by the Legislature to address revenue shortfalls in the 2003-05 biennium. ASF775, Ex. 13, at 525, 529. The solutions included program reductions and eliminations (e.g. \$368 million reduction in the basic health plan);

compensation savings, (e.g. suspended COLAs for teachers, no pay increases for state and higher education employees; increased revenue and fund and spending transfers. ASF775, Ex. 13, at 529. The report observes that if the Legislature was to take similar actions to those taken in the 2003-05 biennium, there would still be a budget shortfall of \$2-3 billion. ASF775, Ex. 13, at 525.¹¹

D. Governor Prepares Budget Document

1. Budget Statutes

RCW Chapter 43.88 governs the State's budgeting, accounting and reporting system. RCW 43.88.060 requires that the Governor submit her biennial budget document to the Legislature no later than December 20 in the year preceding the session in which the budget is to be considered. RCW 43.88.030(2) requires that the proposed budget be balanced: "The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures." RCW 43.88.030(1) requires that the budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period based on the estimated revenues and caseloads

¹¹ This document is also accessible electronically at the following link:
<http://www.leg.wa.gov/Senate/Committees/WM/Presentations/>.

as approved by the Economic and Revenue Forecast Council¹² and Caseload Forecast Council,¹³ and further provides that revenues “shall be estimated for such fiscal period from the source and at the rates existing by law at the time of the submission of the budget document”

By law, the Governor must propose a biennial budget in December, the month before the Legislature convenes in regular session. RCW 43.88.060. The biennial budget enacted by the Legislature can be modified in any legislative session through increases or reductions to the original appropriations in a supplemental budget act. Since the inception of annual legislative sessions in 1979, it has become common for the Legislature to enact annual revisions to the state’s biennial budget. These revisions are referred to as supplemental budgets. *See* RCW 43.88.030(1); .060.

2. OFM’s Role in Budget Development

OFM is the central finance and management agency for

¹² RCW 82.33.020 sets forth the function and duties of the Economic and Revenue Forecast Council. Created pursuant to RCW 82.33.010, the Economic and Revenue Forecast Council oversees the preparation of “the official, optimistic and pessimistic state economic and revenue forecasts prepared under RCW 82.33.020.” RCW 82.33.010. The supervisor appointed by the Council is required to submit official forecasts to the Governor and members of the committees on Ways and Means and the chairs of the committees on Transportation of the Senate and House of Representatives. Official forecasts are submitted four times each year, in February or March, June, September and November. RCW 82.33.020.

¹³ RCW Chapter 43.88C sets forth the function and duties of the Caseload Forecast Council. RCW 43.88C.020(5), requires that “[t]he official state caseload forecast under this section shall be the basis of the governor’s budget document as provided in RCW 43.88.030 and utilized by the legislature in preparation of the omnibus biennial appropriations act.” The Caseload Forecast Council is charged with forecasting the entitlement caseloads (including health and human services, education and corrections caseloads) for the State of Washington. The most recent Caseload Forecast was issued in October 2008. ASF775, Ex. 4, at 34-35.

Washington State government, as well as the budget and policy arm of the Governor. RCW 43.41.030; .100. As such, OFM assists the Governor in developing, proposing, negotiating, and implementing operating, capital and transportation budgets for the state of Washington. RCW 43.41.110. In addition, OFM is responsible for development, implementation and oversight of statewide accounting; design and operation of the State's financial systems and serves as the Governor's representative in labor negotiations. RCW 43.41.100; 43.41.110; 41.80.010. The agency also plays a significant role in revenue and caseload forecasting. RCW 43.88.030; ASF775, Ex. 4, at 30; ASF925, Ex. 3, at 9.

OFM's duties include key assistance in preparing the Governor's budget proposals and monitoring budget implementation. ASF775, Ex. 4, at 30-35; Ex. 5, at 111-12; ASF925 Ex. 3, at 10; Ex. 5, at 56-57. In its role as the governor's budget office, OFM also presents the interests of the Governor and her executive branch agencies throughout the legislative debate on the budget. RCW 43.41.110(1), (2).

Revenue forecasts are a critical component of preparing a budget proposal, because these forecasts project the financial resources that the State will have available to support proposed expenditures. RCW 43.88.030; ASF775, Ex. 4, at 33-35. The most recent forecast, issued in November 2008, showed general fund revenue was down a combined \$1.93 billion for the remainder of the current biennium (which ends June 30, 2009) and the 2009-2011 fiscal biennium. ASF775, Ex. 12, at 406; Ex. 14, at 532.

Specifically, it is the responsibility of the OFM director to assist the Governor in preparing a budget proposal based on the most recent revenue forecast. RCW 43.88.030(1); ASF775 Ex. 4 at 33-34. The director therefore used the November 2008 revenue forecast in preparing the Governor's budget request for the 2009–2011 fiscal biennium. ASF775, Ex. 14.

The director of OFM assessed the collective bargaining agreements presented to him by October 1, 2008, to determine if the agreements were feasible financially. Because of the projected deficit, reductions had to be made. In identifying where to make those reductions, the director was restricted to considering cuts in only 42 percent of the State's budget, because 58 percent of the budget is nondiscretionary as it funds basic education, pensions, Medicaid and debt service. ASF775, Ex. 16, at 540. In looking at that remaining 42 percent, just some of the State's myriad funding needs include public safety, early learning, higher education, healthcare and human services and natural resources. ASF775, Ex. 16, at 542.

In assisting to develop the Governor's budget document, substantial reductions to each of the programs listed above had already been taken. *Id.* The OFM director determined that the effect of additional reductions in those programs in order to fund the compensation and fringe benefit provisions in the labor agreements would not have been a financially feasible action. ASF775, Ex. 14.

Due to these extraordinary economic conditions, and the competing responsibilities of the State to provide for public safety, and the health and welfare of its citizens, the OFM director concluded that the economic

provisions of the collective bargaining agreements (CBAs) were not feasible financially for the State. After concluding that the economic provisions of the CBAs were not feasible financially, the director prepared a letter to the Governor dated December 17, 2008, titled *Financial Feasibility of Collective Bargaining Agreements & Arbitration Awards for 2009-11 Biennium*. ASF775, Ex. 14. The letter points out that the November 18, 2008, reduction in the state revenue forecast of \$1.93 billion is more than twice as much as the largest downward revision the State had ever experienced previously: \$813 million in November 2001. As the letter notes, in the face of this economic meltdown, “[c]urrently, the budget proposal reflects sharp reductions in services for the most vulnerable of our citizens, along with cuts in funding for higher education and nonbasic education programs. Funding the increases negotiated in the collective bargaining agreements . . . would add to the projected deficit and require even deeper cuts in these areas, resulting in even larger job losses.” ASF775, Ex. 14, at 532.

3. Governor’s Budget Proposal

In light of the recommendation from the director of OFM, the Governor submitted her proposed biennial budget document to the Legislature, pursuant to RCW 43.88.030, on December 18, 2008. The Governor’s budget document does not include a request for funding to implement the compensation and fringe benefit increases decided by Arbitrators Cavanaugh and Williams, and does not include a request for

funding to implement any compensation or money contributions that were agreed to by the parties and not subject to interest arbitration. ASF775, Ex. 16. In her budget message, the Governor described the economic condition of the State in these terms:

Our state is facing significant economic turmoil. The deepening national recession is already the longest in a quarter century and has resulted in severe budget shortfalls in states across the nation. People are losing their jobs—unemployment has risen from 4.6 percent to 6.3 percent over the past year. Our state is not immune and our revenue—largely reliant on a sales tax—is down dramatically, resulting in the largest budget gap in state history.

* * *

This drastic increase has created a tremendous challenge for us in constructing the state budget. Since the November forecast, revenue has been predicted to decline significantly while the cost of providing services such as basic education and medical assistance has risen sharply over the past two years. Increases are also expected in caseloads, or the number of people we need to serve. The result is an approximately \$5.7 billion shortfall for 2009-11, which is a little more than the entire budgets of our higher education institutions and the Department of Corrections combined.

We cannot cut the almost 60 percent of the budget devoted to items we are required to provide, such as basic education, federally mandated Medicaid, pensions and debt service. This forces us to balance the budget through cuts in the remaining 40 percent.

ASF775, Ex. 16, at 539-540.

In addressing her decision to not seek funding for increased compensation and benefits contained in the labor agreements, the Governor stated:

Unfortunately, we had no choice but to put their raises on hold. The cost of these salary increases would be about \$678 million over the next two years. We looked hard at whether we could afford these increases during these difficult times, and saw we could not.

Foregoing the raises allowed us to keep classes smaller in our K-12 schools and protect early learning and teachers' jobs, as well as avoid even deeper cuts to services for our most vulnerable and healthcare for children and families.

ASF775, Ex. 16, at 542.¹⁴

IV. SUMMARY OF ARGUMENT

Petitioners claim that the Governor has a mandatory duty, enforceable in mandamus, to include in her budget document under RCW 43.88.030, a request to the Legislature for funds to implement the compensation and fringe benefit provisions of CBAs that cover their members. The provisions of the agreements stem in part from interest arbitration awards, and in part from negotiation. This claim fails for three distinct reasons.

¹⁴ The \$678 million figure to which the Governors' budget document refers represents the cost of all state employee collective bargaining agreements for the 2009-2011 biennium, including but not limited to the agreements at issue in this case.

First, the duty that Petitioners allege on the part of the Governor does not arise unless the agreements either (1) are certified by the director of OFM as feasible financially for the State, or (2) reflect the binding decision of an arbitration panel. The director of OFM did not certify the agreements as feasible financially for the State, and Petitioners do not claim otherwise. In fact, in light of the unanticipated and unprecedented financial crisis faced by the State, the director certified that the agreements were not financially feasible. Nor are the interest arbitration decisions in this case binding decisions. Under the statutes upon which Petitioners rely, a decision of an arbitration panel is not binding on the Legislature, and is not binding on the State, unless the Legislature provides funding for the request. The Legislature has not provided funding. The Court need go no farther. Petitioners' claim fails for this reason, and their Petitions should be dismissed.

Second, although the Court need not reach the question of the nature of the Governor's duty, if the Court does, the Governor's duty is neither mandatory nor ministerial. Accordingly, it is not subject to mandamus.

Petitioners rely almost exclusively on a single word – “must” – in a single statute, to argue that the Governor is required to request funding from the Legislature for the compensation and fringe benefit provisions of

their agreements. Petitioners' argument fails to take into account the context for the Governor's duty, the process of formulating a proposed budget document, statutory and constitutional language reposing discretion in the Governor in the process, and the untoward consequences that would result from Petitioners' interpretation of the word "must" in the statute on which each Petitioner relies. When all of these relevant factors are considered, the Governor's discretion to determine whether to request funding for the awards at issue is evident. For this additional reason, mandamus will not lie, and the petitions should be dismissed.

Finally, even if the Governor's duty to include amounts to fund collective bargaining agreements were mandatory, the duty would not be ministerial, lacking in the exercise of judgment and discretion. By its very nature, the process of developing a proposed budget document is an exercise in difficult tradeoffs with respect to the policy and fiscal priorities of the State. The discretion to make these difficult judgments is reposed in the Governor, and is not subject to mandamus. The petitions should be dismissed for this additional reason.

V. ARGUMENT

A. **The Prerequisites For Petitioners' Claims Under RCW 74.39A.300(2) and RCW 41.56.028(6), Are Not Met In This Case**

As SEIU 775NW and Local 925 recognize, their claims do not even arise unless, with respect to SEIU 775NW, the prerequisites of RCW 74.39A.300(2) are satisfied; and with respect to Local 925, the prerequisites of RCW 41.56.028(6) are satisfied. Br. Pet'r SEIU Healthcare 775NW at 16-17; Br. Pet'r SEIU Local 925 at 15-17. They are not satisfied in this case.

Under these statutes, a request for funds to implement the compensation and fringe benefits provisions of the collective bargaining agreements "shall not be submitted by the governor to the legislature unless such request" is "certified by the director of financial management as being feasible financially for the state *or* reflects the binding decision of an arbitration panel." RCW 74.39A.300(2); RCW 41.56.028(6). Neither Petitioner claims that the director of OFM certified the amounts necessary to implement the compensation and fringe benefits provisions as feasible financially for the State, and precisely the opposite is the case. The director of OFM certified that the amounts would not be feasible financially for the State.

- 1. The Arbitration Decisions Are Binding On The State When They Are Approved By The Legislature; The Arbitration Decisions At Issue Have Not Been So Approved**

Nonetheless, each of the Petitioners asserts that the respective statutes on which it bases its claim requires the Governor to submit a request for funds to implement the agreement's compensation and fringe benefits provisions. Their theory is that the request would reflect the *binding decision* of an arbitration panel – a “*binding decision of an arbitration panel reached under RCW 74.39A.270(2)(c)*,” for SEIU 775NW's claim; and a “*binding decision of an arbitration panel reached under this section [RCW 41.56.028]*,” for Local 925's claim. RCW 74.39A.300(2); RCW 41.56.028(6) (emphasis added).

But, neither Petitioner mentions the definition of a “binding decision of an arbitration panel” for purposes of these statutes. *HJS Dev., Inc. v. Pierce Cy. ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 472, 61 P.3d 1141, 1151 (2003) (in interpreting statutes, definitions contained within the act control the meaning of words used in that act).

RCW 74.39A.270(2)(c)(ii) defines a binding arbitration decision for purposes of SEIU 775NW's claim. It provides:

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

* * *

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the

compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

RCW 74.39A.270(2)(c)(ii) (emphasis added).¹⁵

For Local 925's claim, RCW 41.56.028(2)(d)(ii) defines a binding arbitration award essentially the same:

(d) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, *except that:*

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state.

RCW 41.56.028(2)(d)(ii) (emphasis added).

The statutes thus carefully provide that the arbitration decisions are not binding on the State unless the Legislature has approved a request for funds necessary to implement their compensation and fringe benefit provisions. The Legislature has not approved a request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreements at issue. Accordingly, the decisions are not "binding decisions of an arbitration panel" for purposes of the statutes on which Petitioners base their claims that the Governor

¹⁵ The referenced "authority" is the home care quality authority. RCW 74.39A.240. Its duties with respect to individual providers are set out in RCW 74.39A.250.

must request funding for them in her budget document. Rather, the statutes affirmatively provide that a request for amounts to implement compensation and fringe benefit provisions “shall not be submitted by the governor to the legislature” under the circumstances of this case. RCW 74.39A.300(2); RCW 41.56.028(6).¹⁶

Petitioners state that in referring to a “binding decision of an arbitration panel reached under RCW 74.39A.270(2)(c)” for SEIU 775 NW’s claim, and a “binding decision of an arbitration panel reached under this section [RCW 41.56.028]” for Local 925’s claim, the statutes are “referencing the outcome of the interest arbitration process set forth in RCW 41.56.430 through RCW 41.56.480.” Br. Pet’r SEIU 775NW at 20; Br. Pet’r Local 925 at 20. But this is incorrect. RCW 74.39A.270(2)(c) and RCW 41.56.028(2)(d) each begin by stating that: “The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, *except that*,” and then go on to define when a decision of an arbitration panel is binding. (Emphasis added.) As quoted above, the statutes provide that a decision of an arbitration panel is not binding “if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective

¹⁶ The Petitioners are, of course, not precluded from going to the Legislature and asking the Legislature to provide funding for the wage and benefit increases set forth in the arbitrators’ decisions. See discussion *infra* at 51-52.

bargaining agreement.” RCW 74.39A.270(2)(c)(ii); RCW 41.56-.028(2)(d)(ii). The Legislature has not approved funding for the decisions in these cases.

The mediation and arbitration provisions of RCW 41.56.430 through 41.56.470, and 41.56.480 provide for binding arbitration with respect to local government uniformed employees – essentially law enforcement personnel and firefighters. *See* RCW 41.56-.430 (“The intent and purpose of chapter 131, Laws of 1973 is to recognize . . . a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.”). As to this limited class of government employees, “[a] decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose.” RCW 41.56.480. *See Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 461, 938 P.2d 827, 834 (1997) (“In the event of an impasse in negotiations with uniformed personnel, we have a ‘public policy in the state of Washington against

strikes by uniformed personnel as a means of settling their labor disputes.” (quoting RCW 41.56.430) “The decision of the arbitration panel is final and binding on the parties.” (citing RCW 41.56.480)).¹⁷

But the employees represented by Petitioners in this case are not local uniformed personnel. *See* RCW 41.56.030(7). And RCW 74.39A.270(2)(c)(ii) and RCW 41.56.028(2)(d)(ii) “except” arbitration agreements reached under RCW 74.39A.270(2)(c) and RCW 41.56.028 from the binding arbitration provisions of RCW 41.56.480. Rather, they provide specifically that such agreements are binding only when the Legislature approves a funding request for them. The Legislature has not approved a funding request for these decisions. Accordingly, the decisions are not binding decisions of an arbitration panel under RCW 74.39A.300(2) and RCW 41.56.028(6), and this prerequisite to Petitioners’ claims has not been satisfied.

It should be noted that the fact that arbitration decisions are not binding under RCW 74.39A.270(2)(c)(ii) and RCW 41.56.028(2)(d)(ii) does not preclude the Governor from submitting a request for appropriations necessary to implement them. Such a request would be included where the amounts necessary to fund the decisions have been

¹⁷ With respect to the Washington State Patrol, bylaws of 2005, chapter 438, sections 1 and 2, the Legislature imposed fiscal limitations on arbitration decisions that are very similar to those applicable to the Petitioners in this case. *See* RCW 41.56.473(5) and RCW 41.56.475(3).

“certified by the director of financial management as being feasible financially for the state” under RCW 74.39A.300(2)(b) or RCW 41.56.028(6)(b). Indeed, requests for funds to implement collective bargaining agreements stemming in whole or in part from interest arbitration have been included in the Governor’s budget document in the past. ASF775 ¶ 3; ASF925 ¶ 6.

Nor does this conclusion mean that an interest arbitration decision *never* would be binding on the State under the statutes on which Petitioners base their claims. Where (1) the director of OFM determines that arbitration awards are feasible financially for the State; (2) the Governor requests funds from the Legislature to implement them in her biennial budget document; and (3) the Legislature appropriates funding for them, the arbitration decisions would be binding on the State under RCW 74.39A.270(2)(c)(ii) and RCW 41.56.028(2)(d)(ii) – precisely as those statutes provide. At that point, the Governor would be required to include a request to fund the agreements in her *supplemental* budget document for

the second year of the biennium. She could not eliminate or reduce those amounts in her budget document for the supplemental budget.¹⁸

2. Washington's Public Sector Collective Bargaining Reflects The Unique Character Of The State Employer

That statutes relating to *public sector* collective bargaining do not simply mirror traditional *private sector* collective bargaining is important to understand, but should not be surprising. “[P]rivate sector labor law can provide only a partial blueprint for accommodating the complex interplay of interests that arises in public sector collective bargaining. Whereas in the private sector there exist only two essential parties—the employer and the union—whose interests must be reconciled by the bargaining process, in the public sector there is an additional party: the public.” *Collective Bargaining in the Public Sector*, 97 Harv. L. Rev. 1676, 1699 (1984). “Management fragmentation, budgeting procedures and the impact of an employer's limited ability to pay have long been recognized as central issues affecting public sector collective bargaining.”

¹⁸ This does not mean that the State never may revisit funding of the compensation and benefit provisions of a collective bargaining agreement after the Legislature has appropriated funding for them. As to SEIU 775NW, RCW 74.39A.300(7) provides that: “If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.” RCW 41.56.028(10) contains an identical provision that would apply to Local 925.

Miscimarra, *Inability To Pay: The Problem of Contract Enforcement in Public Sector Collective Bargaining*, 43 U. Pitt. L. Rev. 703 (1982).

These central issues long “recognized as affecting public sector collective bargaining,” affect collective bargaining in Washington. *Id.*¹⁹

These influences on public sector collective bargaining have their source in the Washington Constitution and related fiscal statutes, beginning with the prohibition embodied in Article VIII, Section 4, that “[n]o moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, *except in pursuance of an appropriation by law . . . and every such law making a new*

¹⁹ While dispute resolution in the private sector is bilateral – between employee and employer – in the public sector, it is trilateral, with three distinctly different interests to be accommodated – the employee, the particular governmental unit or agency as employer, and the public as voter, tax-payer, and consumer of services. Justice Stewart summarized this point in *Abood v. Detroit Board of Education*:

The government officials making decisions as the public “employer” are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority – department managers, budgetary officials, and legislative bodies – are involved, and in part because each official may respond to a distinctive political constituency. And the cost of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Finally, decision making by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which . . . can be viewed as comprising three overlapping classes of voters – taxpayers, users of particular government services, and government employees

Public employees are not basically different from private employees; on the whole, they have the same sort of skills, the same needs, and seek the same advantages. “The uniqueness of public employment is *not in the employees nor in the work performed; the uniqueness is in the special character of the employer.*”

Elkouri & Elkouri, *How Arbitration Works*, at 1361 (6th Ed. 2003) (citing *Abood v. Detroit Bd. of Education*, 431 U.S. 209, 228-30, 97 S. Ct. 1782 (1977)).

appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied.” Const. art. VIII § 4 (emphasis added). Thus, under the Washington Constitution, only the Legislature may appropriate funds, and no funds may be spent without appropriation.

“Likewise, RCW 43.88.130 provides that it is unlawful for a state agency to *expend or contract to expend or incur any liability* in excess of the amounts appropriated for that purpose.” *Greenwood v. State Bd. for Community College Ed.*, 82 Wn.2d 667, 672, 513 P.2d 57, 60 (1973) (emphasis added) (employment contracts of the academic employees in excess of appropriated amounts “are illegal contracts, and, as such, are unenforceable to that extent”). RCW 43.88.130 provides:

No agency shall expend or contract to expend any money or incur any liability in excess of the amounts appropriated for that purpose: PROVIDED, That nothing in this section shall prevent the making of contracts or the spending of money for capital improvements, nor the making of contracts of lease or for service for a period exceeding the fiscal period in which such contract is made, when such contract is permitted by law. Any contract made in violation of this section shall be null and void.

RCW 43.88.130 (emphasis added).

Thus, “Washington State Constitution, Article VIII, Section 4 and RCW 43.88.130 are clear and unambiguous. State agencies may not incur liabilities or expend funds in excess of allotted appropriations for a

particular purpose.” *Properties Four, Inc. v. State*, 125 Wn. App. 108, 115, 105 P.3d 416, 419 (2005) (Department of General Administration and its authorized agent not empowered to bind State to purchase and sale agreement in absence of appropriation, and OFM and other agency approval); *Ortblad v. State*, 88 Wn.2d 380, 561 P.2d 201 (1977) (statutes imposing duty on state budget director to negotiate and bargain as to matters included with salary survey do not authorize budget director to bind himself and governor to fixed position). “To require that a public employer meet, confer and negotiate in good faith without reaching a binding agreement is not without precedent.” *Ortblad* at 383.

In sum, no state agency or officer, including the Governor or the director of OFM, has authority to bind their offices or agencies to spend money or incur any liability without an appropriation for the purpose, or to bind the Legislature to make appropriations. The definition of a *binding* arbitration award, in RCW 74.39A.270(2)(c)(ii) and RCW 41.56.028(2)(d)(ii), quoted above, and the alternative requirement for OFM’s certification of financial feasibility, simply reflect these limitations.²⁰ Under the Washington Constitution and statutes, including those at issue in this case, the Legislature and the Governor thus play a

²⁰ As previously discussed, under RCW 41.56.480 the Legislature has made a narrow exception to some of these statutory fiscal controls by enacting binding arbitration for uniformed personnel based on the unique public safety considerations that a work stoppage by such employees would pose.

central role in protecting the public's interest in the financial aspects of public employee collective bargaining agreements.

3. Arbitration Panels Do Not Perform The Role Of The OFM Director To Certify Financial Feasibility

The statutes discussed above make it apparent that the Legislature is concerned about and intends to ensure firm fiscal oversight and control with respect to funding "state employee" collective bargaining agreements.²¹ Nonetheless, Petitioners argue that, because an interest arbitration panel is to consider "[t]he financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement" under RCW 41.56.465(5)(a)(ii) and RCW 41.56.465(4)(a)(ii), this requirement "serves the same role" for agreements resulting from interest arbitration, as the director of OFM serves "with regard to certifying the financial feasibility of bargained agreements." Br. Pet'r SEIU 775NW at 21; Br. Pet'r Local 925 at 21. Petitioners' argument fails. First, it does not take into account Article VIII, Section 4, RCW 43.88.130, and the cases discussed above. The Legislature did not hand off to interest arbitration panels fiscal oversight with respect to "state

²¹ SEIU 775NW states that "RCW 74.39A was enacted into law via Initiative 775." Br. Pet'r SEIU 775NW at 4. To the extent SEIU 775NW's brief suggests that the provisions discussed above and at issue in this case were part of Initiative 775, enacted by the voters in 2001, such an understanding would be incorrect. The Legislature substantially amended the provisions of Initiative 775 relating to collective bargaining in 2004 and specifically provided for fiscal controls with respect to its collective bargaining provisions. Laws of 2004, ch. 3 § 1-2.

employee” compensation and benefits in these circumstances and for good reasons.

Interest arbitration panels do not serve the role that the OFM director serves when he certifies the financial feasibility of bargained agreements. Interest arbitration proceedings do not take place at the critical time when the state’s budget is being developed and so, cannot take into account the fiscal condition of the State at that critical point, as this case starkly demonstrates. In fact, it is apparent from the record in this case, that Arbitrator William’s “consideration of the financial ability of the state to pay” under RCW 41.56.465(5)(a)(ii) and RCW 41.56.465(4)(a)(ii) simply began from a presumption that the State could afford to pay what it offered to pay at the time of the arbitration proceeding (months before the Governor’s budget document is submitted to the Legislature and without regard to the State’s financial circumstances at that later critical point), and increased from there. ASF775, Ex 10, at 304. As this case demonstrates, the director of OFM *can* take the fiscal condition of the State at that critical point into account. In fact, in assisting to develop the Governor’s budget document, the OFM director is required to act on the basis of the most current revenue and caseload forecasts. RCW 43.88.030(1).

Nor are interest arbitration panels constrained by the responsibility to propose a balanced budget document. The director of OFM, and the Governor are so constrained. See RCW 43.88.030(2) (“The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures.”).

Even more fundamentally, however, interest arbitration panels are neither sufficiently knowledgeable nor competent to evaluate the multitude of public programs and initiatives of the State, and to make policy judgments about which programs it is financially feasible for the State to fund within available revenues, including a responsible reserve, and which it is not. The Governor’s director of OFM, the Governor, and the Legislature are, and as one might expect, the law leaves these responsibilities to them, not to interest arbitration panels.

Neither of the statutory prerequisites to Petitioners’ claims – a *binding* decision of an arbitration panel or certification of financial feasibility by the director of OFM – have been satisfied. The Court need go no farther to resolve this case. For this reason alone, the Petitions should be dismissed.

B. The Governor Has No Duty, Enforceable In Mandamus, To Include In Her Budget Document Under RCW 43.88.030, A Request To Fund The Compensation And Fringe Benefit Provisions Of The Collective Bargaining Agreements At Issue In This Case

Because the statutory prerequisites for Petitioners' claim have not been satisfied in this case, the Court need not and should not consider the nature of the Governor's duty under RCW 74.39A.300(1) and RCW 41.56.028(5) to request funding for collective bargaining agreements. However, if the Court nonetheless reaches that question, the Governor's duty is neither mandatory nor ministerial. Accordingly, it is not subject to mandamus.

1. Mandamus Does Not Lie In The Absence Of A Mandatory Nondiscretionary Duty

Mandamus is an extraordinary remedy that exists only "to compel the performance of an act which the law especially enjoins as a duty resulting from an office." *Wash. State Coun. of Cy. & City Employees v. Hahn*, 151 Wn.2d 163, 166-67, 86 P.3d 774 (2004) (quoting RCW 7.16.160). The duty to act must be imposed expressly by law, and involve no discretion. *State ex rel. Clark v. City of Seattle*, 137 Wash. 455, 461, 242 P. 966, 46 A.L.R. 253 (1926). "[M]andamus may not be used to compel the performance of acts or duties which involve discretion on the part of a public official." *Walker v. Munro*, 124 Wn.2d 402, 410, 879 P.2d

(1994). “The distinction between merely ministerial . . . and other official acts is that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or judgment, it is not to be deemed merely ministerial.” *State ex rel. Clark*, 137 Wash. at 461.

For the reasons explained below, the Governor does not have a duty enforceable in mandamus because her responsibility under RCW 74.39A.300(1) and RCW 41.56.028(5), is neither mandatory nor ministerial. The Petitions in this matter should be dismissed.

2. The Governor Has No Mandatory Duty Under RCW 74.39A.300(1) Or RCW 41.56.028(5) To Request Amounts To Implement Compensation And Fringe Benefit Provisions Of Collective Bargaining Agreements

Petitioners rely on selected language from RCW 74.39A.300 and RCW 41.56.028 to support their claim that the Governor has a mandatory duty, enforceable in mandamus, to request funds in her budget document under RCW 43.88.030, to implement the compensation and fringe benefits provisions of collective bargaining agreements. In asserting their claims, Petitioners overlook relevant language in these statutes, and in related statutes. The language that Petitioners overlook leads to the conclusion

that RCW 74.39A.300(1) and RCW 41.56.028(5) do not impose a mandatory duty on the Governor.²²

a. Considered As A Whole And In Context, The Language Upon Which Petitioners Rely Does Not Impose A Mandatory Duty On The Governor To Request Funding Of Collective Bargaining Agreements

Petitioners' contention that the Governor has a mandatory duty to request funding for the compensation and fringe benefit provisions of CBAs focuses almost exclusively on the word "must" in RCW 74.39A.300(1) and RCW 41.56.028(5). Petitioners argue that in its ordinary usage, "must" connotes a mandatory duty and so, the statutes compel the Governor to submit a request to fund the compensation and fringe benefit provisions of CBAs where the prerequisites of RCW 74.39A.300(2) and RCW 41.56.028(6) are met.²³ Br. Pet'r SEIU 775NW at 13-14; Br. Pet'r Local 925 at 13-14.

²² Petitioners also suggest that the deputy director of OFM "conceded" in testimony during the interest arbitration proceedings that the Governor has no discretion with respect to requesting funding for arbitration awards. When read in context, Mr. Opitz' testimony appears to have addressed a matter of fact, based on his assumption that an arbitration award would be deemed financially feasible. Significantly, Mr. Opitz testified on August 26, 2008, well before the catastrophic financial meltdown that occurred between September and December 18, 2008. Moreover, even if that were not the case, there is no basis to conclude that Mr. Opitz sets the legal position of the State.

²³ As explained at 32-35 § 3, supra, the prerequisites are not met in this case. The director of OFM did not determine that the contract provisions are feasible financially for the State (precisely the opposite), and the arbitration decisions are not binding under RCW 74.39A.300(2) and RCW 41.56.028(6).

Petitioners' argument has the appeal of simplicity, but it is unsound because it fails to examine the factors that this Court evaluates to determine whether statutory language is mandatory or permissive. Petitioners recite some of the relevant factors. Petitioners acknowledge that, "[p]lain meaning is "discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole", citing *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007). Br. Pet'r SEIU 775NW at 14; Br. Pet'r Local 925 at 14. But Petitioners then ignore these factors, and they also fail to acknowledge that the Court additionally considers "the general object to be accomplished and consequences that would result from construing the particular statute in one way or another." *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040, 1041 (1994) ("In determining the meaning of the word "shall" we traditionally have considered the legislative intent as evidenced by all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another."). In such an inquiry, "as of every other question of statutory construction, the prime object is to ascertain the legislative intent as disclosed by all the terms and provisions of the act in relation to the

subject of legislation, and by a consideration of the nature of the act, the general object to be accomplished, and the consequences that would result from construing the particular statute in one way or another.” *Spokane Cy. ex rel. Sullivan v. Glover*, 2 Wn.2d 162, 169, 97 P.2d 628, 631 (1940). Although the Court begins from the premise that words such as “shall” and “must” generally carry a mandatory connotation, “the word is to be given that effect which is necessary to carry out the intention of the legislature as determined by the ordinary rules of construction.” *Id.* “[T]he prime consideration is the intent of the legislature as reflected in its general, as well as its specific, legislation upon the particular subject.” *Id.* at 170. Notably, “with reference to powers and duties imposed on public officers, it is often difficult to determine whether they are mandatory or merely directory.” *Faunce v. Carter*, 26 Wn. 2d 211, 215, 173 P.2d 526, 528- 529 (1946).

RCW 74.39A.300(1) and RCW 41.56.028(5) provide that “the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under RCW 74.39A.270 [and RCW 41.56.028].” Thus, the submission of the Governor’s budget document under RCW 43.88.030 is part of the context

for the Legislature's direction to the Governor, and informs the meaning of the term "must" in RCW 74.39A.300(1) and RCW 41.56.028(5).

RCW 43.88.030 is central to the state's budgeting process, and contemplates broad discretion on the part of the Governor. *Dicomes v. State*, 113 Wn.2d 612, 622, 782 P.2d 1002, 1008-1009 (1989) (It is within the discretion of the Governor to determine the scope and extent of budget requests.). The Governor's budget document to the Legislature is to reflect the Governor's judgment, in the form of budget recommendations, concerning the revenue and spending policies and priorities that the State should pursue for the relevant budget period, within available revenues.²⁴ RCW 43.88.030 also contemplates a budget proposal based on revenue projections that are current at the time the budget document is submitted. It further is evident that the Governor's budget documents may be predicated on proposed changes in existing statutes affecting expenditures or revenues. Under RCW 43.88.030:

- "The budget document or documents shall consist of *the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period.*" (Emphasis added.)

²⁴ RCW 43.88.030(2) provides: "The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures."

- “The message shall *set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy.*” (Emphasis added.)
- “The budget document or documents *shall set forth a proposal for expenditures in the ensuing fiscal period . . . based upon the estimated revenues and caseloads as approved by the economic and revenue forecast council.*” (Emphasis added.)
- “*Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document.*” (Emphasis added.)
- “The governor may additionally submit, as an appendix to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.”
- “The budget document or documents shall also contain: ... *Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature.*” (Emphasis added.)

RCW 43.88.030.

RCW 43.88.090(1) also addresses the Governor’s budget document, and it too evidences the Governor’s substantial discretion in this process. The statute provides: “For purposes of developing budget proposals to the legislature, the governor shall have the power, and it shall be the governor’s duty, to require from proper agency officials such detailed estimates and other information in such form and at such times as the governor shall direct. The governor shall communicate statewide

priorities to agencies for use in developing biennial budget recommendations for their agency and shall seek public involvement and input on these priorities.” RCW 43.88.090(1).

RCW 43.88.035 also concerns the Governor’s budget document, and like RCW 43.88.030, its language reflects additional discretion on the part of the Governor. Under RCW 43.88.035, the Governor’s budget document may be based on changes in statutes that the Governor wishes to propose. “Any changes in . . . statutes affecting expenditures or revenues for the ensuing biennium relative to the then current fiscal period which the governor may wish to recommend shall be clearly and completely explained in the text of the budget document, in a special appendix thereto, or in an alternative budget document.” RCW 43.88.035.

The Governor’s broad *statutory discretion* to propose revenue policies and spending priorities for the State in submitting her budget recommendation to the Legislature under RCW 43.88.030 should not be surprising. Indeed, one would only expect it in light of the Governor’s broad *constitutional authority* to recommend measures to the Legislature. Under Article III, Section 6, the Governor “shall communicate at every session by message to the legislature the condition of the affairs of the

state, and *recommend such measures as he shall deem expedient for their action.*” Const. art. III, § 6 (emphasis added).²⁵

It is very difficult to square this statutory and constitutional language with SEIU 775NW’s and Local 925’s view that simply by using the word “must” in RCW 74.39A.300(1) and RCW 41.56.028(5), the Legislature intended to strip the Governor of her broad discretion to present to the Legislature a budget document that reflects the Governor’s honest judgment concerning the fiscal priorities of the State, and by necessary implication, the public policy priorities of the State. Petitioners’ construction is at odds with RCW 43.88.030 and Article III, Section 6.

Moreover, considered in context and in light of all of the relevant provisions of law, even if the word “must” in RCW 74.39A.300(1) and RCW 41.56.028(5) could be given a mandatory meaning, the better

²⁵ Petitioners end their brief with a request that the Court order the Governor to submit a “revised balanced budget.” To the extent this language is intended to refer to the “budget bill” that the Governor submits to the Legislature under RCW 43.88.060, rather than the governor’s budget document under RCW 43.88.030, the request additionally is misguided. The statutes upon which Petitioners purport to rely address only the Governor’s budget document under RCW 43.88.030. Petitioners cite no statute that would require the Governor to include the amounts that Petitioners seek in her budget bill. Moreover, such a request would require the Court to intrude into the legislative process and into that body’s authority to consider bills pending before it. *See* Const. art. II, § 9 (“Each house may determine the rules of its own proceedings”). The Governor’s budget bill has been submitted to the Legislature and is pending in that body as companion bills. HB 1244 had its first reading in the House on Jan. 15, 2009, and has been referred to House Ways and Means. SB 5600 had its first reading in the Senate on Jan. 27, 2009, and has been referred to the House Ways and Means. HB 1244 can be found at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1244&year=2009>; SB can be found at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5600&year=2009>.

mandatory meaning would be quite different from that suggested by Petitioners. And it would not compel the Governor to submit a request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement where in the exercise of her honest judgment, the Governor believes that it is not in the best interests of the State to do so.

As previously discussed, each of the statutes upon which Petitioners rely begins from a prohibitory premise: “A request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement . . . *shall not be submitted by the governor to the legislature unless . . .*” RCW 74.39A.300(2); RCW 41.56.028(6) (emphasis added). Each statute then provides: “Upon meeting the requirements of [RCW 74.39A.300(2) and RCW 41.56.028(6)], the governor *must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under [RCW 74.39A.270(2) or RCW 41.56.028.]*” RCW 74.39A.300(1); RCW 41.56.028(5) (emphasis added).

In this context, if the word “must” is to be given a mandatory reading, the better reading of “must” would be that the statutes *mandate*

the process by which – i.e., direct how, the Governor is to request funding for the collective bargaining provisions, *if* she determines to seek funding for them, not that the Governor is required to seek funding for them. In other words, such requests must be submitted “as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030,” and not otherwise. RCW 74.39A.300(1); RCW 41.56.028(5).

This reading of the statutes would be consistent with the Legislature’s obvious concern for maintaining fiscal control over the costs of state employee collective bargaining agreements. It would ensure that funding requests for these purposes are specifically called out in the Governor’s budget document, so that the requests are transparent to the Legislature. This reading would make sense in light of the fact that under RCW 74.39A300(3) and RCW 41.56.028(7), “[t]he legislature must approve or reject the submission of the request for funds.” Thus, unlike Petitioners’ interpretation, this interpretation would be consistent with the values that inhere in the Governor’s budget recommendations under RCW 43.88.030, and in the statutes regulating “state employee” collective bargaining. It secures for the Legislature, the Governor’s honest and informed assessments and recommendations with respect to the fiscal priorities of the State, and does so in a manner that promotes transparency

and thus, promotes legislative oversight and control with respect to such expenditures. In each of these respects, such an interpretation comports with the statutory language and is a far more rational mandatory reading of “must” in RCW 74.39A.300(1) and RCW 41.56.028(5) than the reading offered by Petitioners.

For each of these reasons, when all of the language of the relevant statutes is considered, it does not support Petitioners’ contention that RCW 74.39A.300(1) and RCW 41.56.028(5) impose upon the Governor a mandatory duty to include in her budget document requests to fund the compensation and fringe benefit provisions of state employee collective bargaining agreements.

b. Petitioners’ Argument That The Governor Has A Mandatory Duty Under RCW 74.39A.300(1) and RCW 41.56.028(5) To Submit Funding Requests For Collective Bargaining Agreements Also Would Lead To Irrational And Unsound Consequences

In determining whether language is mandatory or permissive, the Court also is to consider “the consequences that would result from construing the particular statute in one way or another.” *State v. Krall*, 125 Wn.2d at 148. The Court “will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences.” *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order*

of *Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002). A reading that produces absurd consequences must be avoided as “it will not be presumed that the legislature intended absurd results.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792 (2003)). This factor also leads to the conclusion that RCW 74.39A.300(1) and RCW 41.56.028(5) do not compel the Governor to recommend spending for collective bargaining agreements that she determines are not appropriate for the State, in light of its multitude of needs (including a responsible reserve) and its finite fiscal resources.

As in this case, Petitioners’ reading would require the Governor to include a request to fund arbitration decisions without regard to the fact that the State’s economic condition severely deteriorates between the time an arbitration decision is entered and before the submission of the Governor’s budget proposal to the Legislature.

In addition, as even Petitioners acknowledge, when the Governor’s director of OFM determines that the compensation and fringe benefits provisions of a *bargained* agreement – i.e., provisions which the parties negotiated, are not feasible financially for the State, the Governor need not submit a request to fund them as a part of her proposed biennial or

supplemental operating budget document under RCW 43.88.030. Br. Pet'r SEIU 775NW at 16-17; Br. Pet'r Local 925 at 16. But according to Petitioners, the result is different when the Governor's director of OFM determines that the compensation and fringe benefits provisions of an *arbitrated* agreement – i.e., provisions with respect to which the parties negotiated to impasse, are not feasible financially for the State. According to Petitioners, in these circumstances, the Governor nonetheless must submit a request to fund the provisions as a part of her proposed biennial or supplemental operating budget to the Legislature under RCW 43.88.030. This makes no sense. And this result makes even less sense when, as in the case with Local 925, collective bargaining agreements will contain a combination of *negotiated and arbitrated* compensation and fringe benefits provisions. *See Supra*, at 5 n.5. The governing statutes do not contemplate submission of only some, but not all, compensation and fringe benefit provisions in the agreements. Under RCW 74.39A.300(3) and RCW 41.56.028(7), “[t]he legislature must approve or reject the submission of the request for funds as a whole.” Yet under Petitioners’ theory, the Legislature would be presented with only *arbitrated* compensation and fringe benefit provisions, when the director of OFM

determines that the *negotiated* provisions are not feasible financially for the State.²⁶

Finally, Petitioners' interpretation of RCW 74.39A.300(1) and RCW 41.56.028(5) would call the validity of these statutes into question in light of the Governor's authority under Article III, Section 6 to "recommend [to the legislature] such measures as [the governor] shall deem expedient for their action." Const. art. III, § 6. Stripped to its bones, Petitioners' interpretation would mean that the Legislature may require the Governor to submit for its consideration, legislative proposals that the Governor does not support. Notably, the Legislature is not before the Court seeking such an interpretation. Only Petitioners are. The Court "may interpret the mandatory 'shall' as permissive if it otherwise would render a statute unconstitutional." *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Coun. (EFSEC)*, 197 P.3d 1153, 1165 (2008) (quoting *In re Elliott*, 74 Wn.2d 600, 607, 446 P.2d 347 (1968) ("The word 'shall' must also be construed as permissive when the statute can thereby be upheld, if a construction to the contrary could render it unconstitutional." Id. (quoting 82 C.J.S. *Statutes* § 380, at 881-882 (1953)). See also, *People ex rel. Sutherland v. Governor*, 29 Mich.

²⁶ For reasons previously explained, interest arbitration panels do not and cannot perform the financial feasibility evaluation of the Governor and her director of OFM. See *supra* at 32-35 § 3.

320, 1874 WL 6372, at *5 (1874), recognizing that it is inconsistent with the dignity of judiciary and the executive “to place [the governor] in [a] position where, in a matter within his own province, he must act contrary to his judgment, or stand convicted of a disregard of the laws.” For this additional reason, Petitioners’ mandatory interpretation of RCW 74.39A.300(1) and RCW 41.56.028(5) is deeply flawed.

And each of these irrational consequences of Petitioners’ interpretation is borne out in this case. State revenue projections dropped precipitously – by \$1.67 billion – between the time interest arbitration proceedings which took place in the summer and early fall of 2008, and the Governor’s submission of her budget document on December 18, 2008. Yet, SEIU 775NW’s and Local 925’s reading of RCW 74.39A.300 and RCW 41.56.028 would have this Court compel the Governor to include in her budget document a funding request amounting to \$82.8 million, determined without regard to the magnitude of the economic crisis that the State faces.²⁷ It would fundamentally undermine the Governors’ authority under RCW 43.88.030 to weigh the multitude of

²⁷ As the Governor’s budget document indicates, the agreements relating to the “public employees” represented by SEIU 775NW and Local 925 are not the only state employee collective bargaining agreements that are subject to statutes similar to those at issue in this case. The total dollar amount necessary to fund compensation and fringe benefit provisions of state employee collective bargaining agreements submitted to the director of OFM for certification of financial feasibility, and a request for funding in the Governor’s budget document, was \$678 million.

competing demands for finite state dollars, and to propose spending priorities that she believes will best serve the interests of the people of this State, based upon complete, accurate, and up to date information.

By contrast, the consequences of interpreting the Governor's responsibility under RCW 74.39A.300(1) and RCW 41.56.028(5) as discretionary, preserves rationality in all of the provisions that bear on the question before the Court, and preserves the value of the Governor's key role in developing the state budget.²⁸

Further, and importantly, a discretionary interpretation of the Governor's responsibility under RCW 74.39A.300(1) and RCW 41.56.028(5) in no way would preclude SEIU 775NW or Local 925 from seeking – or the Legislature from making – appropriations for the compensation and fringe benefit provisions of the collective bargaining

²⁸ Petitioners may suggest that the statutory collective bargaining and interest arbitration process mean little if the Governor need not request funding for agreements that result from the process. But this overlooks the essence of the process and its value. The obligation to engage in collective bargaining is concerned with the good faith of the parties. The Public Employees Collective Bargaining Act . . . RCW 41.56 . . . “regulates the subjective conduct and motivations of the parties in a collective bargaining situation, but expressly refrains from mandating any result or procedure for achieving final resolution of an intractable bargaining dispute.” Stuart S. Mukamal, *Unilateral Employer Action Under Public Sector Binding Interest Arbitration*, 6 J.L. & Com. 107, 113-14 (1986) (discussing the NLRA). The resolution of disputes is left to the parties themselves, subject to intervention by PERC or the courts only when the conduct of a party indicates a refusal to bargain in good faith, which Mukamal has defined as “an absence of a sincere desire to reach agreement.” *Id.* at 114. The mandate of the statute “extends only to the state of mind with which each party approaches the negotiating table and considers the proposals advanced by the other.” *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 460, 938 P.2d 827, 833 (1997). Such a suggestion also would overlook the parties bargaining history and the Governor's submission of funding requests in the past, when they have been determined financially feasible for the State.

agreements at issue in this case. Absent a constitutional mandate, “[t]he decision to create a program as well as whether and to what extent to fund it is strictly a legislative prerogative.” *Pannell v. Thompson*, 91 Wn.2d 591, 599, 589 P.2d 1235, 1240 (1979). Inclusion or exclusion of these funding requests from the Governor’s budget document does not affect the Legislature’s plenary authority to enact whatever appropriations it determines wise, or the Petitioners’ right to lobby that body in support of their cause.²⁹

In short, SEIU 775’s and Local 925’s suggested reading of RCW 74.39A.300(1) and RCW 41.56.028(5) would attribute to the Legislature an intent to require the Governor to submit a budget document containing spending proposals that are based on inaccurate fiscal information; that in the Governor’s best and honest judgment, are not feasible financially for the State; and that do not reflect the spending priorities of the Governor. These are compelling reasons to conclude that, in the context of RCW 74.39A.300(1) and RCW 41.56.028(5), the Legislature employed the word “must” in a permissive sense.

²⁹ SEIU 775NW and Local 925 state that the Governor’s inclusion of a request for amounts necessary to implement the compensation and fringe benefit provisions of the agreements in her budget document is important to their success in securing legislative funding. Br. Pet’r SEIU 775NW at 3; Br. Pet’r SEIU Local 925 at 2. This may be true, but such a request is not a precondition to funding and does not guarantee funding. Moreover, it is difficult to believe that a revision of the Governor’s budget document as a result of this action, to reflect a request coerced from the Governor, would further Petitioners effort.

3. The Governor's Duty Under RCW 74.39A.300(1) And RCW 41.56.028(5) Is Not The Performance Of A Ministerial Act

Even if the Governor's duty under RCW 74.39A.300(1) and RCW 41.56.028(5) were mandatory, and it is not, it still would not be a duty subject to mandamus. "[M]andamus may not be used to compel the performance of acts or duties which involve discretion on the part of a public official." *Walker v. Munro*, 124 Wn.2d at 410. The distinction between merely ministerial . . . and other official acts is that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or judgment, it is not to be deemed merely ministerial." *State ex rel. Clark*, 137 Wash. at 461.

Petitioners would have the Court treat the Governor's decision to include a request in her budget document to fund the compensation and fringe benefit provisions of collective bargaining agreements as though that decision takes place in isolation, apart from the development of her budget proposal as a whole, and as though it involves no exercise of judgment or discretion. This is incorrect. By the very nature of the state's budget process and the Governor's central role in it, if the Governor were to include a request for funds in her budget document, she necessarily

must answer the question: At the cost of what else? Health care for adults and children who cannot afford it? Smaller class sizes? Fewer corrections officers? A prudent reserve? It is difficult to imagine an act on the part of a state officer more freighted with the exercise of judgment and discretion. As the Michigan Supreme Court observed in 1874, "it is not customary in our republican government to confer upon the governor duties merely ministerial, and in the performance of which he is to be left to no discretion whatever; and the presumption . . . must be, where a duty is devolved upon the chief executive of the state rather than upon an inferior officer, that is so because his superior judgment, discretion, and sense of responsibility were confided in for a more accurate, faithful, and discreet performance than could be relied upon if the duty were devolved upon an officer chosen for more inferior duties." The observation of the Michigan Court is apropos. *Sutherland*, 29 Mich. 320, 1874 WL 6372, at *2.

Petitioners do not need to be concerned about these difficult choices. But the Governor must be. They are the essence of her responsibility to propose a balanced budget document. And though Petitioners presumably would like for the Court to pretend that these choices are distinct from their request to compel the Governor to fund collective bargaining agreements, they are not. These difficult choices would be driven by and inseparable from such a requirement.

The act of the Governor in including a request to fund collective bargaining agreements in her balanced budget proposal of necessity entails the exercise of judgment and discretion. It is not a ministerial act, and for this additional reason, its performance is not subject to mandamus.

VI. CONCLUSION

The Governor respectfully requests that the Petitions in these cases be dismissed.

RESPECTFULLY SUBMITTED this 17th day of February, 2009.

ROBERT M. MCKENNA
Attorney General

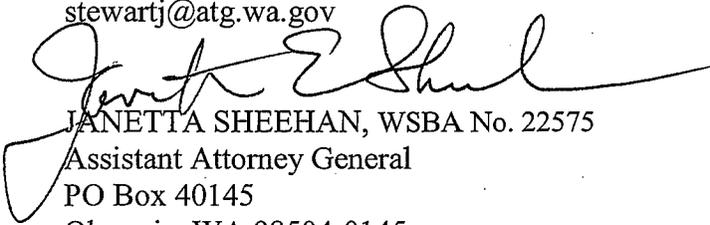


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MAUREEN HART, WSBA No. 7831
Solicitor General
marnieh@atg.wa.gov



STEWART JOHNSTON, WSBA No. 8774
Senior Counsel
stewartj@atg.wa.gov



JANETTA SHEEHAN, WSBA No. 22575
Assistant Attorney General
PO Box 40145
Olympia, WA 98504-0145
(360) 66-4177
janettas@atg.wa.gov

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BY RONALD R. CARPENTER

counsel of record on the date below as follows:

CLERK

Robert H. Lavitt
Schwerin Campbell Barnard Iglitzin and Lavitt, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119

E-mail: Lavitt@workerlaw.com

Dmitri Iglitzin
18 West Mercer Street
Suite 400
Seattle, WA 98119-3971

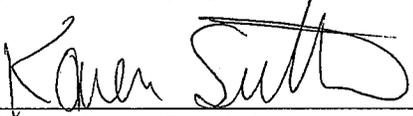
E-mail: iglitzin@workerlaw.com

Judith Krebs
SEIU Healthcare 775NW, Ste A
33615 First Way South
Federal Way, WA 98003

E-mail: judy.krebs@seiu775.org

I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 17th day of February, 2009, at Olympia, WA.



Karen Sutter, Legal Assistant

APPENDIX

RCW 41.56.028

Application of chapter to family child care providers — Governor as public employer — Procedure — Intent.

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to family child care providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of family child care providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW.

(2) This chapter governs the collective bargaining relationship between the governor and family child care providers, except as follows:

(a) A statewide unit of all family child care providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of family child care providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070, except that in the initial election conducted under chapter 54, Laws of 2006, if more than one labor organization is on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be held.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for child care providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

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

(i) With respect to commencement of negotiations between the governor and the exclusive bargaining representative of family child care providers, negotiations shall be commenced initially upon certification of an exclusive bargaining representative under (a) of this subsection and, thereafter, by February 1st of any even-numbered year; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state.

(e) Family child care providers do not have the right to strike.

(3) Family child care providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any purpose. This section applies only to the governance of the collective bargaining relationship between the employer and family child care providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The parents' or legal guardians' right to choose and terminate the services of any family child care provider that provides care for their child or children;

(b) The secretary of the department of social and health services' right to adopt requirements under RCW 74.15.030, except for requirements related to grievance procedures and collective negotiations on personnel matters as specified in subsection (2)(c) of this section;

(c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130; and

(d) The legislature's right to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility of parents, legal guardians, and family child care providers participating in child care subsidy programs, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this section that does not expressly reserve the legislative rights described in this subsection (4)(d).

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into

under this section or for legislation necessary to implement such agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless such request has been:

(a) Submitted to the director of financial management by October 1st before the legislative session at which the request is to be considered, except that, for initial negotiations under this section, the request must be submitted by November 15, 2006; and

(b) Certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(8) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and benefit provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in subsection (4)(d) of this section.

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

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this chapter.



RCW 41.56.030
Definitions.

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means 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.

(9) "Home care quality authority" means the authority under chapter 74.39A RCW.

(10) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(11) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(12) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary

due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

(13) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

[2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1; prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

Notes:

Part headings not law -- Severability -- Conflict with federal requirements -- 2007 c 184: See notes following RCW 41.56.029.

Severability -- Effective date -- 2004 c 3: See notes following RCW 74.39A.270.

Effective date -- 1995 c 273: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 273 § 5.]

Effective dates -- 1993 c 398: "(1) Sections 3 and 5 of this act shall take effect July 1, 1995.

(2) Sections 1, 2, 4, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 398 § 7.]

Intent -- Severability -- Effective date -- 1993 c 379: See notes following RCW 28B.10.029.

Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.

Severability -- 1987 c 135: See note following RCW 41.56.020.

Effective date -- 1984 c 150: "This act shall take effect on July 1, 1985." [1984 c 150 § 2.]

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.

Public employment relations commission: Chapter 41.58 RCW.



RCW 41.56.430

Uniformed personnel — Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

[1973 c 131 § 1.]

Notes:

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.



RCW 41.56.440

Uniformed personnel — Negotiations — Declaration of an impasse — Appointment of mediator.

Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, That a mediator does not have a power of compulsion.

[1979 ex.s. c 184 § 1; 1975-'76 2nd ex.s. c 14 § 1; 1975 1st ex.s. c 296 § 28; 1973 c 131 § 3.]

Notes:

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.



RCW 41.56.450

Uniformed personnel — Interest arbitration panel — Powers and duties — Hearings — Findings and determination.

If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chairman shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

[1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-'76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

Notes:

Severability -- 1983 c 287: "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." [1983 c 287 § 6.]

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.



RCW 41.56.452

Interest arbitration panel a state agency.

An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter.

[1983 c 287 § 3; 1980 c 87 § 19.]

Notes:

Severability -- 1983 c 287: See note following RCW 41.56.450.



RCW 41.56.465

Uniformed personnel — Interest arbitration panel — Determinations — Factors to be considered.

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) The average consumer prices for goods and services, commonly known as the cost of living;

(d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

(4) For employees listed in RCW 41.56.028:

(a) The panel shall also consider:

(i) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) The public's interest in reducing turnover and increasing retention of child care providers;

(ii) The state's interest in promoting, through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and

(iii) In addition, for employees exempt from licensing under chapter 74.15 RCW, the state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(5) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

(i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;

(ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

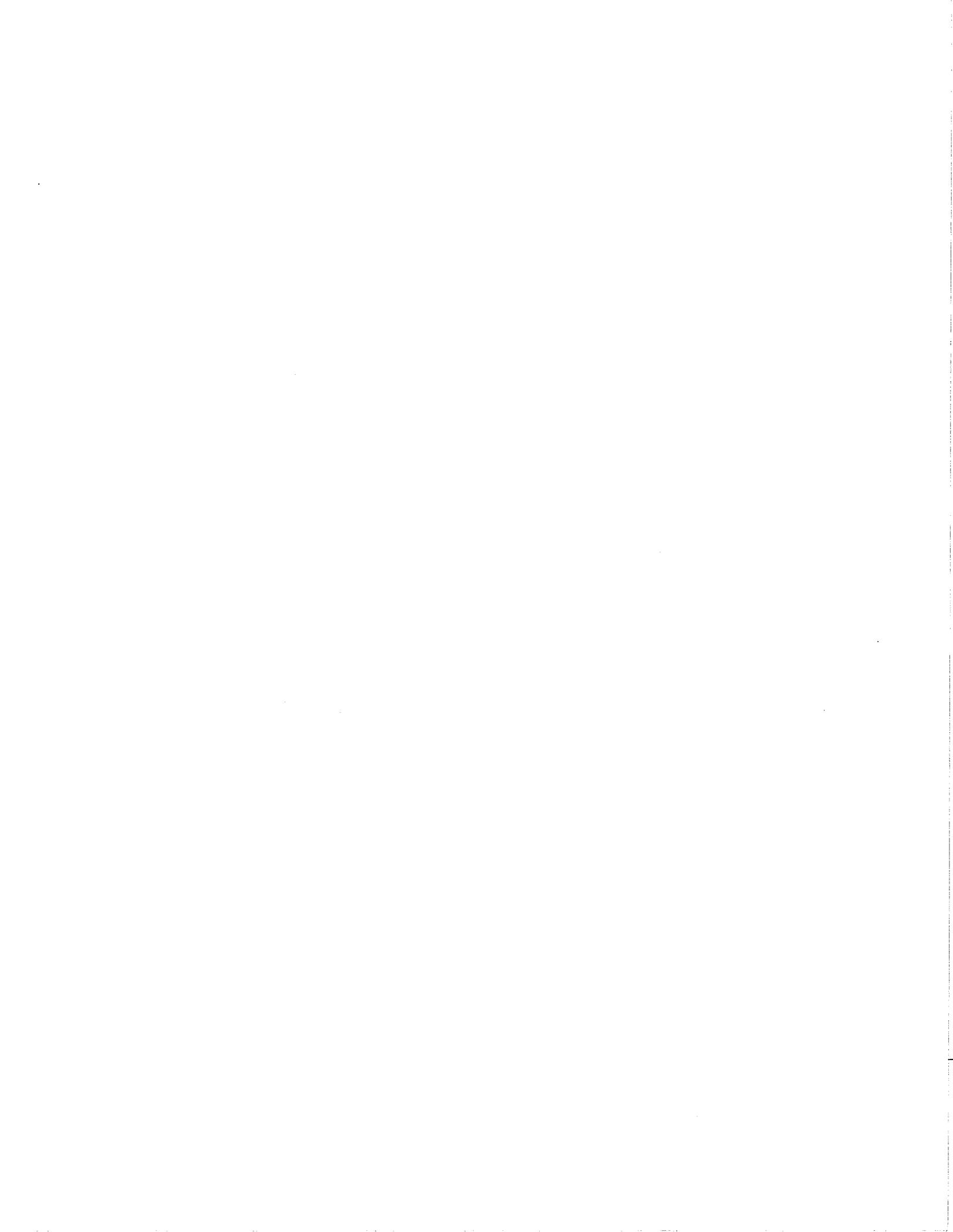
(6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW.

[2007 c 278 § 1; 1995 c 273 § 2; 1993 c 398 § 3.]

Notes:

Effective date -- 1995 c 273: See note following RCW 41.56.030.

Effective dates -- 1993 c 398: See note following RCW 41.56.030.



RCW 41.56.470

Uniformed personnel — Arbitration panel — Rights of parties.

During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under chapter 131, Laws of 1973.

[1973 c 131 § 6.]

Notes:

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.



RCW 41.56.473

Uniformed personnel — Application of chapter to Washington state patrol — Bargaining subjects.

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to the officers of the Washington state patrol appointed under RCW 43.43.020, except that the state is prohibited from negotiating any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

(2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the state shall be represented by the governor or the governor's designee who is appointed under chapter 41.80 RCW, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.

(3) The governor or the governor's designee shall consult with the chief of the Washington state patrol regarding collective bargaining.

(4) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the state and the Washington state patrol officers is subject to the following:

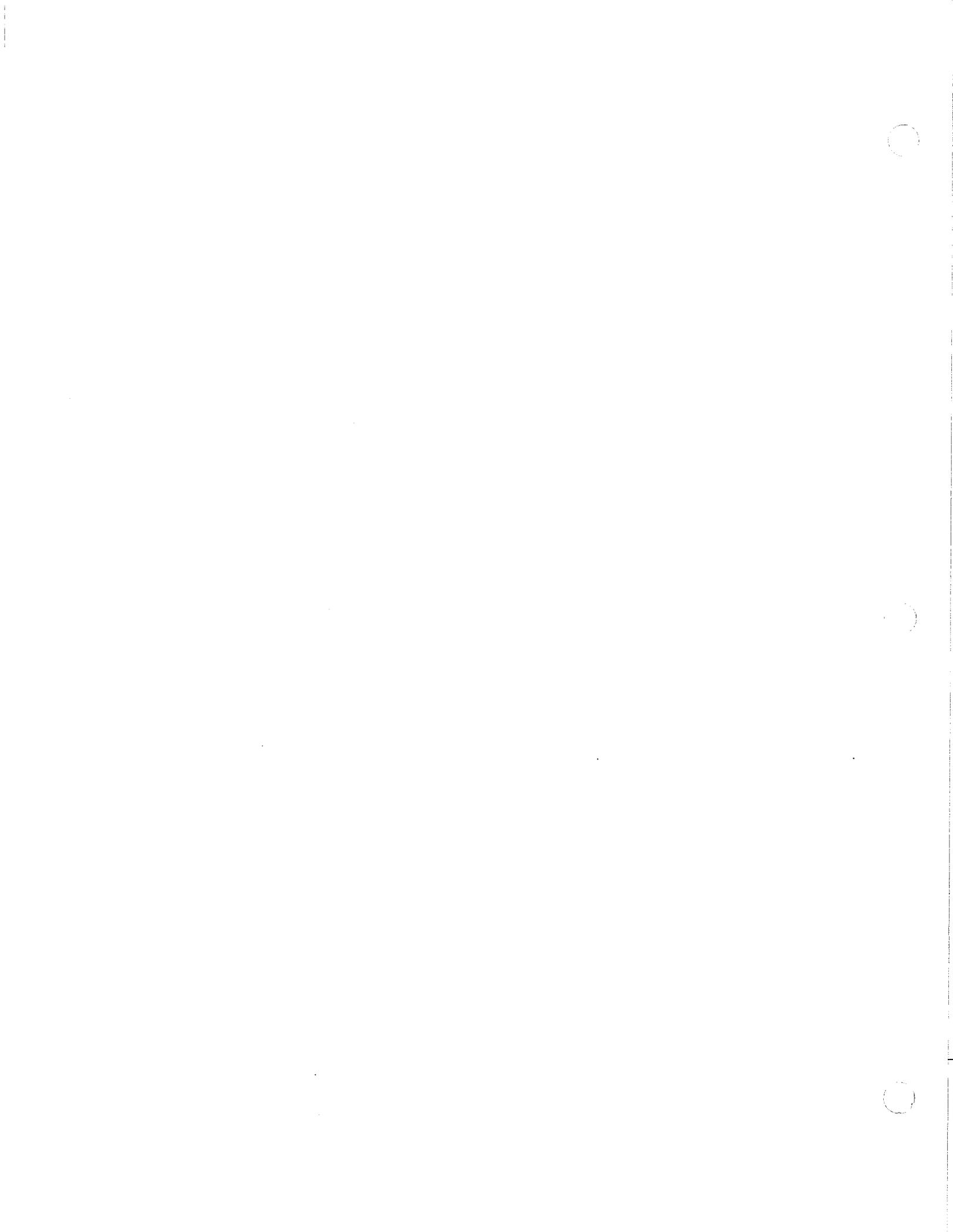
(a) The state's bargaining representative must periodically consult with a subcommittee of the joint committee on employment relations created in RCW 41.80.010(5) which shall consist of the four members appointed to the joint committee with leadership positions in the senate and the house of representatives, and the chairs and ranking minority members of the senate transportation committee and the house transportation committee, or their successor committees. The subcommittee must be consulted regarding the appropriations necessary to implement these provisions in a collective bargaining agreement and, on completion of negotiations, must be advised on the elements of these provisions.

(b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions must be conditioned upon the legislature's subsequent approval of the funds.

(5) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not be submitted to the legislature by the governor unless such requests:

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

(b) Have been certified by the director of financial management as being feasible financially for the state or reflects the decision of an arbitration panel reached under RCW 41.56.475.



RCW 41.56.475

Uniformed personnel — Application of chapter to Washington state patrol — Mediation and arbitration.

In addition to the classes of employees listed in RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the state's bargaining representative and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. Each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (a) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such a request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (b) either party may apply to the commission, the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW 41.56.473.

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol.

(4) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

[2008 c 149 § 1; 2005 c 438 § 2; 1999 c 217 § 4; 1993 c 351 § 1; 1988 c 110 § 2; 1987 c 135 § 3.]

Notes:

Severability -- 1987 c 135: See note following RCW 41.56.020.



RCW 41.56.480

Uniformed personnel — Refusal to submit to procedures — Invoking jurisdiction of superior court — Contempt.

If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose.

[1975 1st ex.s. c 296 § 30; 1973 c 131 § 7.]

Notes:

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.



RCW 41.80.010

Negotiation and ratification of collective bargaining agreements.

(1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

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

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

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

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

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

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

(4) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community and technical colleges or a designee chosen by the board to negotiate on its behalf. A governing board may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1), (2), and (3) of this section. Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations. If appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements reached between institutions of higher education and exclusive bargaining representatives agreed to under the provisions of this chapter, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section.

(5) There is hereby created a joint committee on employment relations, which consists of two members with leadership positions in the house of representatives, representing each of the two largest caucuses; the chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses; two members with leadership positions in the senate, representing each of the two largest caucuses; and the chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses. The governor shall periodically consult with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

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

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

[2002 c 354 § 302.]



RCW 43.41.030

Purpose.

The legislature finds that the need for long-range state program planning and for the short-range planning carried on through the budget process, complement each other. The biennial budget submitted to the legislature must be considered in the light of the longer-range plans and goals of the state. The effectiveness of the short-range plan presented as budget proposals, cannot be measured without being aware of these longer-range goals. Thus efficient management requires that the planning and fiscal activities of state government be integrated into a unified process. It is the purpose of this chapter to bring these functions together in a new division of the office of the governor to be called the office of financial management.

[1979 c 151 § 109; 1969 ex.s. c 239 § 1.]



RCW 43.41.100

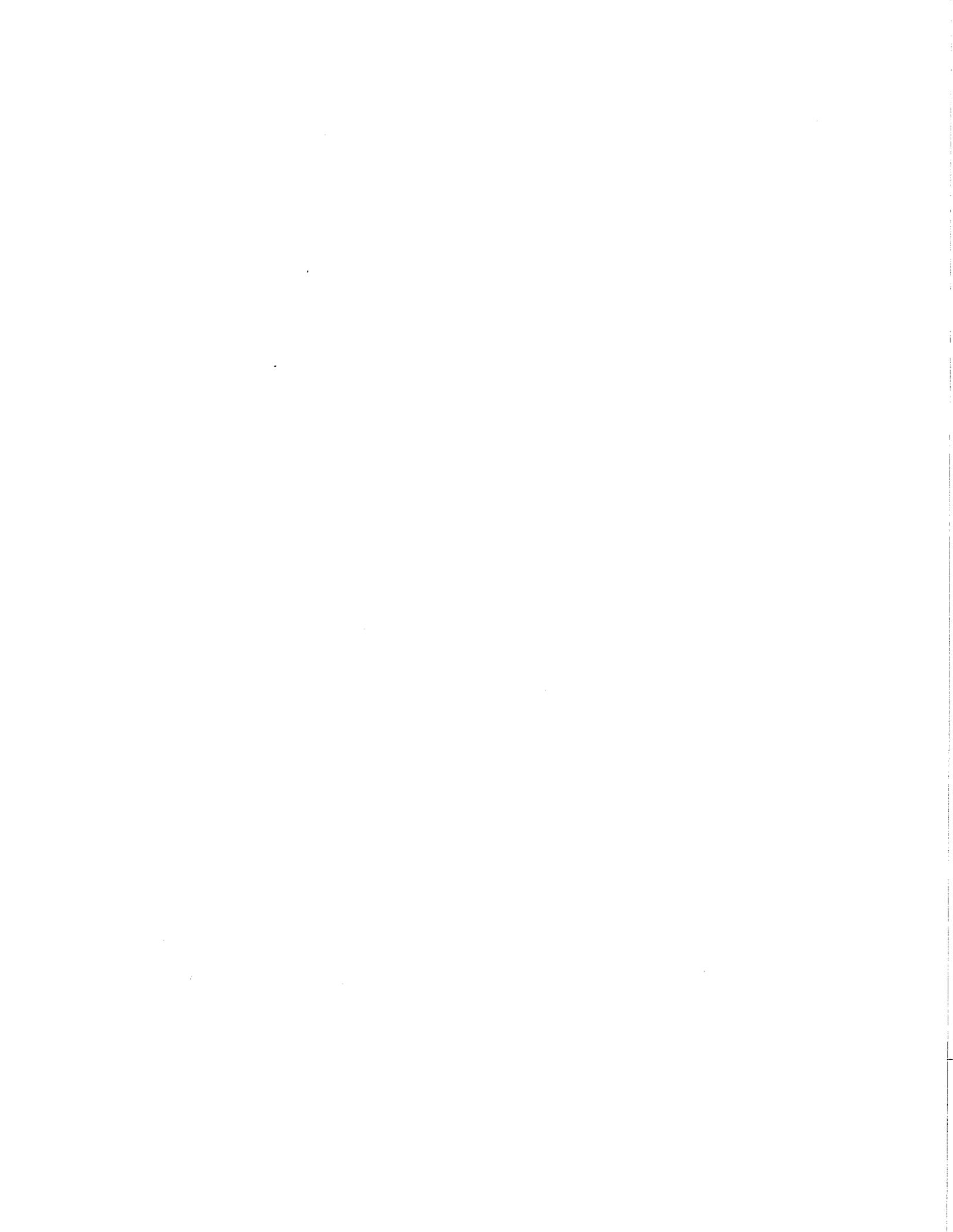
Director's powers and duties.

The director of financial management shall:

- (1) Supervise and administer the activities of the office of financial management.
- (2) Exercise all the powers and perform all the duties prescribed by law with respect to the administration of the state budget and accounting system.
- (3) Advise the governor and the legislature with respect to matters affecting program management and planning.
- (4) Make efficiency surveys of all state departments and institutions, and the administrative and business methods pursued therein, examine into the physical needs and industrial activities thereof, and make confidential reports to the governor, recommending necessary betterments, repairs, and the installation of improved and more economical administrative methods, and advising such action as will result in a greater measure of self-support and remedies for inefficient functioning.

The director may enter into contracts on behalf of the state to carry out the purposes of this chapter; he may act for the state in the initiation of or participation in any multi-governmental agency program relative to the purposes of this chapter; and he may accept gifts and grants, whether such grants be of federal or other funds.

[1979 c 151 § 114; 1969 ex.s. c 239 § 8.]



RCW 43.41.110

Powers and duties of office of financial management.

The office of financial management shall:

(1) Provide technical assistance to the governor and the legislature in identifying needs and in planning to meet those needs through state programs and a plan for expenditures.

(2) Perform the comprehensive planning functions and processes necessary or advisable for state program planning and development, preparation of the budget, inter-departmental and inter-governmental coordination and cooperation, and determination of state capital improvement requirements.

(3) Provide assistance and coordination to state agencies and departments in their preparation of plans and programs.

(4) Provide general coordination and review of plans in functional areas of state government as may be necessary for receipt of federal or state funds.

(5) Participate with other states or subdivisions thereof in interstate planning.

(6) Encourage educational and research programs that further planning and provide administrative and technical services therefor.

(7) Carry out the provisions of RCW 43.62.010 through 43.62.050 relating to the state census.

(8) Carry out the provisions of this chapter and chapter 4.92 RCW relating to risk management.

(9) Be the official state participant in the federal-state cooperative program for local population estimates and as such certify all city and county special censuses to be considered in the allocation of state and federal revenues.

(10) Be the official state center for processing and dissemination of federal decennial or quinquennial census data in cooperation with other state agencies.

(11) Be the official state agency certifying annexations, incorporations, or disincorporations to the United States bureau of the census.

(12) Review all United States bureau of the census population estimates used for federal revenue sharing purposes and provide a liaison for local governments with the United States bureau of the census in adjusting or correcting revenue sharing population estimates.

(13) Provide fiscal notes depicting the expected fiscal impact of proposed legislation in accordance with chapter 43.88A RCW.

(14) Be the official state agency to estimate and manage the cash flow of all public funds as provided in chapter 43.88 RCW. To this end, the office shall adopt such rules as are necessary to manage the cash flow of public funds.

[2002 c 332 § 23; 1981 2nd ex.s. c 4 § 13; 1979 c 10 § 3. Prior: 1977 ex.s. c 110 § 4; 1977 ex.s. c 25 § 6; 1969 ex.s. c 239 § 11.]

Notes:

Intent -- Effective date -- 2002 c 332: See notes following RCW 43.41.280.

Severability -- 1981 2nd ex.s. c 4: See note following RCW 43.30.325.



RCW 43.88C.020

Preparation and submittal of caseload forecasts — Cooperation of state agencies — Official state caseload forecast.

(1) In consultation with the caseload forecast work group established under RCW 43.88C.030, and subject to the approval of the caseload forecast council under RCW 43.88C.010, the supervisor shall prepare:

(a) An official state caseload forecast; and

(b) Other caseload forecasts based on alternative assumptions as the council may determine.

(2) The supervisor shall submit caseload forecasts prepared under this section, along with any unofficial forecasts provided under RCW 43.88C.010, to the governor and the members of the legislative fiscal committees, including one copy to the staff of each of the committees. The forecasts shall be submitted at least three times each year and on such dates as the council determines will facilitate the development of budget proposals by the governor and the legislature.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to caseload forecasts.

(4) The administrator of the legislative evaluation and accountability program committee may request, and the supervisor shall provide, alternative caseload forecasts based on assumptions specified by the administrator.

(5) The official state caseload forecast under this section shall be the basis of the governor's budget document as provided in RCW 43.88.030 and utilized by the legislature in the development of the omnibus biennial appropriations act.

[1997 c 168 § 2.]



RCW 43.88.030

Instructions for submitting budget requests — Content of the budget document or documents — Separate budget document or schedules — Format changes.

(1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period, as well as an outline of the proposed six-year financial policies where applicable, and shall describe in connection therewith the important features of the budget. The biennial budget document or documents shall also describe performance indicators that demonstrate measurable progress towards priority results. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period, or six-year period where applicable, based upon the estimated revenues and caseloads as approved by the economic and revenue forecast council and caseload forecast council or upon the estimated revenues and caseloads of the office of financial management for those funds, accounts, sources, and programs for which the forecast councils do not prepare an official forecast. Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document, including the supplemental budgets submitted in the even-numbered years of a biennium. However, the estimated revenues and caseloads for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue and caseload estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues and caseloads must be set forth in the budget document. The governor may additionally submit, as an appendix to each supplemental, biennial, or six-year agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, and those anticipated for the ensuing biennium;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance, and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, and agency;

(f) The expenditures that include nonbudgeted, nonappropriated accounts outside the state treasury;

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.71 RCW, shown by agency and in total; and

(h) Tabulations showing each postretirement adjustment by retirement system established after fiscal year 1991, to include, but not be limited to, estimated total payments made to the end of the previous biennial period, estimated payments for the present biennium, and estimated payments for the ensuing biennium.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments, and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium;

(g) A showing and explanation of amounts of general fund and other funds obligations for debt service and any transfers of moneys that otherwise would have been available for appropriation;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods; and

(j) A showing and explanation of anticipated amounts of general fund and other funds required to amortize the unfunded actuarial accrued liability of the retirement system specified under chapter 41.45 RCW, and the contributions to meet such amortization, stated in total dollars and as a level percentage of total compensation.

(3) The governor's operating budget document or documents shall reflect the statewide priorities as required by RCW 43.88.090.

(4) The governor's operating budget document or documents shall identify activities that are not addressing the statewide priorities.

(5) A separate capital budget document or schedule shall be submitted that will contain the following:

(a) A statement setting forth a long-range facilities plan for the state that identifies and includes the highest priority needs within affordable spending levels;

(b) A capital program consisting of proposed capital projects for the next biennium and the two biennia succeeding the next biennium consistent with the long-range facilities plan. Inasmuch as is practical, and recognizing emergent needs, the capital program shall reflect the priorities, projects, and spending levels proposed in previously submitted capital budget documents in order to provide a reliable long-range planning tool for the legislature and state agencies;

(c) A capital plan consisting of proposed capital spending for at least four biennia succeeding the next biennium;

(d) A strategic plan for reducing backlogs of maintenance and repair projects. The plan shall include a prioritized list of specific facility deficiencies and capital projects to address the deficiencies for each agency, cost estimates for each project, a schedule for completing projects over a reasonable period of time, and identification of normal maintenance activities to reduce future backlogs;

(e) A statement of the reason or purpose for a project;

(f) Verification that a project is consistent with the provisions set forth in chapter 36.70A RCW;

(g) A statement about the proposed site, size, and estimated life of the project, if applicable;

(h) Estimated total project cost;

(i) For major projects valued over five million dollars, estimated costs for the following project components: Acquisition, consultant services, construction, equipment, project management, and other costs included as part of the project. Project component costs shall be displayed in a standard format defined by the office of financial management to allow comparisons between projects;

(j) Estimated total project cost for each phase of the project as defined by the office of financial management;

(k) Estimated ensuing biennium costs;

(l) Estimated costs beyond the ensuing biennium;

(m) Estimated construction start and completion dates;

(n) Source and type of funds proposed;

(o) Estimated ongoing operating budget costs or savings resulting from the project, including staffing and maintenance costs;

(p) For any capital appropriation requested for a state agency for the acquisition of land or the capital improvement of land in which the primary purpose of the acquisition or improvement is recreation or wildlife habitat conservation, the capital budget document, or an omnibus list of recreation and habitat acquisitions provided with the governor's budget document, shall identify the projected costs of operation and maintenance for at least the two biennia succeeding the next biennium. Omnibus lists of habitat and recreation land acquisitions shall include individual project cost estimates for operation and maintenance as well as a total for all state projects included in the list. The document shall identify the source of funds from which the operation and maintenance costs are proposed to be funded;

(q) Such other information bearing upon capital projects as the governor deems to be useful;

(r) Standard terms, including a standard and uniform definition of normal maintenance, for all capital projects;

(s) Such other information as the legislature may direct by law or concurrent resolution.

For purposes of this subsection (5), the term "capital project" shall be defined subsequent to the analysis, findings, and recommendations of a joint committee comprised of representatives from the house capital appropriations committee, senate ways and means committee, legislative evaluation and accountability program committee, and office of financial management.

(6) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session.

[2006 c 334 § 43. Prior: 2005 c 386 § 3; 2005 c 319 § 108; 2004 c 276 § 908; 2002 c 371 § 911; 2000 2nd sp.s. c 4 § 12; 1998 c 346 § 910; prior: 1997 c 168 § 5; 1997 c 96 § 4; prior: 1994 c 247 § 7; 1994 c 219 § 2; prior: 1991 c 358 § 1; 1991 c 284 § 1; 1990 c 115 § 1; prior: 1989 c 311 § 3; 1989 c 11 § 18; 1987 c 502 § 2; prior: 1986 c 215 § 3; 1986 c 112 § 1; 1984 c 138 § 7; 1981 c 270 § 3; 1980 c 87 § 26; 1977 ex.s. c 247 § 1; 1973 1st ex.s. c 100 § 3; 1965 c 8 § 43.88.030; prior: 1959 c 328 § 3.]

Notes:

Effective date -- 2006 c 334: See note following RCW 47.01.051.

Findings--Intent--Part headings--Effective dates -- 2005 c 319: See notes following RCW 43.17.020.

Severability -- Effective date -- 2004 c 276: See notes following RCW 43.330.167.

Severability -- Effective date -- 2002 c 371: See notes following RCW 9.46.100.

Construction -- Severability -- Effective date -- 1998 c 346: See notes following RCW 50.24.014.

Effective date -- 1997 c 168: See RCW 43.88C.900.

Findings -- Purpose -- 1997 c 96: See note following RCW 43.82.150.

Effective date -- 1994 c 247: See note following RCW 41.32.4991.

Finding -- 1994 c 219: "The legislature finds that the acquisition, construction, and management of state-owned and leased facilities has a profound and long-range effect upon the delivery and cost of state programs, and that there is an increasing need for better facility planning and management to improve the effectiveness and efficiency of state facilities." [1994 c 219 § 1.]

Effective date -- 1991 c 358: "This act shall take effect April 1, 1992." [1991 c 358 § 8.]

Severability -- 1989 c 11: See note following RCW 9A.56.220.



RCW 43.88.035

Changes in accounting methods, practices or statutes — Explanation in budget document or appendix required — Contents.

Any changes in accounting methods and practices or in statutes affecting expenditures or revenues for the ensuing biennium relative to the then current fiscal period which the governor may wish to recommend shall be clearly and completely explained in the text of the budget document, in a special appendix thereto, or in an alternative budget document. This explanatory material shall include, but need not be limited to, estimates of revenues and expenditures based on the same accounting practices and methods and existing statutes relating to revenues and expenditure effective for the then current fiscal period, together with alternative estimates required by any changes in accounting methods and practices and by any statutory changes the governor may wish to recommend.

[1973 1st ex.s. c 100 § 9.]



RCW 43.88.060

Legislative review of budget document and budget bill or bills — Time for submission.

The governor shall submit the budget document for the 1975-77 biennium and each succeeding biennium to the legislature no later than the twentieth day of December in the year preceding the session during which the budget is to be considered: PROVIDED, That where a budget document is submitted for a fiscal period other than a biennium, such document shall be submitted no less than twenty days prior to the first day of the session at which such budget document is to be considered. The governor shall also submit a budget bill or bills which for purposes of this chapter is defined to mean the appropriations proposed by the governor as set forth in the budget document. Such representatives of agencies as have been designated by the governor for this purpose shall, when requested, by either house of the legislature, appear to be heard with respect to the budget document and the budget bill or bills and to supply such additional information as may be required.

[1977 ex.s. c 247 § 2; 1973 1st ex.s. c 100 § 4; 1965 c 8 § 43.88.060. Prior: 1959 c 328 § 6.]



RCW 43.88.090

Development of budget — Detailed estimates — Mission statement, measurable goals, quality and productivity objectives — Integration of strategic plans and performance assessment procedures — Reviews by office of financial management — Governor-elect input.

(1) For purposes of developing budget proposals to the legislature, the governor shall have the power, and it shall be the governor's duty, to require from proper agency officials such detailed estimates and other information in such form and at such times as the governor shall direct. The governor shall communicate statewide priorities to agencies for use in developing biennial budget recommendations for their agency and shall seek public involvement and input on these priorities. The estimates for the legislature and the judiciary shall be transmitted to the governor and shall be included in the budget without revision. The estimates for state pension contributions shall be based on the rates provided in chapter 41.45 RCW. Copies of all such estimates shall be transmitted to the standing committees on ways and means of the house and senate at the same time as they are filed with the governor and the office of financial management.

The estimates shall include statements or tables which indicate, by agency, the state funds which are required for the receipt of federal matching revenues. The estimates shall be revised as necessary to reflect legislative enactments and adopted appropriations and shall be included with the initial biennial allotment submitted under RCW 43.88.110. The estimates must reflect that the agency considered any alternatives to reduce costs or improve service delivery identified in the findings of a performance audit of the agency by the joint legislative audit and review committee. Nothing in this subsection requires performance audit findings to be published as part of the budget.

(2) Each state agency shall define its mission and establish measurable goals for achieving desirable results for those who receive its services and the taxpayers who pay for those services. Each agency shall also develop clear strategies and timelines to achieve its goals. This section does not require an agency to develop a new mission or goals in place of identifiable missions or goals that meet the intent of this section. The mission and goals of each agency must conform to statutory direction and limitations.

(3) For the purpose of assessing activity performance, each state agency shall establish quality and productivity objectives for each major activity in its budget. The objectives must be consistent with the missions and goals developed under this section. The objectives must be expressed to the extent practicable in outcome-based, objective, and measurable form unless an exception to adopt a different standard is granted by the office of financial management and approved by the legislative committee on performance review. Objectives must specifically address the statutory purpose or intent of the program or activity and focus on data that measure whether the agency is achieving or making progress toward the purpose of the activity and toward statewide priorities. The office of financial management shall provide necessary professional and technical assistance to assist state agencies in the development of strategic plans that include the mission of the agency and its programs, measurable goals, strategies, and performance measurement systems.

(4) Each state agency shall adopt procedures for and perform continuous self-assessment of each activity, using the mission, goals, objectives, and measurements required under subsections (2) and (3) of this section. The assessment of the activity must also include an evaluation of major information technology systems or projects that may assist the agency in achieving or making progress toward the activity purpose and statewide priorities. The evaluation of proposed major information technology systems or projects shall be in accordance with the standards and policies established by the information services board. Agencies' progress toward the mission, goals, objectives, and measurements required by subsections (2) and (3) of this section is subject to review as set forth in this subsection.

(a) The office of financial management shall regularly conduct reviews of selected activities to analyze whether the objectives and measurements submitted by agencies demonstrate progress toward statewide results.

(b) The office of financial management shall consult with the higher education coordinating board and the state board for community and technical colleges in those reviews that involve institutions of higher education.

(c) The goal is for all major activities to receive at least one review each year.

(d) The office of financial management shall consult with the information services board when conducting reviews of major information technology systems in use by state agencies. The goal is that reviews of these information technology systems occur periodically.

(5) It is the policy of the legislature that each agency's budget recommendations must be directly linked to the agency's stated mission and program, quality, and productivity goals and objectives. Consistent with this policy, agency budget proposals must include integration of performance measures that allow objective determination of an activity's success in achieving its goals. When a review under subsection (4) of this section or other analysis determines that the agency's objectives demonstrate that the agency is making insufficient progress toward the goals of any particular program or is otherwise underachieving or inefficient, the agency's budget request shall contain proposals to remedy or improve the selected programs. The office of financial management shall develop a plan to merge the budget

development process with agency performance assessment procedures. The plan must include a schedule to integrate agency strategic plans and performance measures into agency budget requests and the governor's budget proposal over three fiscal biennia. The plan must identify those agencies that will implement the revised budget process in the 1997-1999 biennium, the 1999-2001 biennium, and the 2001-2003 biennium. In consultation with the legislative fiscal committees, the office of financial management shall recommend statutory and procedural modifications to the state's budget, accounting, and reporting systems to facilitate the performance assessment procedures and the merger of those procedures with the state budget process. The plan and recommended statutory and procedural modifications must be submitted to the legislative fiscal committees by September 30, 1996.

(6) In reviewing agency budget requests in order to prepare the governor's biennial budget request, the office of financial management shall consider the extent to which the agency's activities demonstrate progress toward the statewide budgeting priorities, along with any specific review conducted under subsection (4) of this section.

(7) In the year of the gubernatorial election, the governor shall invite the governor-elect or the governor-elect's designee to attend all hearings provided in RCW 43.88.100; and the governor shall furnish the governor-elect or the governor-elect's designee with such information as will enable the governor-elect or the governor-elect's designee to gain an understanding of the state's budget requirements. The governor-elect or the governor-elect's designee may ask such questions during the hearings and require such information as the governor-elect or the governor-elect's designee deems necessary and may make recommendations in connection with any item of the budget which, with the governor-elect's reasons therefor, shall be presented to the legislature in writing with the budget document. Copies of all such estimates and other required information shall also be submitted to the standing committees on ways and means of the house and senate.

[2005 c 386 § 2; 1997 c 372 § 1; 1996 c 317 § 10; 1994 c 184 § 10; 1993 c 406 § 3; 1989 c 273 § 26; 1987 c 505 § 35; 1984 c 247 § 3; 1981 c 270 § 4; 1979 c 151 § 137; 1975 1st ex.s. c 293 § 5; 1973 1st ex.s. c 100 § 6; 1965 c 8 § 43.88.090. Prior: 1959 c 328 § 9.]

Notes:

Short title -- 1993 c 406: See note following RCW 43.88.020.

Severability -- 1989 c 273: See RCW 41.45.900.

Effective date -- Severability -- 1981 c 270: See notes following RCW 43.88.010.



RCW 43.88.130

When contracts and expenditures prohibited.

No agency shall expend or contract to expend any money or incur any liability in excess of the amounts appropriated for that purpose: PROVIDED, That nothing in this section shall prevent the making of contracts or the spending of money for capital improvements, nor the making of contracts of lease or for service for a period exceeding the fiscal period in which such contract is made, when such contract is permitted by law. Any contract made in violation of this section shall be null and void.

[1965 c 8 § 43.88.130. Prior: 1959 c 328 § 13.]



RCW 74.15.030
Powers and duties of secretary.

The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(l) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability,

and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons.

[2007 c 387 § 5; 2007 c 17 § 14. Prior: 2006 c 265 § 402; 2006 c 54 § 8; 2005 c 490 § 11; prior: 2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3; prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Notes:

Reviser's note: This section was amended by 2007 c 17 § 14 and by 2007 c 387 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law -- Effective date -- Severability -- 2006 c 265: See RCW 43.215.904 through 43.215.906.

Part headings not law -- Severability -- Conflict with federal requirements -- Short title -- 2006 c 54: See RCW 41.56.911 through 41.56.914.

Effective date -- 2005 c 490: See note following RCW 43.215.540.

Application -- Effective date -- 1997 c 386: See notes following RCW 13.50.010.

Intent -- 1995 c 302: See note following RCW 74.15.010.

Purpose -- Intent -- Severability -- 1977 ex.s. c 80: See notes following RCW 4.16.190.



RCW 74.39A.240
Definitions.

The definitions in this section apply throughout RCW 74.39A.030 and 74.39A.095 and 74.39A.220 through 74.39A.300, 41.56.026, 70.127.041, and 74.09.740 unless the context clearly requires otherwise.

(1) "Authority" means the home care quality authority.

(2) "Board" means the board created under RCW 74.39A.230.

(3) "Consumer" means a person to whom an individual provider provides any such services.

(4) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

[2002 c 3 § 3 (Initiative Measure No. 775, approved November 6, 2001).]

Notes:

Findings--Captions not law--Severability -- 2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.



RCW 74.39A.250
Authority duties.

(1) The authority must carry out the following duties:

(a) Establish qualifications and reasonable standards for accountability for and investigate the background of individual providers and prospective individual providers, except in cases where, after the department has sought approval of any appropriate amendments or waivers under RCW 74.09.740, federal law or regulation requires that such qualifications and standards for accountability be established by another entity in order to preserve eligibility for federal funding. Qualifications established must include compliance with the minimum requirements for training and satisfactory criminal background checks as provided in RCW 74.39A.050 and confirmation that the individual provider or prospective individual provider is not currently listed on any long-term care abuse and neglect registry used by the department at the time of the investigation;

(b) Undertake recruiting activities to identify and recruit individual providers and prospective individual providers;

(c) Provide training opportunities, either directly or through contract, for individual providers, prospective individual providers, consumers, and prospective consumers;

(d) Provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the authority shall determine that:

(i) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW 74.39A.050;

(ii) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(iii) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department;

(e) Remove from the referral registry any individual provider or prospective individual provider the authority determines not to meet the qualifications set forth in (d) of this subsection or to have committed misfeasance or malfeasance in the performance of his or her duties as an individual provider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW;

(f) Provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider;

(g) Give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment; and

(h) Cooperate with the department, area agencies on aging, and other federal, state, and local agencies to provide the services described and set forth in this section. If, in the course of carrying out its duties, the authority identifies concerns regarding the services being provided by an individual provider, the authority must notify the relevant area agency or department case manager regarding such concerns.

(2) In determining how best to carry out its duties, the authority must identify existing individual provider recruitment, training, and referral resources made available to consumers by other state and local public, private, and nonprofit agencies. The authority may coordinate with the agencies to provide a local presence for the authority and to provide consumers greater access to individual provider recruitment, training, and referral resources in a cost-effective manner. Using requests for proposals or similar processes, the authority may contract with the agencies to provide recruitment, training, and referral services if the authority determines the agencies can provide the services according to reasonable standards of performance determined by the authority. The authority must provide an opportunity for consumer participation in the determination of the standards.

[2002 c 3 § 4 (Initiative Measure No. 775, approved November 6, 2001).]

Notes:

Findings--Captions not law--Severability -- 2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.



RCW 74.39A.270

Collective bargaining — Circumstances in which individual providers are considered public employees — Exceptions.

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

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

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

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

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

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

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

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

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

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

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

(5) In implementing and administering this chapter, neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

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

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee

appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

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

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

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

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

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

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

(8)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(b) The members of the board are immune from any liability resulting from implementation of this chapter.

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

[2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Notes:

Reviser's note: This section was amended by 2007 c 278 § 3 and by 2007 c 361 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2007 c 361 §§ 7 and 8: "Sections 7 and 8 of this act take effect March 1, 2008." [2007 c 361 § 14.]

Construction -- Severability -- Captions not law -- Short title -- 2007 c 361: See notes following RCW 74.39A.009.

Effective date -- 2006 c 106: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2006]." [2006 c 106 § 2.]

Severability -- 2004 c 3: "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." [2004 c

3 § 8.]

Effective date -- 2004 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]

Findings--Captions not law--Severability -- 2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.



RCW 74.39A.300
Funding.

(1) Upon meeting the requirements of subsection (2) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to administer chapter 3, Laws of 2002 and to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 or for legislation necessary to implement such agreement.

(2) A request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 shall not be submitted by the governor to the legislature unless such request:

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

(b) Has been certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under RCW 74.39A.270(2)(c).

(3) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(4) When any increase in individual provider wages or benefits is negotiated or agreed to, no increase in wages or benefits negotiated or agreed to under this chapter will take effect unless and until, before its implementation, the department has determined that the increase is consistent with federal law and federal financial participation in the provision of services under Title XIX of the federal social security act.

(5) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and fringe benefits provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(6) After the expiration date of any collective bargaining agreement entered into under RCW 74.39A.270, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in RCW 74.39A.270(6)(f).

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

[2004 c 3 § 2; 2002 c 3 § 9 (Initiative Measure No. 775, approved November 6, 2001).]

Notes:

Severability -- Effective date -- 2004 c 3: See notes following RCW 74.39A.270.

Findings--Captions not law--Severability -- 2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.



RCW 74.39A.310

Contract for individual home care services providers — Cost of increase in wages and benefits funded — Formula.

(1) The department shall create a formula that converts the cost of the increase in wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those benefits defined in subsection (2) of this section. That per-hour amount shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

(a) All types of wages, benefits, and compensation negotiated and funded each biennium, including but not limited to:

(i) Regular wages;

(ii) Benefit pay, such as vacation, sick, and holiday pay;

(iii) Taxes on wages/benefit pay;

(iv) Mileage; and

(v) Contributions to a training partnership; and

(b) The increase in the average cost of worker's compensation for home care agencies and application of the increases identified in (a) of this subsection to all hours required to be paid, including travel time, of direct service workers under the wage and hour laws and associated employer taxes.

(2) The contribution rate for health care benefits, including but not limited to medical, dental, and vision benefits, for eligible agency home care workers shall be paid by the department to home care agencies at the same rate as negotiated and funded in the collective bargaining agreement for individual providers of home care services.

[2007 c 361 § 8; 2006 c 9 § 1.]

Notes:

Effective date -- 2007 c 361 §§ 7 and 8: See note following RCW 74.39A.270.

Construction -- Severability -- Captions not law -- Short title -- 2007 c 361: See notes following RCW 74.39A.009.

Temporary rate increase--2006 c 9: "For the fiscal year ending June 30, 2007, the per-hour amount added to the home care agency vendor rate pursuant to section 1(1)(a) of this act shall be limited to the cost of: (1) A \$0.02 per-hour increase in wages, plus the employer share of unemployment and social security taxes on the amount of the increase; and (2) the cost of annual leave benefits negotiated and funded for individual providers of home care services. This section expires June 30, 2007." [2006 c 9 § 2.]

Effective date -- 2006 c 9: "This act takes effect July 1, 2006." [2006 c 9 § 3.]



RCW 82.33.010

Economic and revenue forecast council — Oversight and approval of economic and revenue forecasts.

(1) The economic and revenue forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts. As used in this chapter, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(3) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official, optimistic, and pessimistic state economic and revenue forecasts prepared under RCW 82.33.020. If the council is unable to approve a forecast before a date required in RCW 82.33.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(4) A council member who does not cast an affirmative vote for approval of the official economic and revenue forecast may request, and the supervisor shall provide, an alternative economic and revenue forecast based on assumptions specified by the member.

(5) Members of the economic and revenue forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

[1990 c 229 § 1; 1984 c 138 § 4. Formerly RCW 82.01.130.]

Notes:

Effective date -- 1990 c 229: See note following RCW 41.06.087.



RCW 82.33.020

Economic and revenue forecast supervisor — Economic and revenue forecasts — Submittal of forecasts — Estimated tuition fees revenue.

(1) Four times each year the supervisor shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

- (a) An official state economic and revenue forecast;
- (b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and
- (c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(2) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 20th, and September 20th. All forecasts shall include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information shall be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff shall co-locate and share information, data, and files with the tax research section of the department of revenue but shall not duplicate the duties and functions of one another.

(5) As part of its forecasts under subsection (1) of this section, the supervisor shall provide estimated revenue from tuition fees as defined in RCW 28B.15.020.

[2005 c 319 § 137; 1992 c 231 § 34; 1990 c 229 § 2. Prior: 1987 c 505 § 79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1. Formerly RCW 82.01.120.]

Notes:

Findings -- Intent -- Part headings -- Effective dates -- 2005 c 319: See notes following RCW 43.17.020.

Effective date -- 1992 c 231: See note following RCW 28B.10.016.

Effective date -- 1990 c 229: See note following RCW 41.06.087.