

ESHB 1916 - S COMM AMD

By Committee on Labor, Commerce, Research & Development

ADOPTED 04/05/2007

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

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

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

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

10 (b) Stipulations of the parties;

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

16 ~~((ii)) For employees listed in RCW 41.56.030(7) (e) through (h),~~
17 ~~comparison of the wages, hours, and conditions of employment of~~
18 ~~personnel involved in the proceedings with the wages, hours, and~~
19 ~~conditions of employment of like personnel of public fire departments~~
20 ~~of similar size on the west coast of the United States. However, when~~
21 ~~an adequate number of comparable employers exists within the state of~~
22 ~~Washington, other west coast employers may not be considered;~~

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

25 ~~((e))~~ (d) Changes in any of the circumstances under (a) through
26 ~~((d))~~ (c) of this subsection during the pendency of the proceedings;
27 and

28 ~~((f))~~ (e) Such other factors, not confined to the factors under
29 (a) through ~~((e))~~ (d) of this subsection, that are normally or
30 traditionally taken into consideration in the determination of wages,

1 hours, and conditions of employment. For those employees listed in RCW
2 41.56.030(7)(a) who are employed by the governing body of a city or
3 town with a population of less than fifteen thousand, or a county with
4 a population of less than seventy thousand, consideration must also be
5 given to regional differences in the cost of living.

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

11 (3) For employees listed in RCW 41.56.030(7) (e) through (h), the
12 panel shall also consider a comparison of the wages, hours, and
13 conditions of employment of personnel involved in the proceedings with
14 the wages, hours, and conditions of employment of like personnel of
15 public fire departments of similar size on the west coast of the United
16 States. However, when an adequate number of comparable employers
17 exists within the state of Washington, other west coast employers may
18 not be considered.

19 (4) For employees listed in RCW 41.56.028:

20 (a) The panel shall also consider:

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

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

26 (b) The panel may consider:

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

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

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

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

38 (a) The panel shall consider:

1 (i) A comparison of wages, hours, and conditions of employment of
2 publicly reimbursed personnel providing similar services to similar
3 clients, including clients who are elderly, frail, or have
4 developmental disabilities, both in the state and across the United
5 States; and

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

8 (b) The panel may consider:

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

14 (ii) The state's interest in promoting a stable long-term care
15 workforce to provide quality and reliable care to vulnerable elderly
16 and disabled recipients;

17 (iii) The state's interest in ensuring access to affordable,
18 quality health care for all state citizens; and

19 (iv) The state's fiscal interest in reducing reliance upon public
20 benefit programs including but not limited to medical coupons, food
21 stamps, subsidized housing, and emergency medical services.

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

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

29 (1) In addition to the entities listed in RCW 41.56.020, this
30 chapter applies to the governor with respect to family child care
31 providers. Solely for the purposes of collective bargaining and as
32 expressly limited under subsections (2) and (3) of this section, the
33 governor is the public employer of family child care providers who,
34 solely for the purposes of collective bargaining, are public employees.
35 The public employer shall be represented for bargaining purposes by the
36 governor or the governor's designee appointed under chapter 41.80 RCW.

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

4 (a) A statewide unit of all family child care providers is the only
5 unit appropriate for purposes of collective bargaining under RCW
6 41.56.060.

7 (b) The exclusive bargaining representative of family child care
8 providers in the unit specified in (a) of this subsection shall be the
9 representative chosen in an election conducted pursuant to RCW
10 41.56.070, except that in the initial election conducted under chapter
11 54, Laws of 2006, if more than one labor organization is on the ballot
12 and none of the choices receives a majority of the votes cast, a
13 run-off election shall be held.

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

25 (d) The mediation and interest arbitration provisions of RCW
26 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

27 (i) With respect to commencement of negotiations between the
28 governor and the exclusive bargaining representative of family child
29 care providers, negotiations shall be commenced initially upon
30 certification of an exclusive bargaining representative under (a) of
31 this subsection and, thereafter, by February 1st of any even-numbered
32 year; and

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

37 ~~(iii))~~ The decision of the arbitration panel is not binding on the
38 legislature and, if the legislature does not approve the request for

1 funds necessary to implement the compensation and benefit provisions of
2 the arbitrated collective bargaining agreement, is not binding on the
3 state.

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

5 (3) Family child care providers who are public employees solely for
6 the purposes of collective bargaining under subsection (1) of this
7 section are not, for that reason, employees of the state for any
8 purpose. This section applies only to the governance of the collective
9 bargaining relationship between the employer and family child care
10 providers as provided in subsections (1) and (2) of this section.

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

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

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

20 (c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130;
21 and

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

30 (5) Upon meeting the requirements of subsection (6) of this
31 section, the governor must submit, as a part of the proposed biennial
32 or supplemental operating budget submitted to the legislature under RCW
33 43.88.030, a request for funds necessary to implement the compensation
34 and benefit provisions of a collective bargaining agreement entered
35 into under this section or for legislation necessary to implement such
36 agreement.

37 (6) A request for funds necessary to implement the compensation and

1 benefit provisions of a collective bargaining agreement entered into
2 under this section shall not be submitted by the governor to the
3 legislature unless such request has been:

4 (a) Submitted to the director of financial management by October
5 1st before the legislative session at which the request is to be
6 considered, except that, for initial negotiations under this section,
7 the request must be submitted by November 15, 2006; and

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

11 (7) The legislature must approve or reject the submission of the
12 request for funds as a whole. If the legislature rejects or fails to
13 act on the submission, any such agreement will be reopened solely for
14 the purpose of renegotiating the funds necessary to implement the
15 agreement.

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

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

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

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

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

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

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

30 (a) The only unit appropriate for the purpose of collective
31 bargaining under RCW 41.56.060 is a statewide unit of all individual
32 providers;

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

36 (c) The mediation and interest arbitration provisions of RCW
37 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

9 ~~(iii))~~ The decision of the arbitration panel is not binding on the
10 legislature and, if the legislature does not approve the request for
11 funds necessary to implement the compensation and fringe benefit
12 provisions of the arbitrated collective bargaining agreement, is not
13 binding on the authority or the state;

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

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

18 (3) Individual providers who are public employees solely for the
19 purposes of collective bargaining under subsection (1) of this section
20 are not, for that reason, employees of the state, its political
21 subdivisions, or an area agency on aging for any purpose. Chapter
22 41.56 RCW applies only to the governance of the collective bargaining
23 relationship between the employer and individual providers as provided
24 in subsections (1) and (2) of this section.

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

30 (5) In implementing and administering this chapter, neither the
31 authority nor any of its contractors may reduce or increase the hours
32 of service for any consumer below or above the amount determined to be
33 necessary under any assessment prepared by the department or an area
34 agency on aging.

35 (6) Except as expressly limited in this section and RCW 74.39A.300,
36 the wages, hours, and working conditions of individual providers are
37 determined solely through collective bargaining as provided in this

1 chapter. No agency or department of the state may establish policies
2 or rules governing the wages or hours of individual providers.
3 However, this subsection does not modify:

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

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

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

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

24 (e) The department's obligation to comply with the federal medicaid
25 statute and regulations and the terms of any community-based waiver
26 granted by the federal department of health and human services and to
27 ensure federal financial participation in the provision of the
28 services; and

29 (f) The legislature's right to make programmatic modifications to
30 the delivery of state services under this title, including standards of
31 eligibility of consumers and individual providers participating in the
32 programs under this title, and the nature of services provided. The
33 governor shall not enter into, extend, or renew any agreement under
34 this chapter that does not expressly reserve the legislative rights
35 described in this subsection (6)(f).

36 (7)(a) The state, the department, the authority, the area agencies
37 on aging, or their contractors under this chapter may not be held
38 vicariously or jointly liable for the action or inaction of any

1 individual provider or prospective individual provider, whether or not
2 that individual provider or prospective individual provider was
3 included on the authority's referral registry or referred to a consumer
4 or prospective consumer. The existence of a collective bargaining
5 agreement, the placement of an individual provider on the referral
6 registry, or the development or approval of a plan of care for a
7 consumer who chooses to use the services of an individual provider and
8 the provision of case management services to that consumer, by the
9 department or an area agency on aging, does not constitute a special
10 relationship with the consumer.

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

13 (8) Nothing in this section affects the state's responsibility with
14 respect to unemployment insurance for individual providers. However,
15 individual providers are not to be considered, as a result of the state
16 assuming this responsibility, employees of the state."

ESHB 1916 - S COMM AMD

By Committee on Labor, Commerce, Research & Development

ADOPTED 04/05/2007

17 On page 1, line 2 of the title, after "providers;" strike the
18 remainder of the title and insert "and amending RCW 41.56.465,
19 41.56.028, and 74.39A.270."

EFFECT: Removes the requirement that for individual providers, the arbitration panel must consider a comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States. Instead, a panel may consider these factors but is not mandated to do so.

--- END ---