

SENATE BILL REPORT

ESHB 2111

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, March 29, 2007
Ways & Means, April 2, 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: 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: Passed House: 3/14/07, 80-16.

Committee Activity: Labor, Commerce, Research & Development: 3/22/07, 3/29/07 [DP-WM, DNP, w/oRec].

Ways & Means: 4/02/07 [DP, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senator Holmquist.

Minority Report: That it be referred without recommendation.

Signed by Senators Clements, Ranking Minority Member and Hewitt.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Rockefeller and Tom.

Minority Report: Do not pass.

Signed by Senator Zarelli, Ranking Minority Member.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Carrell, Fairley, Honeyford, Parlette, Roach and Schoesler.

Staff: Chelsea Buchanan (786-7446)

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 (DSHS) licenses adult family homes. The DSHS 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 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 DSHS 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 DSHS 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Labor, Commerce, Research & Development):

PRO: Adult family home providers need more help with rates and the regulations that affect their businesses. Collective bargaining will level the playing field for adult family home providers and the state. Providers' expenses have increased and wages have decreased and

providers' ability to offer various things to residents has declined as well. Providers need empowerment and that is what this bill offers them. With the amendment on the House floor to remove the card check portion and return to the election process, the Washington State Residential Care Council (WSRCC) is no longer opposed to the bill.

OTHER: There is concern about the employees of the adult family home providers. They should have the same access to unionization that providers do and the two should go hand-in-hand.

Persons Testifying (Labor, Commerce, Research & Development): PRO: Dennis Eagle, Washington Federation of State Employees; Amy Thomas, Adult Family Home Provider; Bill Day, Adult Family Home Association; Dan Simnianow, WSRCC.

OTHER: Andrew Beane, Service Employees International Union 775.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill is patterned after collective bargaining for child care workers. Adult family homes (AFHs) are facing difficulties, including a 25 percent turnover in providers, and this bill will give AFHs a tool to assist them. AFHs provide high quality care and are a low-cost alternative to nursing home care.

Persons Testifying (Ways & Means): PRO: Dennis Eagle, Washington Federation of State Employees; Dan Simnioniw, Washington State Residential Care Council of AFHs.