

## SB 5545 and HB 1287: Requiring government employee collective bargaining sessions to be open to the public

By Jason Mercier, Director, Center for Government Reform

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### Key Findings

1. **Since 2004 the governor of Washington has negotiated in secret with union executives to decide how much taxpayers will pay government employees.**
2. **Before 2004 those decisions were made in public as part of the normal legislative budget process, with open votes on changes and amendments.**
3. **SB 5545 and HB 1287 would promote open government by making employee contract talks subject to the state's open meetings law.**
4. **Several states already ensure that the public and union members themselves are not shut out of the collective-bargaining talks with government unions.**
5. **Two local governments in Washington State have also recently embraced contract transparency.**
6. **Open contract meetings would work against the appearance of secret deal making with campaign contributors.**

### Introduction

Since 2004 the governor of Washington has had the ability to negotiate secretly with state employee unions to decide how much taxpayers will provide for compensation for government employees.

Before 2004 those spending decisions were made in public as part of the normal legislative budget process, with the opportunity to comment in public hearings before compensation promises were made. Now, lawmakers only have the ability to say “yes” or “no” to these secretly negotiated contracts, with no possibility of changes or amendments. The people’s elected lawmakers are not allowed to propose alternatives as they work on the 2017-19 state budget.

To provide more transparency into this secretive process, proposed bills SB 5545 and HB 1287 would open these negotiations in the future under the state’s open public meetings law, so that the public, the media, government employees, and elected lawmakers could see what tradeoffs and promises are being proposed before the final agreements are reached. The bills propose a transparent process similar to the one used in several other states when deciding the compensation of government employees and the amount of tax dollars required to fund the agreements.

### Example from other states

When announcing the first secretly negotiated state employee contracts in 2004, then Governor Gary Locke said:

*“This year’s contract negotiations mark the first time in state history that unions have been able to bargain with the state for wages and benefits. The new personnel reform law passed by the Legislature in 2002 expanded the state’s collective bargaining activities to include*

wages and benefits. In the past, the Legislature unilaterally set those terms.”<sup>1</sup>

Governor Locke failed to note, however, that this was also the first time in state history these spending decisions were not made in public.

Those opposed to the reform proposed by SB 5545 and HB 1287 have said that making government employee contract negotiations in Washington transparent is not necessary, since citizens are able to make public records requests for all the documents and contract proposals to get a clearer picture of what happened between the governor and union executives behind closed doors.

According to the Office of Financial Management, however, none of the offers or counteroffers (other than the final contract) will be released publicly until after the legislature approves the contracts and the governor signs them into law.<sup>2</sup> This means the public, media, government employees, and lawmakers are not able to see the details covering months of talks until after the taxpayer funding for the contracts is already provided.

While SB 5545 and HB 1287 would retain the governor’s exclusive authority to negotiate directly with state employee unions, it would provide more transparency in how these decisions promising taxpayer resources are made. Several states ensure that the public is not shut out of the collective-bargaining process with government unions.<sup>3</sup>

Some states open the entire negotiation process to the public, while others include an exemption when government officials are strategizing among themselves. Once public

1 “State, Unions Reach Tentative Agreement,” Press Release, Office of Governor Gary Locke, September 13, 2004, at <http://www.digitalarchives.wa.gov/governorlocke/press/press-view.asp?pressRelease=1689&newsType=1>.

2 E-mail from Ralph Thomas, Office of Financial Management, November 25, 2014, copy available on request.

3 “Do you know how the current state contract negotiations are going?,” by Jason Mercier, blogpost, Washington Policy Center, June 9, 2014, at <http://www.washingtonpolicy.org/blog/post/do-you-know-how-current-state-contract-negotiations-are-going>

officials meet with union negotiators, however, the public is allowed to monitor the process.

This is exactly what occurs in Florida. As that state’s Attorney General explains:

*“The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law.”*<sup>4</sup>

The Governor of Idaho also recently signed into law a bipartisan bill passed unanimously by both the Idaho house and senate to bring public employee union negotiations under the open meetings law.<sup>5</sup> The lack of dissent on this reform in Idaho shows transparency for public union negotiations enjoys the broad support of both parties.

Two local governments in Washington have recently embraced contract transparency. The first was Lincoln County on September 6, 2016.<sup>6</sup> The Pullman School District adopted contract transparency on January 25, 2017.<sup>7</sup>

## Differences between SB 5545 and HB 1287

Both SB 5545 and HB 1287 would require government employment contracts to be subject to open meetings. SB 5545, however, provides for the option to video tape the meeting instead if the video is posted online for the public to view within 24 hours of the

4 “What types of discussions are covered by the Sunshine Law?,” Florida Office of the Attorney General, January 4, 2011 at <http://www.myflsunshine.com/sun.nsf/manual/d7b6960216b3f10b852566f300571852>.

5 “House Bill 167 – Relating to Labor,” Idaho Legislature, April 6, 2015, at <http://www.legislature.idaho.gov/legislation/2015/H0167.htm>.

6 “Lincoln County embraces collective bargaining transparency,” by Jason Mercier, Press Release, Washington Policy Center, September 8, 2016, at <http://www.washingtonpolicy.org/publications/detail/lincoln-county-embraces-collective-bargaining-transparency>.

7 “Pullman Teacher’s Union Becomes First in Washington Required to Negotiate Contracts in Public,” by Evan Ellis, Pullman Radio (1150 AM), January 25, 2017, at <http://pullmanradio.com/pullman-teachers-union-becomes-first-in-wa-now-required-to-negotiate-contracts-in-public/>.

meeting. Though an improvement over the total secrecy currently allowed under the law, the live public access to the meeting provided under HB 1287 is preferable. If the video taped option of SB 5545 is enacted, there should be clear penalties prescribed for failing to post the video and any money charge for viewing the video should be explicitly prohibited.

## Conclusion

State and local employment contracts should not be negotiated in secret. The public provides the money for these agreements. Taxpayers should be allowed to follow the process and hold government officials accountable for the spending decisions they make on our behalf. Government employees should also be able to see firsthand what offers and counteroffers are being made in their name. Open public meetings would identify whether one side is being unreasonable, and would quickly reveal who is acting in bad faith.

As noted by the recent Lincoln County contract transparency resolution:

*“Both taxpayers and employees deserve to know how they are being represented during collective bargaining negotiations; and the impression of secret deal-making will be eliminated by making collective bargaining negotiations open to the public.”<sup>8</sup>*

A broader conversation should occur about how the relatively new state collective-bargaining process, which took effect in 2004, is working. Even if mandatory government collective bargaining is retained, lawmakers should end the shroud of secrecy that surrounds the current negotiations as proposed by SB 5545 and HB 1287.

*Jason Mercier is  
Washington Policy Center’s  
Center for Government  
Reform Research Director.*

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8 “Lincoln County embraces collective bargaining transparency,” by Jason Mercier, Press Release, Washington Policy Center, September 8, 2016, at <http://www.washingtonpolicy.org/publications/detail/lincoln-county-embraces-collective-bargaining-transparency>.