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SENATE BILL 5949

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Keiser, Kohl-Welles, Fairley, Fraser, Weinstein, Roach, Kline, Pridemore, Delvin and McAuliffe

Read first time 02/08/2007.                      Referred to Committee on Labor, Commerce, Research & Development.

1            AN ACT Relating to making the governor the public employer of adult  
2 family home providers; amending RCW 41.04.810, 41.56.113, and  
3 43.01.047; adding a new section to chapter 41.56 RCW; and creating a  
4 new section.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 41.56 RCW  
7 to read as follows:

8            (1) In addition to the entities listed in RCW 41.56.020, this  
9 chapter applies to the governor with respect to adult family home  
10 providers. Solely for the purposes of collective bargaining and as  
11 expressly limited under subsections (2) and (3) of this section, the  
12 governor is the public employer of adult family home providers as  
13 defined in RCW 70.128.010, who solely for the purposes of collective  
14 bargaining, are public employees. The public employer shall be  
15 represented for bargaining purposes by the governor or the governor's  
16 designee.

17            (2) There shall be collective bargaining, as defined in RCW  
18 41.56.030, between the governor and adult family home providers, except  
19 as follows:

1 (a) A statewide unit of all adult family home providers is the only  
2 unit appropriate for purposes of collective bargaining under RCW  
3 41.56.060;

4 (b) The state shall recognize the exclusive bargaining  
5 representative of adult family home providers in the unit specified in  
6 (a) of this subsection, upon verification that a majority of providers  
7 have designated an exclusive representative. The certification of  
8 majority status shall be conducted by the commission.

9 (i) The commission shall grant a prospective representative  
10 intervener status if that organization submits authorization cards from  
11 a majority of providers in the unit within five days of the initial  
12 request for recognition.

13 (ii) In the event that two or more prospective representatives have  
14 valid authorization cards from the same individual within the unit, the  
15 commission shall add the cards to both organizations' total number of  
16 authorization cards.

17 (c) Notwithstanding the definition of "collective bargaining" in  
18 RCW 41.56.030(4), the scope of collective bargaining for adult family  
19 home providers under this section includes, but is not limited to:

20 (i) Economic compensation, such as manner and rate of reimbursement,  
21 including tiered reimbursements; (ii) benefits, including but not  
22 limited to health and welfare upgrading; (iii) expanded options for  
23 training beyond certification requirements; (iv) provider safety and  
24 liability, including but not limited to liability insurance; (v) terms  
25 and conditions of the current contract; (vi) comprehensive assessment  
26 reporting evaluation assessment procedures; (vii) grievance procedures;  
27 and (viii) any other matter that would affect the provision of services  
28 in adult family homes or the livelihood of the providers. A party may  
29 not be compelled to agree to a proposal or be required to make a  
30 concession unless otherwise provided in this chapter.

31 (d) In addition to the entities listed in the mediation and  
32 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and  
33 41.56.480, the provisions apply to the governor or the governor's  
34 designee and the exclusive bargaining representative of adult family  
35 home providers, except that:

36 (i) In addition to the factors to be taken into consideration by an  
37 interest arbitration panel under RCW 41.56.465, the panel shall

1 consider the financial ability of the state to pay for the compensation  
2 and benefit provisions of a collective bargaining agreement.

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

8 (3) Adult family home providers who are public employees solely for  
9 the purposes of collective bargaining under subsection (1) of this  
10 section are not, for that reason, employees of the state for any other  
11 purpose. This section applies only to the governance of the collective  
12 bargaining relationship between the employer and adult family home  
13 providers as provided in subsections (1) and (2) of this section.

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

15 (a) The residents', parents', or legal guardians' right to choose  
16 and terminate the services of any licensed adult family home provider;  
17 and

18 (b) RCW 43.43.832, 43.20A.205, or 74.15.130.

19 (5) Upon meeting the requirements of subsection (6) of this  
20 section, the governor must submit, as a part of the proposed biennial  
21 or supplemental operating budget submitted to the legislature under RCW  
22 43.88.030, a request for funds necessary to implement the compensation  
23 and benefit provisions of a collective bargaining agreement entered  
24 into under this section or for legislation necessary to implement the  
25 agreement.

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

30 (a) Submitted to the director of financial management by October  
31 1st prior to the legislative session at which the requests are to be  
32 considered; and

33 (b) Certified by the director of financial management as  
34 financially feasible for the state or reflective of a binding decision  
35 of an arbitration panel reached under subsection (2)(d) of this  
36 section.

37 (7) The legislature must approve or reject the submission of the  
38 request for funds as a whole. If the legislature rejects or fails to

1 act on the submission, any collective bargaining agreement must be  
2 reopened for the sole purpose of renegotiating the funds necessary to  
3 implement the agreement.

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

10 (9) After the expiration date of any collective bargaining  
11 agreement entered into under this section, all of the terms and  
12 conditions specified in the agreement remain in effect until the  
13 effective date of a subsequent agreement, not to exceed one year from  
14 the expiration date stated in the agreement.

15 (10) In enacting this section, the legislature intends to provide  
16 state action immunity under federal and state antitrust laws for the  
17 joint activities of adult family home providers and their exclusive  
18 bargaining representative to the extent the activities are authorized  
19 by this chapter.

20 **Sec. 2.** RCW 41.04.810 and 2006 c 54 s 4 are each amended to read  
21 as follows:

22 Individual providers, as defined in RCW 74.39A.240, (~~and~~) family  
23 child care providers, as defined in RCW 41.56.030, and adult family  
24 home providers, as defined in RCW 70.128.010, are not employees of the  
25 state or any of its political subdivisions and are specifically and  
26 entirely excluded from all provisions of this title, except as provided  
27 in RCW 74.39A.270 (~~and~~), 41.56.028, and section 1 of this act.

28 **Sec. 3.** RCW 41.56.113 and 2006 c 54 s 3 are each amended to read  
29 as follows:

30 (1) Upon the written authorization of an individual provider  
31 (~~or~~), a family child care provider, or an adult family home provider  
32 within the bargaining unit and after the certification or recognition  
33 of the bargaining unit's exclusive bargaining representative, the state  
34 as payor, but not as the employer, shall, subject to subsection (3) of  
35 this section, deduct from the payments to an individual provider  
36 (~~or~~), a family child care provider, or an adult family home provider

1 the monthly amount of dues as certified by the secretary of the  
2 exclusive bargaining representative and shall transmit the same to the  
3 treasurer of the exclusive bargaining representative.

4 (2) If the governor and the exclusive bargaining representative of  
5 a bargaining unit of individual providers (~~(or)~~), family child care  
6 providers, or adult family home providers enter into a collective  
7 bargaining agreement that:

8 (a) Includes a union security provision authorized in RCW  
9 41.56.122, the state as payor, but not as the employer, shall, subject  
10 to subsection (3) of this section, enforce the agreement by deducting  
11 from the payments to bargaining unit members the dues required for  
12 membership in the exclusive bargaining representative, or, for  
13 nonmembers thereof, a fee equivalent to the dues; or

14 (b) Includes requirements for deductions of payments other than the  
15 deduction under (a) of this subsection, the state, as payor, but not as  
16 the employer, shall, subject to subsection (3) of this section, make  
17 such deductions upon written authorization of the individual provider  
18 (~~(or the)~~), family child care provider, or adult family home provider.

19 (3)(a) The initial additional costs to the state in making  
20 deductions from the payments to individual providers or family child  
21 care providers under this section shall be negotiated, agreed upon in  
22 advance, and reimbursed to the state by the exclusive bargaining  
23 representative.

24 (b) The allocation of ongoing additional costs to the state in  
25 making deductions from the payments to individual providers (~~(or)~~),  
26 family child care providers, or adult family home providers under this  
27 section shall be an appropriate subject of collective bargaining  
28 between the exclusive bargaining representative and the governor unless  
29 prohibited by another statute. If no collective bargaining agreement  
30 containing a provision allocating the ongoing additional cost is  
31 entered into between the exclusive bargaining representative and the  
32 governor, or if the legislature does not approve funding for the  
33 collective bargaining agreement as provided in RCW 74.39A.300 (~~(or)~~),  
34 41.56.028, or section 1 of this act, as applicable, the ongoing  
35 additional costs to the state in making deductions from the payments to  
36 individual providers (~~(or)~~), family child care providers, or adult  
37 family home providers under this section shall be negotiated, agreed

1 upon in advance, and reimbursed to the state by the exclusive  
2 bargaining representative.

3 (4) The governor and the exclusive bargaining representative of a  
4 bargaining unit of family child care providers may not enter into a  
5 collective bargaining agreement that contains a union security  
6 provision unless the agreement contains a process, to be administered  
7 by the exclusive bargaining representative of a bargaining unit of  
8 family child care providers, for hardship dispensation for license-  
9 exempt family child care providers who are also temporary assistance  
10 for needy families recipients or WorkFirst participants.

11 **Sec. 4.** RCW 43.01.047 and 2006 c 54 s 5 are each amended to read  
12 as follows:

13 RCW 43.01.040 through 43.01.044 do not apply to individual  
14 providers under RCW 74.39A.220 through 74.39A.300 (~~or to~~), family  
15 child care providers under RCW 41.56.028, or adult family home  
16 providers under section 1 of this act.

17 NEW SECTION. **Sec. 5.** If any part of this act is found to be in  
18 conflict with federal requirements that are a prescribed condition to  
19 the allocation of federal funds to the state, the conflicting part of  
20 this act is inoperative solely to the extent of the conflict and with  
21 respect to the agencies directly affected, and this finding does not  
22 affect the operation of the remainder of this act in its application to  
23 the agencies concerned. Rules adopted under this act must meet federal  
24 requirements that are a necessary condition to the receipt of federal  
25 funds by the state.

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