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ENGROSSED SUBSTITUTE HOUSE BILL 1916

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State of Washington

60th Legislature

2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Ericksen, Moeller, Strow, Green, Haler, Appleton, Seaquist, Chase, Priest, McDermott, Walsh, Ormsby, Hasegawa, Fromhold, Kessler, Dunshee, Dunn, Sells, Wood, P. Sullivan, Kenney and Morrell)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to interest arbitration regarding certain care  
2 providers; and amending RCW 41.56.465, 41.56.028, and 74.39A.270.

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

4 **Sec. 1.** RCW 41.56.465 and 1995 c 273 s 2 are each amended to read  
5 as follows:

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

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

11 (b) Stipulations of the parties;

12 (c) ~~((i) For employees listed in RCW 41.56.030(7) (a) through (d),~~  
13 ~~comparison of the wages, hours, and conditions of employment of~~  
14 ~~personnel involved in the proceedings with the wages, hours, and~~  
15 ~~conditions of employment of like personnel of like employers of similar~~  
16 ~~size on the west coast of the United States;~~

17 ~~((ii) For employees listed in RCW 41.56.030(7) (e) through (h),~~  
18 ~~comparison of the wages, hours, and conditions of employment of~~  
19 ~~personnel involved in the proceedings with the wages, hours, and~~

1 ~~conditions of employment of like personnel of public fire departments~~  
2 ~~of similar size on the west coast of the United States. However, when~~  
3 ~~an adequate number of comparable employers exists within the state of~~  
4 ~~Washington, other west coast employers may not be considered;~~

5 ~~(d))~~ The average consumer prices for goods and services, commonly  
6 known as the cost of living;

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

10 ~~((f))~~ (e) Such other factors, not confined to the factors under  
11 (a) through ~~((e))~~ (d) of this subsection, that are normally or  
12 traditionally taken into consideration in the determination of wages,  
13 hours, and conditions of employment. For those employees listed in RCW  
14 41.56.030(7)(a) who are employed by the governing body of a city or  
15 town with a population of less than fifteen thousand, or a county with  
16 a population of less than seventy thousand, consideration must also be  
17 given to regional differences in the cost of living.

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

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

31 (4) For employees listed in RCW 41.56.028:

32 (a) The panel shall also consider:

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

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

38 (b) The panel may consider:

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

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

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

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

12 (a) The panel shall consider:

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

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

20 (b) The panel may consider:

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

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

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

29 (6) Subsections ((1)(e)) (2) and (3) of this section may not be  
30 construed to authorize the panel to require the employer to pay,  
31 directly or indirectly, the increased employee contributions resulting  
32 from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required  
33 under chapter 41.26 RCW.

34 **Sec. 2.** RCW 41.56.028 and 2006 c 54 s 1 are each amended to read  
35 as follows:

36 (1) In addition to the entities listed in RCW 41.56.020, this  
37 chapter applies to the governor with respect to family child care

1 providers. Solely for the purposes of collective bargaining and as  
2 expressly limited under subsections (2) and (3) of this section, the  
3 governor is the public employer of family child care providers who,  
4 solely for the purposes of collective bargaining, are public employees.  
5 The public employer shall be represented for bargaining purposes by the  
6 governor or the governor's designee appointed under chapter 41.80 RCW.

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

10 (a) A statewide unit of all family child care providers is the only  
11 unit appropriate for purposes of collective bargaining under RCW  
12 41.56.060.

13 (b) The exclusive bargaining representative of family child care  
14 providers in the unit specified in (a) of this subsection shall be the  
15 representative chosen in an election conducted pursuant to RCW  
16 41.56.070, except that in the initial election conducted under chapter  
17 54, Laws of 2006, if more than one labor organization is on the ballot  
18 and none of the choices receives a majority of the votes cast, a  
19 run-off election shall be held.

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

31 (d) The mediation and interest arbitration provisions of RCW  
32 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

1           (ii) (~~In addition to the factors to be taken into consideration by~~  
2 ~~an interest arbitration panel under RCW 41.56.465, the panel shall~~  
3 ~~consider the financial ability of the state to pay for the compensation~~  
4 ~~and benefit provisions of a collective bargaining agreement; and~~

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

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

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

17           (4) This section does not create or modify:

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

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

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

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

36           (5) Upon meeting the requirements of subsection (6) of this  
37 section, the governor must submit, as a part of the proposed biennial  
38 or supplemental operating budget submitted to the legislature under RCW

1 43.88.030, a request for funds necessary to implement the compensation  
2 and benefit provisions of a collective bargaining agreement entered  
3 into under this section or for legislation necessary to implement such  
4 agreement.

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

9 (a) Submitted to the director of financial management by October  
10 1st before the legislative session at which the request is to be  
11 considered, except that, for initial negotiations under this section,  
12 the request must be submitted by November 15, 2006; and

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

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

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

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

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

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

6 **Sec. 3.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to read  
7 as follows:

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

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

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

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

4 (c) The mediation and interest arbitration provisions of RCW  
5 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

10 ~~(ii) ((With respect to factors to be taken into consideration by an  
11 interest arbitration panel, the panel shall consider the financial  
12 ability of the state to pay for the compensation and fringe benefit  
13 provisions of a collective bargaining agreement; and~~

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

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

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

23 (3) Individual providers who are public employees solely for the  
24 purposes of collective bargaining under subsection (1) of this section  
25 are not, for that reason, employees of the state, its political  
26 subdivisions, or an area agency on aging for any purpose. Chapter  
27 41.56 RCW applies only to the governance of the collective bargaining  
28 relationship between the employer and individual providers as provided  
29 in subsections (1) and (2) of this section.

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

35 (5) In implementing and administering this chapter, neither the  
36 authority nor any of its contractors may reduce or increase the hours  
37 of service for any consumer below or above the amount determined to be



1 necessary under any assessment prepared by the department or an area  
2 agency on aging.

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

9 (a) The department's authority to establish a plan of care for each  
10 consumer or its core responsibility to manage long-term in-home care  
11 services under this chapter, including determination of the level of  
12 care that each consumer is eligible to receive. However, at the  
13 request of the exclusive bargaining representative, the governor or the  
14 governor's designee appointed under chapter 41.80 RCW shall engage in  
15 collective bargaining, as defined in RCW 41.56.030(4), with the  
16 exclusive bargaining representative over how the department's core  
17 responsibility affects hours of work for individual providers. This  
18 subsection shall not be interpreted to require collective bargaining  
19 over an individual consumer's plan of care;

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

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

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

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

34 (f) The legislature's right to make programmatic modifications to  
35 the delivery of state services under this title, including standards of  
36 eligibility of consumers and individual providers participating in the  
37 programs under this title, and the nature of services provided. The

1 governor shall not enter into, extend, or renew any agreement under  
2 this chapter that does not expressly reserve the legislative rights  
3 described in this subsection (6)(f).

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

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

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

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