

# HOUSE BILL REPORT

## ESHB 2111

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### As Passed House:

March 14, 2007

**Title:** An act relating to making the governor the public employer of adult family home providers.

**Brief Description:** Making the governor the public employer of adult family home providers.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Conway, Wood, Green, Moeller, Darneille, Miloscia, Dickerson, P. Sullivan, Morrell, McDermott, Grant, Hudgins, Simpson and Ormsby).

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/23/07, 2/27/07 [DPS];

Appropriations: 3/3/07 [DPS(CL)].

#### Floor Activity:

Passed House: 3/14/07, 80-16.

### Brief Summary of Engrossed Substitute Bill

- Provides for collective bargaining between the Governor and a statewide unit of adult family home providers under the Public Employees' Collective Bargaining Act.
- Provides for negotiated rule-making with a statewide unit of adult family home licensees under the Administrative Procedure Act.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Crouse.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Jill Reinmuth (786-7134).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Haler, Assistant Ranking Minority Member; Buri, Cody, Conway, Darneille, Dunn, Ericks, Fromhold, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist and P. Sullivan.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Anderson, Chandler, Grant, Kretz and Walsh.

**Staff:** Bernard Dean (786-7130).

### **Background:**

#### Adult Family Homes

Adult family homes are licensed by the state to provide residential care for up to six persons in a home-like setting. The residents in adult family homes are persons who are elderly or who have physical or developmental disabilities. They generally require supervision or assistance with activities of daily living and/or health-related services and are unable to live alone. The Department of Social and Health Services (Department) licenses adult family homes. The Department also regulates adult family homes through rules overseen by the Aging and Adult Services Administration.

#### Public Employee Collective Bargaining

Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission (Commission). Individual providers (home care workers) and family child care providers also have collective bargaining rights under the PECBA.

Under the PECBA, the employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining: grievance procedures and personnel matters, including wages, hours, and working conditions. For uniformed personnel, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation.

### **Summary of Engrossed Substitute Bill:**

The Public Employees' Collective Bargaining Act (PECBA) is amended to apply to the Governor with respect to adult family home providers, and to govern collective bargaining between the Governor and the providers' exclusive bargaining representative.

#### Public Employees and Employer

Solely for purposes of collective bargaining, adult family homes are "public employees." Adult family home providers are persons who are licensed by the Department of Social and Health Services (Department) to operate an adult family home, and who receive payments from the Medicaid and state-funded long-term care programs. Solely for purposes of collective bargaining, the Governor is the "public employer."

#### Bargaining Unit and Representative

For purposes of collective bargaining, the only appropriate unit is a statewide unit of all adult family home providers.

The exclusive bargaining representative of the adult family home providers is determined in an election conducted in the manner specified in the PECBA. Bargaining authorization cards furnished as the showing of interest are exempt from public disclosure.

#### Mandatory Subjects of Bargaining

The exclusive bargaining representative of the adult family home providers and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Mandatory subjects are limited to: (1) economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (2) health and welfare benefits; (3) professional development and training; (4) labor-management committees; (5) grievance procedures; and (6) other economic matters. Retirement benefits are not subject to collective bargaining.

#### Requests for Funds and Legislative Changes

The Governor must submit a request to the Legislature for any funds and legislative changes necessary to implement a collective bargaining agreement covering adult family home providers. The Legislature may approve or reject the submission of the request for funds only as a whole. If the Legislature rejects or fails to act on the submission, the collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

#### Mediation and Arbitration; No Right to Strike

Adult family home providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. For uniformed personnel subject to this requirement, the interest arbitration panel must consider: the employer's authority; the parties' stipulations; comparisons of wages, hours, and conditions of employment of like personnel of like employers; and the cost-of-living. For adult family home providers, the interest arbitration panel must consider the financial ability of the state to pay for the compensation and benefit

provisions of the agreement. The interest arbitration panel's decision is not binding on the Legislature, and if the Legislature does not approve the funding, it is not binding on the state.

Adult family home providers do not have the right to strike.

### Union Dues

The state must deduct monthly union dues from an adult family home provider's payments upon written authorization of the adult family home provider and after certification or recognition of an exclusive bargaining representative of the adult family home providers. If a union security clause is included in the agreement, the state must deduct the dues or equivalent fees from the payments made to all adult family home provider bargaining unit members.

### Negotiated Rule-making

For purposes of negotiated rule-making under the Administrative Procedures Act, the only appropriate unit is a statewide unit of all adult family home licensees. Adult family home licensees are persons who are licensed by the Department to operate an adult family home, but who do not receive payments from the Medicaid and state-funded long-term care programs.

The representative of the adult family home licensees is the organization certified by the American Arbitration Association as having majority support following a cross-check of authorization cards.

### State Action Immunity

The Legislature intends to provide state action immunity under antitrust laws for the joint activities of: (1) adult family home providers and their representative; and (2) adult family home licensees and their representative.

### Other Provisions

Residents, parents, and legal guardians have the right to choose and terminate the services of adult family home providers.

The Department has the authority to establish plans of care for consumers and to manage long-term care services. The Department is obligated to comply with Medicaid laws.

The Legislature has the right to make programmatic modifications.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** (Commerce & Labor)

(In support) The Washington Federation of State Employees supports this bill. Over one year ago, a group of adult family homes came to us because they wanted a better voice. We have talked with thousands who very much want a collective voice to bargain over their working conditions.

This bill makes them public employees solely for the purposes of collective bargaining. The Federation already represents a continuum of workers in the industry. The scope of bargaining is over rates of reimbursement, training opportunities, and benefits. We believe it will improve their working conditions tremendously.

This bill would increase the rights for adult family home providers by increasing their options for representation. This bill would increase their ability to advocate for themselves, their homes, and their clients.

We have given them detailed information about the union so they can make an informed choice. We have not asked caregivers to sign authorization cards, and do not intend to do so. We do not want to take over their businesses.

This bill ensures that an exclusive bargaining representative is selected by a majority of providers. If a provider does not sign a card, the presumption is that the provider is voting no.

To establish my business, I invested \$65,000 in my home. I work 103 on-shift hours per week. I just manage to make it work at \$46 per day. Whether it is a lack of funding or a backlog at the Department of Social and Health Services (Department) or a lack of an adequate referral system, clients are not being placed in adult family homes. The care assessment and the referral process have missed certain medical conditions. If a coordinated voice were available through the collective bargaining process, adult family homes could participate in the decisions that affect our businesses and our home.

The adult family homes deserve the right to vote on whether or not to be represented by the union. The other association's opposition blocks the provider's right to decide. Their attempt to kill the bill makes the decision for the providers. The two associations have accomplished a great deal together, but on unions, we hold different views. We have both tried, unsuccessfully, to improve Medicaid rates, but we have failed miserably. We will continue to fail, unaided by professionals skilled in such negotiations.

If this bill is passed and voted on union representation, the union has assured us that the providers will decide their own agenda. They will decide on dues, and on which regulatory issues should be addressed. The key is that we will be supported by a more professional organization.

We do not think that there is a conflict if the same union represents the Department's personnel and the adult family home providers. That's like saying a police officer will not arrest a firefighter because they are represented by the same union.

Quality care depends on financial resources. If we care about our elderly and disabled, we need to financially support the people that provide this care. The only way to ensure fair

wages is for them to be represented by an organization that can support them in a collective bargaining environment. The lack of resources can interfere with the ability to provide the best care.

This bill reflects where unionization and representation are going. The people that operate these adult family homes are a critical part of our care network. They deserve the right to join a union. The largest association has expressed its desire to have its voice heard, and to have a union. No one has to join, but the additional power of a collective voice will be beneficial to adult family home providers, the state, and the people they serve.

(In support with concerns) You are including employers and employees in the same unit, which is an inherent conflict. With that in mind, a simple amendment to recognize the employees separately would be important.

(With concerns) We have some concerns about the way this bill is written, but are working with the Federation to address our concerns.

(Opposed) I've been in business for eleven years. I do not agree with this bill because we are our own bosses. We can organize everything in our home and take care of our people in the way that they want. We do not need a union to take care of our business. I am the owner, and I work for myself. This is not like a nursing home or an assisted-living home. We don't hire a lot of people. We have just one employee.

(Available for questions) The way that the representation petitions are structured, the Public Employment Relations Commission would be asked to run a cross-check. There is also the possibility of an intervener getting a cross-check. Employees could sign multiple cards and there could be two unions with majority status. That needs to be fixed.

**Staff Summary of Public Testimony: (Appropriations)**

(In support) Thank you for the excellent work on this bill. Adult family home providers are caught between low rates and red tape. The industry is in trouble and the state is losing an important low-cost alternative in the continuum of long-term care in this state. An overwhelming majority of providers are supporting a new dynamic and stronger voice in ensuring their profession remains strong in both the long- and short-term. This bill is modeled closely after the childcare provider bill that passed last session with an 86 to 11 vote in the House and the hope is this bill garners similar bi-partisan support. Collective bargaining for adult family home providers is good for providers, clients, and the State of Washington to keep this industry viable and to keep these low cost long-term care alternatives as a major part of the health care continuum.

This bill is enthusiastically supported as it is a form of empowerment that is long overdue. The legislation is important to the state too. Currently with adult family home pay, they cannot afford liability insurance and it is not required due to the exorbitant cost. Adult family homes have the highest acuity next to nursing homes. The need for Medicaid funding increases is almost crucial at this time. It is in the state's interest to start funding adult family homes in a way that will cover liability costs.

With increases gained through collective bargaining, adult family home care providers would be able to deliver better care, have more caregivers, and residents would benefit from additional staffing.

(Opposed) None.

**Persons Testifying:** (Commerce & Labor) (In support) Greg Devereux and James Dannen, Washington Federation of State Employees; Kim Blume, Adult Family Home of the Tri-Cities; Bill Day and Richard Moore, Adult Family Home Association; Jan Thomson; and Robby Stern, Washington State Labor Council.

(In support with concerns) Terry Kohl, Elaine Lawrence, and Don Simnionin, Washington State Residential Care Council of Adult Family Home Providers.

(With concerns) Steve McLain, Office of Financial Management - Labor Relations Office.

(Opposed) Afrodita Asanachescu and Elisabeta Raducu, Washington State Residential Care Council of Adult Family Home Providers.

(Available for questions) Ken Latsch, Public Employment Relations Commission.

**Persons Testifying:** (Appropriations) Terry Kohl, and Dan Simnioniw, Washington State Residential Care Council of Adult Family Homes; Bill Day, Adult Family Home Association; and Dennis Eagle, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** (Commerce & Labor) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.