

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5055

Chapter 13, Laws of 2021

67th Legislature
2021 Regular Session

LAW ENFORCEMENT DISCIPLINARY GRIEVANCE ARBITRATION

EFFECTIVE DATE: July 25, 2021

Passed by the Senate February 18,
2021

Yeas 41 Nays 8

DENNY HECK

President of the Senate

Passed by the House March 24, 2021

Yeas 60 Nays 38

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved April 7, 2021 3:39 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5055** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

April 7, 2021

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5055

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Nguyen, Saldaña, Billig, Darneille, Das, Hunt, Keiser, Kuderer, Liiias, Lovelett, Nobles, Stanford, and Wilson, C.)

READ FIRST TIME 02/04/21.

1 AN ACT Relating to establishing a statewide roster for
2 arbitrating law enforcement personnel disciplinary grievances and
3 publishing their decisions; amending RCW 41.56.122, 41.56.125,
4 41.56.905, 36.65.050, 41.80.020, and 41.80.030; reenacting and
5 amending RCW 41.56.030; and adding a new section to chapter 41.58
6 RCW.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 41.58
9 RCW to read as follows:

10 (1) For the purposes of this section, the definitions in this
11 subsection have the meanings given them.

12 (a) "Employer" means a political subdivision or law enforcement
13 agency employing law enforcement personnel.

14 (b)(i) "Law enforcement personnel" means:

15 (A) Any individual employed, hired, or otherwise commissioned to
16 enforce criminal laws by any municipal, county, or state agency or
17 department, or combination thereof, that has, as its primary
18 function, the enforcement of criminal laws in general, rather than
19 the implementation or enforcement of laws related to specialized
20 subject matter areas. For the purposes of this subsection (1)(b),

1 officers employed, hired, or otherwise commissioned by the department
2 of fish and wildlife are considered law enforcement personnel.

3 (B) Corrections officers and community corrections officers
4 employed by the department of corrections.

5 (ii) "Law enforcement personnel" does not include any individual
6 hired as an attorney to prosecute or litigate state or local criminal
7 laws or ordinances, nor any civilian individuals hired to do
8 administrative work.

9 (iii) For the purposes of this subsection (1)(b), "primary
10 function" means that function to which the greater allocation of
11 resources is made.

12 (c) "Disciplinary grievance" means a dispute or disagreement
13 regarding any disciplinary action, discharge, or termination decision
14 arising under a collective bargaining agreement covering law
15 enforcement personnel.

16 (d) "Grievance arbitration" means binding arbitration of a
17 disciplinary grievance under the grievance procedures established in
18 a collective bargaining agreement covering law enforcement personnel.

19 (2)(a) The arbitrator selection procedure established under this
20 section applies to all grievance arbitrations for disciplinary
21 actions, discharges, or terminations of law enforcement personnel
22 which are heard on or after January 1, 2022.

23 (b)(i) The grievance procedures for all collective bargaining
24 agreements covering law enforcement personnel negotiated or renewed
25 on or after January 1, 2022, must include the arbitrator selection
26 procedure established in this section if the collective bargaining
27 agreement provides for arbitration as a means of resolving grievances
28 for disciplinary actions, discharges, or terminations.

29 (ii) The provisions of grievance procedures governing the appeal
30 of disciplinary grievances in collective bargaining agreements
31 covering law enforcement personnel negotiated or renewed prior to
32 January 1, 2022, that provide for arbitration but do not contain the
33 arbitrator selection procedures established in this section expire
34 upon the expiration date of the collective bargaining agreement and
35 may not be extended or rolled over beyond the expiration date of the
36 collective bargaining agreement.

37 (c) This section does not require any party to a collective
38 bargaining agreement in existence on the effective date of this
39 section to reopen negotiations of the agreement or to apply any of
40 the rights and responsibilities under this act unless and until the

1 existing agreement is reopened or renegotiated by the parties or
2 expires.

3 (3) All fees charged by arbitrators under this section must be in
4 accordance with a schedule of fees established by the commission on
5 an annual basis. The parties are responsible for paying the
6 arbitrator's fees as set forth in the parties' negotiated fee-sharing
7 provisions of their collective bargaining agreement or, in the
8 absence of contractual fee-sharing provisions, shall be borne equally
9 by the parties.

10 (4) The commission must appoint a roster of a minimum of nine
11 persons and a maximum of 18 persons suited and qualified by training
12 and experience to act as arbitrators for law enforcement personnel
13 grievance arbitrations under this section.

14 (a) The commission may only consider appointing persons who
15 possess:

16 (i) A minimum of six years' experience as a full-time labor
17 relations advocate and who has been the principal representative of
18 either labor or management in at least 10 arbitration proceedings;

19 (ii) A minimum of six years' experience as a full-time labor
20 mediator with substantial mediation experience;

21 (iii) A minimum of six years' experience as an arbitrator and who
22 has decided at least 10 cases involving collective bargaining
23 disputes; or

24 (iv) A minimum of six years' experience as a practitioner or
25 full-time instructor of labor law or industrial relations, including
26 substantial content in the area of collective bargaining, labor
27 agreements, and contract administration.

28 (b) In making these appointments, and as applicable, the
29 commission must consider these factors:

30 (i) A candidate's familiarity, experience, and technical and
31 theoretical understanding of and experience with labor law, the
32 grievance process, and the field of labor arbitration;

33 (ii) A candidate's ability and willingness to travel through the
34 state, conduct hearings in a fair and impartial manner, analyze and
35 evaluate testimony and exhibits, write clear and concise awards in a
36 timely manner, and be available for hearings within a reasonable time
37 after the request of the parties;

38 (iii) A candidate's experience and training in cultural
39 competency, racism, implicit bias, and recognizing and valuing
40 community diversity and cultural differences; and

1 (iv) A candidate's familiarity and experience with the law
2 enforcement profession, including ride-alongs with on-duty officers,
3 participation in a citizen's academy conducted by a law enforcement
4 agency, or other activities that provide exposure to the
5 environments, choices, and judgments required by officers in the
6 field.

7 (5) The appointments are effective immediately upon selection by
8 the commission. Except for appointments subject to subsection (6) of
9 this section, appointments are for three years to expire on the first
10 Monday in January.

11 (6) The commission must make at least three of the initial
12 appointments to the roster of arbitrators for terms to expire on the
13 first Monday in January 2024, at least three of the appointments for
14 terms to expire on the first Monday in January 2025, and at least
15 three of the appointments for terms to expire on the first Monday in
16 January 2026. The initial terms of arbitrators appointed under this
17 subsection may be for longer than three years.

18 (7) Subsequent appointments to the roster of arbitrators must be
19 for three-year terms to expire on the first Monday in January, with
20 the terms of no more than three arbitrators to expire in the same
21 year.

22 (8) Nothing in this section prevents roster arbitrators from
23 issuing decisions, or retaining jurisdiction to address issues
24 relating to remedy, after the expiration of their term, if the
25 arbitration hearing occurred during the term of their appointment.

26 (9) An arbitrator may be reappointed to the roster upon
27 expiration of the arbitrator's term. If the arbitrator is not
28 reappointed, the arbitrator may continue to serve until a successor
29 is appointed, but in no case later than July 1st of the year in which
30 the arbitrator's term expires.

31 (10) The commission may remove an arbitrator from the roster
32 through a majority vote. A vacancy on the roster caused by a removal,
33 a resignation, or another reason must be filled by the commission as
34 necessary to fill the remainder of the arbitrator's term. A vacancy
35 on the roster occurring with less than six months remaining in the
36 arbitrator's term must be filled for the existing term and the
37 following three-year term.

38 (11) A person appointed to the arbitrator roster under this
39 section must complete training as developed, implemented, and
40 required by the executive director. The commission may adopt rules

1 establishing training requirements consistent with this section. The
2 commission may also establish fees in order to cover the costs of
3 developing and providing the training. At a minimum, an initial
4 training must include:

5 (a) At least six hours on the topics of cultural competency,
6 racism, implicit bias, and recognizing and valuing community
7 diversity and cultural differences; and

8 (b) At least six hours on topics related to the daily experience
9 of law enforcement personnel, which may include ride-alongs with on-
10 duty officers, participation in a citizen's academy conducted by a
11 law enforcement agency, shoot/don't shoot training provided by a law
12 enforcement agency, or other activities that provide exposure to the
13 environments, choices, and judgments required of officers in the
14 field. For the purposes of this subsection (11)(b), "shoot/don't
15 shoot training" means an interactive firearms training that simulates
16 real-world scenarios to train law enforcement personnel on the use of
17 force.

18 (12) An arbitrator appointed to the roster of arbitrators must
19 complete the required initial training within six months of the
20 arbitrator's appointment.

21 (13)(a) The executive director must assign an arbitrator or panel
22 of arbitrators from the roster to each law enforcement personnel
23 grievance arbitration under this section on rotation through the
24 roster alphabetically ordered by last name.

25 (i) If the arbitrator is unable to hear the case within three
26 months from the request for an arbitrator, the executive director
27 must appoint the next arbitrator from the roster alphabetically.

28 (ii) If an arbitrator has a conflict of interest that may
29 reasonably be expected to materially impact the arbitrator's
30 impartiality, the arbitrator must disclose such conflict to the
31 executive director. The executive director may determine whether the
32 conflict merits assigning the next arbitrator on the roster. Either
33 party may petition the executive director to have an assigned
34 arbitrator removed due to a conflict of interest that may reasonably
35 be expected to materially impact the arbitrator's impartiality. If
36 their petition is granted by the executive director, the executive
37 director must assign the next arbitrator or panel of arbitrators on
38 the roster.

1 (b) The arbitrator or panel of arbitrators shall decide the
2 disciplinary grievance, and the decision is binding subject to the
3 provisions of chapter 7.04A RCW.

4 (c) The parties may not participate in, negotiate for, or agree
5 to the selection of an arbitrator or arbitration panel under this
6 section. Employers and law enforcement personnel, through their
7 certified exclusive bargaining representatives, do not have the right
8 to negotiate for or agree to a collective bargaining agreement or a
9 grievance arbitration selection procedure that is inconsistent with
10 this section, if the collective bargaining agreement provides for
11 arbitration as a means of resolving grievances for disciplinary
12 actions, discharges, or terminations.

13 (14) The commission must post law enforcement grievance
14 arbitration decisions made under this section on its website within
15 30 days of the date the grievance arbitration decision is made, with
16 names of grievants and witnesses redacted.

17 (15) The arbitrator selection procedure for law enforcement
18 grievance arbitrations established under this section supersedes any
19 inconsistent provisions in any other chapter governing employee
20 relations and collective bargaining for law enforcement personnel.

21 **Sec. 2.** RCW 41.56.122 and 2019 c 230 s 11 are each amended to
22 read as follows:

23 ((A)) Subject to section 1 of this act, a collective bargaining
24 agreement may provide for binding arbitration of a labor dispute
25 arising from the application or the interpretation of the matters
26 contained in a collective bargaining agreement.

27 **Sec. 3.** RCW 41.56.125 and 1975 1st ex.s. 296 s 23 are each
28 amended to read as follows:

29 ((~~It~~)) Except for law enforcement personnel grievance
30 arbitrations subject to section 1 of this act, in addition to any
31 other method for selecting arbitrators, the parties may request the
32 public employment relations commission to, and the commission shall,
33 appoint a qualified person who may be an employee of the commission
34 to act as an arbitrator to assist in the resolution of a labor
35 dispute between such public employer and such bargaining
36 representative arising from the application of the matters contained
37 in a collective bargaining agreement. The arbitrator shall conduct
38 such arbitration of such dispute in a manner as provided for in the

collective bargaining agreement: PROVIDED, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: PROVIDED FURTHER, That the provisions of chapter 49.08 RCW shall have no application to this chapter.

Sec. 4. RCW 41.56.905 and 1983 c 287 s 5 are each amended to read as follows:

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015 and section 1 of this act, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

Sec. 5. RCW 36.65.050 and 1984 c 91 s 5 are each amended to read as follows:

~~((If))~~ Subject to the requirements of RCW 41.56.100 and section 1 of this act, if the city-county government includes a fire protection or law enforcement unit that was, prior to the formation of the city-county, governed by a state statute providing for binding arbitration in collective bargaining, then the entire fire protection or law enforcement unit of the city-county shall be governed by that statute.

Sec. 6. RCW 41.80.020 and 2015 3rd sp.s. c 1 s 318 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of financial management, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

1 (3) Matters subject to bargaining include the number of names to
2 be certified for vacancies, promotional preferences, and the dollar
3 amount expended on behalf of each employee for health care benefits.
4 However, except as provided otherwise in this subsection for
5 institutions of higher education, negotiations regarding the number
6 of names to be certified for vacancies, promotional preferences, and
7 the dollar amount expended on behalf of each employee for health care
8 benefits shall be conducted between the employer and one coalition of
9 all the exclusive bargaining representatives subject to this chapter.
10 The exclusive bargaining representatives for employees that are
11 subject to chapter 47.64 RCW shall bargain the dollar amount expended
12 on behalf of each employee for health care benefits with the employer
13 as part of the coalition under this subsection. Any such provision
14 agreed to by the employer and the coalition shall be included in all
15 master collective bargaining agreements negotiated by the parties.
16 For institutions of higher education, promotional preferences and the
17 number of names to be certified for vacancies shall be bargained
18 under the provisions of RCW 41.80.010(4). For agreements covering the
19 2013-2015 fiscal biennium, any agreement between the employer and the
20 coalition regarding the dollar amount expended on behalf of each
21 employee for health care benefits is a separate agreement and shall
22 not be included in the master collective bargaining agreements
23 negotiated by the parties.

24 (4) The employer and the exclusive bargaining representative
25 shall not agree to any proposal that would prevent the implementation
26 of approved affirmative action plans or that would be inconsistent
27 with the comparable worth agreement that provided the basis for the
28 salary changes implemented beginning with the 1983-1985 biennium to
29 achieve comparable worth.

30 (5) The employer and the exclusive bargaining representative
31 shall not bargain over matters pertaining to management rights
32 established in RCW 41.80.040.

33 (6) Except as otherwise provided in this chapter, if a conflict
34 exists between an executive order, administrative rule, or agency
35 policy relating to wages, hours, and terms and conditions of
36 employment and a collective bargaining agreement negotiated under
37 this chapter, the collective bargaining agreement shall prevail. A
38 provision of a collective bargaining agreement that conflicts with
39 the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142.

(8) Section 1 of this act applies to uniformed personnel.

Sec. 7. RCW 41.56.030 and 2020 c 298 s 1 and 2020 c 289 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "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.

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

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

(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, subject to section 1 of this act, 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) "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) under chapter 43.216 RCW, is either licensed by the state or is exempt from licensing.

1 (8) "Fish and wildlife officer" means a fish and wildlife officer
2 as defined in RCW 77.08.010 who ranks below lieutenant and includes
3 officers, detectives, and sergeants of the department of fish and
4 wildlife.

5 (9) "Individual provider" means an individual provider as defined
6 in RCW 74.39A.240(3) who, solely for the purposes of collective
7 bargaining, is a public employee as provided in RCW 74.39A.270.

8 (10) "Institution of higher education" means the University of
9 Washington, Washington State University, Central Washington
10 University, Eastern Washington University, Western Washington
11 University, The Evergreen State College, and the various state
12 community colleges.

13 (11)(a) "Language access provider" means any independent
14 contractor who provides spoken language interpreter services, whether
15 paid by a broker, language access agency, or the respective
16 department:

17 (i) For department of social and health services appointments,
18 department of children, youth, and families appointments, medicaid
19 enrollee appointments, or who provided these services on or after
20 January 1, 2011, and before June 10, 2012;

21 (ii) For department of labor and industries authorized medical
22 and vocational providers who provided these services on or after
23 January 1, 2019; or

24 (iii) For state agencies who provided these services on or after
25 January 1, 2019.

26 (b) "Language access provider" does not mean a manager or
27 employee of a broker or a language access agency.

28 (12) "Public employee" means any employee of a public employer
29 except any person (a) elected by popular vote, or (b) appointed to
30 office pursuant to statute, ordinance or resolution for a specified
31 term of office as a member of a multimember board, commission, or
32 committee, whether appointed by the executive head or body of the
33 public employer, or (c) whose duties as deputy, administrative
34 assistant or secretary necessarily imply a confidential relationship
35 to (i) the executive head or body of the applicable bargaining unit,
36 or (ii) any person elected by popular vote, or (iii) any person
37 appointed to office pursuant to statute, ordinance or resolution for
38 a specified term of office as a member of a multimember board,
39 commission, or committee, whether appointed by the executive head or
40 body of the public employer, or (d) who is a court commissioner or a

1 court magistrate of superior court, district court, or a department
2 of a district court organized under chapter 3.46 RCW, or (e) who is a
3 personal assistant to a district court judge, superior court judge,
4 or court commissioner. For the purpose of (e) of this subsection, no
5 more than one assistant for each judge or commissioner may be
6 excluded from a bargaining unit.

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

16 (14) "Uniformed personnel" means: (a) Law enforcement officers as
17 defined in RCW 41.26.030 employed by the governing body of any city
18 or town with a population of two thousand five hundred or more and
19 law enforcement officers employed by the governing body of any county
20 with a population of ten thousand or more; (b) correctional employees
21 who are uniformed and nonuniformed, commissioned and noncommissioned
22 security personnel employed in a jail as defined in RCW 70.48.020(9),
23 by a county with a population of seventy thousand or more, in a
24 correctional facility created under RCW 70.48.095, or in a detention
25 facility created under chapter 13.40 RCW that is located in a county
26 with a population over one million five hundred thousand, and who are
27 trained for and charged with the responsibility of controlling and
28 maintaining custody of inmates in the jail and safeguarding inmates
29 from other inmates; (c) general authority Washington peace officers
30 as defined in RCW 10.93.020 employed by a port district in a county
31 with a population of one million or more; (d) security forces
32 established under RCW 43.52.520; (e) firefighters as that term is
33 defined in RCW 41.26.030; (f) employees of a port district in a
34 county with a population of one million or more whose duties include
35 crash fire rescue or other firefighting duties; (g) employees of fire
36 departments of public employers who dispatch exclusively either fire
37 or emergency medical services, or both; (h) employees in the several
38 classes of advanced life support technicians, as defined in RCW
39 18.71.200, who are employed by a public employer; or (i) court
40 marshals of any county who are employed by, trained for, and

1 commissioned by the county sheriff and charged with the
2 responsibility of enforcing laws, protecting and maintaining security
3 in all county-owned or contracted property, and performing any other
4 duties assigned to them by the county sheriff or mandated by judicial
5 order.

6 **Sec. 8.** RCW 41.80.030 and 2002 c 354 s 304 are each amended to
7 read as follows:

8 (1) The parties to a collective bargaining agreement shall reduce
9 the agreement to writing and both shall execute it.

10 (2) ((A)) Except as provided in section 1 of this act and RCW
11 41.80.020, a collective bargaining agreement shall contain provisions
12 that:

13 (a) Provide for a grievance procedure that culminates with final
14 and binding arbitration of all disputes arising over the
15 interpretation or application of the collective bargaining agreement
16 and that is valid and enforceable under its terms when entered into
17 in accordance with this chapter; and

18 (b) Require processing of disciplinary actions or terminations of
19 employment of employees covered by the collective bargaining
20 agreement entirely under the procedures of the collective bargaining
21 agreement. Any employee, when fully reinstated, shall be guaranteed
22 all employee rights and benefits, including back pay, sick leave,
23 vacation accrual, and retirement and federal old age, survivors, and
24 disability insurance act credits, but without back pay for any period
25 of suspension.

26 (3)(a) If a collective bargaining agreement between an employer
27 and an exclusive bargaining representative is concluded after the
28 termination date of the previous collective bargaining agreement
29 between the employer and an employee organization representing the
30 same bargaining units, the effective date of the collective
31 bargaining agreement may be the day after the termination of the
32 previous collective bargaining agreement, and all benefits included
33 in the new collective bargaining agreement, including wage or salary
34 increases, may accrue beginning with that effective date.

35 (b) If a collective bargaining agreement between an employer and
36 an exclusive bargaining representative is concluded after the
37 termination date of the previous collective bargaining agreement
38 between the employer and the exclusive bargaining representative
39 representing different bargaining units, the effective date of the

1 collective bargaining agreement may be the day after the termination
2 date of whichever previous collective bargaining agreement covering
3 one or more of the units terminated first, and all benefits included
4 in the new collective bargaining agreement, including wage or salary
5 increases, may accrue beginning with that effective date.

Passed by the Senate February 18, 2021.

Passed by the House March 24, 2021.

Approved by the Governor April 7, 2021.

Filed in Office of Secretary of State April 7, 2021.

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