

**2SHB 3145 - H AMD 1195**

By Representative Kagi

ADOPTED 02/15/2008

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 74.13 RCW  
4 to read as follows:

5 The legislature finds that foster parents are an essential partner  
6 in the child welfare system, with responsibility for the care of  
7 vulnerable children whose families are unable to meet their needs.  
8 Because children who enter the foster care system have experienced  
9 varying degrees of stress and trauma before placement, foster parents  
10 sometimes are called upon to provide care for children with significant  
11 behavioral challenges and intensive developmental needs. Other  
12 children who enter foster care may require extraordinary care due to  
13 health care needs or medical fragility. The legislature also finds  
14 that foster parents with specialized skills and experience, or  
15 professional training and expertise, can contribute significantly to a  
16 child's well-being by promoting placement stability and supporting the  
17 child's developmental growth while in foster care. The legislature  
18 intends to implement a specialized foster home program to enhance the  
19 continuum of care options and to promote permanency and positive  
20 outcomes for children served in the child welfare system by authorizing  
21 the department to contract for specialized foster home services.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.13 RCW  
23 to read as follows:

24 (1) The department shall select two or more geographic areas with  
25 high concentrations of children with significant needs in foster care  
26 for the implementation of phase one of a specialized foster home  
27 program. In determining the scope of the first phase of the program,  
28 the department shall: (a) Examine areas where there are concentrations  
29 of children with significant behavioral challenges and intensive

1 developmental or medical needs who are being served in family foster  
2 homes; (b) consider areas of appropriate size that will allow for  
3 careful analysis of the impact of the specialized foster home program  
4 on the array of out-of-home care providers, including providers of  
5 behavioral rehabilitation services; and (c) determine the number of  
6 children to be served in these selected areas. During phase one of the  
7 implementation of the program, only licensed foster parents under the  
8 supervision of the department shall be eligible to participate in the  
9 program. Implementation of the program at the phase one sites also  
10 shall be structured to support the long-term goal of eventual expansion  
11 of the program statewide.

12 (2) Based on the information gathered by the work group convened  
13 under chapter 413, Laws of 2007, and the additional information  
14 gathered pursuant to this section, the department shall actively:

15 (a) Seek recommendations from foster parents and other out-of-home  
16 service providers in the program sites regarding the qualifications and  
17 requirements of specialized foster home providers, the needs of the  
18 children to be served, and the desired outcomes to be measured or  
19 monitored at the respective program sites; and

20 (b) Consult with experts in child welfare, children's mental  
21 health, and children's health care to identify the evidence-based or  
22 promising practice models to be employed in the program and the  
23 appropriate supports to ensure program fidelity, including, but not  
24 limited to, the necessary training and clinical consultation and  
25 oversight to be provided to specialized foster homes.

26 (3) Using the recommendations from foster parents, the  
27 consultations with professionals from appropriate disciplines, and the  
28 information provided in the report to the legislature under chapter  
29 413, Laws of 2007, including the information presented to the work  
30 group convened to prepare and present the report, the department shall  
31 implement the program through contracts with foster parents who are  
32 determined by the department to meet the eligibility criteria for the  
33 specialized foster home program. The department shall:

34 (a) Define the criteria for specialized foster home providers,  
35 which shall include a requirement that the foster parent be licensed by  
36 the department as a foster parent, as well as meet additional  
37 requirements relating to relevant experience, education, training, and

1 professional expertise necessary to meet the high needs of children  
2 identified as eligible for this program;

3 (b) Define criteria for identifying children with high needs who  
4 may be eligible for placement in a specialized foster home provider.  
5 Such criteria shall be based on the best interests of the child and  
6 include an assessment of the child's past and current level of  
7 functioning as well as a determination that the child's treatment plan  
8 and developmental needs are consistent with the placement plan;

9 (c) Establish a policy for placement of children with high needs in  
10 specialized foster homes, including a process for matching the child's  
11 needs with the foster parent's skills and expertise;

12 (d) Establish a limit on the number and ages of children with high  
13 needs that may be placed in a specialized foster home pursuant to the  
14 specialized foster home program contract. Such limitation shall  
15 recognize that children with externalizing behaviors are most likely to  
16 experience long-term improvements in their behavior when care is  
17 provided in settings that minimize exposure to peers with challenging  
18 behaviors;

19 (e) Identify one or more approved models of skill building for use  
20 by specialized foster home providers;

21 (f) Specify the training and consultation requirements that support  
22 the models of service;

23 (g) Establish a system of supports, including clinical consultation  
24 and oversight for specialized foster homes;

25 (h) Establish a level of stipend payments to specialized foster  
26 home providers that is not tied to deficits in the child's level of  
27 functioning;

28 (i) Establish clearly defined responsibilities of specialized  
29 foster home providers, who have a specialized foster home contract  
30 including responsibilities to promote permanency and connections with  
31 birth parents; and

32 (j) Develop a process for annual performance reviews of specialized  
33 foster home providers.

34 (4) Contracts between the department and a specialized foster home  
35 provider shall include a statement of work focusing on achieving  
36 stability in placement and measuring improved permanency outcomes shall  
37 specify at least the following elements:

38 (a) The model of treatment and care to be provided;

1 (b) The training and ongoing professional consultation to be  
2 provided;

3 (c) The method for determining any additional supports to be  
4 provided to an eligible child or the specialized foster home provider;

5 (d) The desired outcomes to be measured;

6 (e) A reasonable and efficient process for seeking a modification  
7 of the contract;

8 (f) The rate and terms of payment under the contract; and

9 (g) The term of the contract and the processes for an annual  
10 performance review of the specialized foster home provider and an  
11 annual assessment of the child.

12 (5) Beginning on or before October 1, 2008, the department shall  
13 begin the selection of, and negotiation of contracts with, specialized  
14 foster home providers in the phase one areas selected for  
15 implementation.

16 (6) Nothing in this act gives an eligible foster parent the right  
17 to a contract under the specialized foster home program, and nothing in  
18 this act gives a specialized foster home provider that has a contract  
19 under the program a right to have a child or children placed in the  
20 home pursuant to the contract.

21 (7) "Specialized foster home providers" means foster parents who  
22 are determined by the department to be eligible foster parents, who  
23 have a specialized foster home program contract with the department.

24 (8) The department shall provide an implementation status update to  
25 the governor and the legislature by January 30, 2009. Based on the  
26 experiences and lessons learned from implementation of the program  
27 during phase one, the department shall recommend a process and timeline  
28 for expanding the program and implementing it statewide. The  
29 department shall report to the governor and the appropriate members of  
30 the legislature by September 1, 2009, and shall identify the essential  
31 elements of the specialized foster home program that should be  
32 addressed or replicated as the program is expanded to the next phase.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.56 RCW  
34 to read as follows:

35 (1) In addition to the entities listed in RCW 41.56.020, this  
36 chapter applies to the governor with respect to specialized foster home  
37 providers. Solely for the purposes of collective bargaining and as

1 expressly limited under subsections (2) and (3) of this section, the  
2 governor is the employer of specialized foster home providers who,  
3 solely for the purposes of collective bargaining, are public employees.  
4 The public employer shall be represented for bargaining purposes by the  
5 governor or the governor's designee.

6 (2) There shall be collective bargaining between the governor and  
7 specialized foster home providers, except as follows:

8 (a) A statewide unit of all specialized foster home providers is  
9 the only unit appropriate for purposes of collective bargaining. The  
10 commission shall adopt reasonable rules providing for the inclusion of  
11 unrepresented specialized foster home providers when, after  
12 implementation of phase one of the specialized foster home program  
13 described in section 2 of this act: (i) The labor organization  
14 certified as the exclusive bargaining representative of the specialized  
15 foster home providers petitions to represent one or more new groups of  
16 specialized foster home providers and demonstrates that it has majority  
17 support among those groups; or (ii) when any labor organization  
18 petitions to represent the entire bargaining unit of specialized foster  
19 home providers and demonstrates that it has at least a thirty percent  
20 showing of interest to warrant an election.

21 (b) The exclusive bargaining representative of specialized foster  
22 home providers in the unit specified in (a) of this subsection shall be  
23 the representative chosen in an election conducted pursuant to RCW  
24 41.56.070. Bargaining authorization cards furnished as the showing of  
25 interest in support of any representation petition or motion for  
26 intervention filed under this section shall be exempt from disclosure  
27 under chapter 42.56 RCW.

28 (c) Notwithstanding the definition of "collective bargaining" in  
29 RCW 41.56.030(4), the scope of collective bargaining for specialized  
30 foster home providers under this section shall be limited solely to:

31 (i) Economic compensation for enhanced services provided by specialized  
32 foster home providers in the form of a stipend; (ii) health and welfare  
33 benefits; (iii) labor management committees; and (iv) grievance  
34 procedures. Retirement benefits shall not be subject to collective  
35 bargaining. By such obligation, neither party shall be compelled to  
36 agree to a proposal or be required to make a concession unless  
37 otherwise provided in this chapter.

1 (d) In addition to the entities listed in the mediation and  
2 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and  
3 41.56.480, the provisions apply to the governor or the governor's  
4 designee and the exclusive bargaining representative of specialized  
5 foster home providers, except that:

6 (i) In addition to the factors to be taken into consideration by an  
7 interest arbitration panel under RCW 41.56.465, the panel shall  
8 consider the financial ability of the state to pay for the compensation  
9 and benefit provisions of a collective bargaining agreement.

10 (ii) The decision of the arbitration panel is not binding on the  
11 legislature and, if the legislature does not approve the request for  
12 funds necessary to implement the compensation and benefit provisions of  
13 the arbitrated collective bargaining agreement, the decision is not  
14 binding on the state.

15 (e) Specialized foster home providers do not have the right to  
16 strike.

17 (3) Specialized foster home providers who are public employees  
18 solely for the purposes of collective bargaining under subsection (1)  
19 of this section are not, for that reason, employees of the state for  
20 any other purpose. This section applies only to the governance of the  
21 collective bargaining relationship between the employer and specialized  
22 foster home providers as provided in subsections (1) and (2) of this  
23 section.

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

25 (a) The department's authority to establish a plan of care for each  
26 foster child or its core responsibility to manage foster care services,  
27 including determination of the level of care that each foster child is  
28 eligible to receive. This subsection shall not be interpreted to  
29 require collective bargaining over an individual foster child's plan of  
30 care;

31 (b) The department's obligation to comply with the federal funding  
32 statutes and regulations, including but not limited to the social  
33 security act and the terms of any state plan or waiver granted by the  
34 federal government to ensure federal financial participation in the  
35 provision of the services;

36 (c) The legislature's right to make programmatic modifications to  
37 the delivery of state services including standards of eligibility of  
38 children in foster care and specialized foster home providers

1 participating in the programs and the nature of services provided. The  
2 governor shall not enter into, extend, or renew any agreement under  
3 this chapter that does not expressly reserve the legislative rights  
4 described in this subsection (4)(c);

5 (d) The right of the court, the department, or any other agency or  
6 individual acting with proper legal authority, to remove a child from  
7 the care of a specialized foster home provider. The right or action of  
8 the court, the department, or any other agency or individual acting  
9 with proper legal authority to remove a child from the care of a  
10 specialized foster home provider shall not constitute an unfair labor  
11 practice;

12 (e) The department's authority to set minimum licensing standards  
13 for foster parents, to establish a method for determining foster care  
14 maintenance payment rates that will be paid for the benefit of foster  
15 children, and to determine the foster care maintenance rate for each  
16 child in care;

17 (f) The department's authority to establish, pursuant to statute,  
18 the nature and means of taking or resolving licensing action against  
19 any foster parent, or investigations and actions involving allegations  
20 of abuse or neglect made against a foster parent;

21 (g) The department's ability to meet and consult with foster  
22 parents, including meetings with specialized foster home providers, as  
23 required under RCW 74.13.031;

24 (h) The department's authority to define the criteria for  
25 specialized foster homes, including training, education, relevant  
26 experience, and professional expertise, and the department's authority  
27 to define the criteria for identifying high needs children who may be  
28 eligible for placement in a specialized foster home; or

29 (i) RCW 43.43.832, 43.20A.205, or 74.15.130.

30 (5) Nothing in this section is intended to imply that the state,  
31 the department, or its contractors agree to any additional vicarious,  
32 joint, or several liability for the action or inaction of a specialized  
33 foster home provider or prospective specialized foster home provider.

34 (6) Upon meeting the requirements of subsection (7) of this  
35 section, the governor must submit, as a part of the proposed biennial  
36 or supplemental operating budget submitted to the legislature under RCW  
37 43.88.030, a request for funds necessary to implement the stipend and

1 benefit provisions of a collective bargaining agreement entered into  
2 under this section or for legislation necessary to implement such  
3 agreement.

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

8 (a) Submitted to the director of financial management by October  
9 1st before the legislative session at which the request is to be  
10 considered, except that, for initial negotiations under this section,  
11 the request must be submitted after July 1, 2009; and

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

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

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

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

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

1 (12) 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 specialized foster home providers and their  
4 exclusive bargaining representative to the extent such activities are  
5 authorized by this chapter.

6 (13) For purposes of chapter 41.56 RCW, "specialized foster home  
7 providers" means specialized foster home providers as defined in  
8 section 2 of this act, but not providers who are related to, or family  
9 members of, the children with extraordinary behavioral, developmental,  
10 or medical needs for whom they provide care.

11 **Sec. 4.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read  
12 as follows:

13 Individual providers, as defined in RCW 74.39A.240, family child  
14 care providers, as defined in RCW 41.56.030, ~~((and))~~ adult family home  
15 providers, as defined in RCW 41.56.030, and specialized foster home  
16 providers, as defined in section 3 of this act, are not employees of  
17 the state or any of its political subdivisions and are specifically and  
18 entirely excluded from all provisions of this title, except as provided  
19 in RCW 74.39A.270, 41.56.028, ~~((and))~~ 41.56.029, and section 3 of this  
20 act.

21 **Sec. 5.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read  
22 as follows:

23 (1) Upon the written authorization of an individual provider, a  
24 family child care provider, ~~((or))~~ an adult family home provider, or a  
25 specialized foster home provider within the bargaining unit and after  
26 the certification or recognition of the bargaining unit's exclusive  
27 bargaining representative, the state as payor, but not as the employer,  
28 shall, subject to subsection (3) of this section, deduct from the  
29 payments to an individual provider, a family child care provider,  
30 ~~((or))~~ an adult family home provider, or from the stipends paid to a  
31 specialized foster home provider the monthly amount of dues as  
32 certified by the secretary of the exclusive bargaining representative  
33 and shall transmit the same to the treasurer of the exclusive  
34 bargaining representative.

35 (2) If the governor and the exclusive bargaining representative of

1 a bargaining unit of individual providers, family child care providers,  
2 ~~((or))~~ adult family home providers, or specialized foster home  
3 providers enter into a collective bargaining agreement that:

4 (a) Includes a union security provision authorized in RCW  
5 41.56.122, the state as payor, but not as the employer, shall, subject  
6 to subsection (3) of this section, enforce the agreement by deducting  
7 from the payments or stipends, as applicable, to bargaining unit  
8 members the dues required for membership in the exclusive bargaining  
9 representative, or, for nonmembers thereof, a fee equivalent to the  
10 dues; or

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

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

22 (b) The allocation of ongoing additional costs to the state in  
23 making deductions ~~((from the payments to individual providers, family~~  
24 ~~child care providers, or adult family home providers))~~ under this  
25 section shall be an appropriate subject of collective bargaining  
26 between the exclusive bargaining representative and the governor unless  
27 prohibited by another statute. If no collective bargaining agreement  
28 containing a provision allocating the ongoing additional cost is  
29 entered into between the exclusive bargaining representative and the  
30 governor, or if the legislature does not approve funding for the  
31 collective bargaining agreement as provided in RCW 74.39A.300,  
32 41.56.028, ~~((or))~~ 41.56.029, or section 3 of this act, as applicable,  
33 the ongoing additional costs to the state in making deductions ~~((from~~  
34 ~~the payments to individual providers, family child care providers, or~~  
35 ~~adult family home providers))~~ under this section shall be negotiated,  
36 agreed upon in advance, and reimbursed to the state by the exclusive  
37 bargaining representative.

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

9 **Sec. 6.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read  
10 as follows:

11 RCW 43.01.040 through 43.01.044 do not apply to individual  
12 providers under RCW 74.39A.220 through 74.39A.300, family child care  
13 providers under RCW 41.56.028, (~~(e)~~) adult family home providers under  
14 RCW 41.56.029, or specialized foster home providers under section 3 of  
15 this act.

16 NEW SECTION. **Sec. 7.** If any part of this act is found to be in  
17 conflict with federal requirements that are a prescribed condition of  
18 federal funds which support the operations and services provided by the  
19 department of social and health services, the conflicting part of this  
20 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.

26 NEW SECTION. **Sec. 8.** If specific funding for the purposes of this  
27 act, referencing this act by bill or chapter number, is not provided by  
28 June 30, 2008, in the omnibus appropriations act, this act is null and  
29 void.

30 NEW SECTION. **Sec. 9.** Sections 3 through 6 of this act take effect  
31 January 1, 2009."

32 Correct the title.

EFFECT: Creates a definition for specialized foster home provider.

Establishes an effective date of January 1, 2009, for the collective bargaining provisions of the bill.

Establishes the scope of bargaining to be limited to: (a) The stipend to be provided under the specialized foster home program; (b) health and welfare benefits; (c) labor management committees; and (d) grievance procedures.

Clarifies that the following are not subject to collective bargaining and are not modified by the bill: (a) Retirement benefits; (b) the DSHS's ability to establish the plan of care for a child; (c) the DSHS's obligation to comply with federal funding laws and rules; and (d) the Legislature's right to make program modifications for child welfare services.

Requires the submission of bargaining agreements by October 1, prior to the budget cycle to which the agreement applies. For initial negotiations, requires submission of the agreement after July 1, 2009.

Directs the PERC to adopt rules relating to perfecting the bargaining unit after phase 1 of the program.

Provides for renegotiation of an agreement in the event of a significant revenue shortfall.

Establishes a process for payment of union dues and clarifies that dues are paid only from the stipend and not from other amounts paid to a foster parent.

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