

HOUSE BILL REPORT

ESHB 2662

As Passed Legislature

Title: An act relating to making payroll deductions for individual providers as defined in RCW 74.39A.240(4).

Brief Description: Making payroll deductions for individual providers as defined in RCW 74.39A.240(4).

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives McDermott, Wood, Miloscia, O'Brien, Cody, Conway, Edwards, Lysen, Chase and Santos).

Brief History:

Committee Activity:

Commerce & Labor: 1/31/02, 2/6/02 [DPS];
Appropriations: 2/9/02, 2/11/02 [DPS(CL)].

Floor Activity:

Passed House: 2/18/02, 53-44.
Passed Senate: 3/7/02, 30-19.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Requires the state, subject to certain reimbursement requirements, to deduct dues and other payments from payments made to in-home care services workers who are in a collective bargaining unit.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Kenney and Lysen.

Minority Report: Do not pass. Signed by 2 members: Representatives Clements, Ranking Minority Member; and Chandler.

Staff: Chris Cordes (786-7103).

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 15 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Ruderman, Schual-Berke, Talcott and Tokuda.

Minority Report: Do not pass. Signed by 10 members: Representatives Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cox, Lisk, Mastin, Pearson and Pflug.

Staff: Bernard Dean (786-7130).

Background:

Initiative 775, adopted by the voters in 2001, created the Home Care Quality Authority to regulate and improve the quality of long-term in-home care services. The authority's duties include recruiting, training, and stabilizing the work force of individual providers. These providers contract with the Department of Social and Health Services to provide personal or respite care to consumers who are functionally disabled persons under various programs. Under the initiative, the authority is considered the public employer of individual providers for collective bargaining purposes. Individual providers are not employees of the state for any purpose. The right to hire, supervise, and terminate individual providers is retained by the consumer.

These individual providers have collective bargaining rights under the public employees' collective bargaining law administered by the Public Employment Relations Commission (PERC). Under this law, if an exclusive bargaining representative is certified by the PERC or recognized by the employer, the employer must deduct union dues from the pay of a bargaining unit employee who has given written authorization for the deduction.

The collective bargaining law also allows the parties to include union security provisions in their collective bargaining agreements. These agreements generally require bargaining unit employees to pay a representation fee equivalent to monthly union dues to the exclusive bargaining representative. Court decisions interpreting similar laws impose limits on representation fees and require exclusive bargaining representatives to have a procedure for determining how much of the fee is related to collective bargaining activities. Under these procedures, representative fee payers may choose to pay a monthly payment equivalent to the amount determined to be germane to collective bargaining activities and administration of the contract.

The collective bargaining law includes provisions addressing bargaining unit employees who object to paying union dues based on a bona fide religious belief. These employees may make their payment to a charitable organization agreed upon by the employee and

the exclusive bargaining representative.

Summary of Engrossed Substitute Bill:

The provisions relating to collective bargaining for "individual providers" are revised. Individual providers are defined as in-home health care workers who are considered employees of the Home Care Quality Authority for collective bargaining purposes under Initiative 775.

On written authorization of an individual provider and after certification or recognition of an exclusive bargaining representative of these individual providers, the state must deduct monthly union dues from payments made to an individual provider.

If a union security agreement is included in a collective bargaining agreement between the Health Care Quality Authority and the exclusive bargaining representative that covers a bargaining unit of individual providers, the state must enforce the agreement by deducting union dues or a fee equivalent to dues from payments made to bargaining unit members. In addition, on written authorization of the individual provider, the state must deduct other payments from the payments made to individual provider when the deductions are authorized in the collective bargaining agreement.

The state makes these required deductions as the payor and not as the employer of individual providers. The additional cost incurred by the state in making these deductions is subject to reimbursement as follows:

- The initial additional costs must be negotiated, agreed upon in advance, and reimbursed by the exclusive bargaining representative.
- The allocation of ongoing additional costs is an appropriate subject of collective bargaining between the Home Care Quality Authority and the exclusive bargaining representative. If the collective bargaining agreement does not contain a provision allocating the cost, or if the Legislature does not fund the agreement, the ongoing additional costs must be negotiated, agreed upon in advance, and reimbursed by the exclusive bargaining representative-.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (Commerce & Labor) This bill is needed to bring the collective bargaining law into conformity with Initiative 775. It clarifies that the state has authority to deduct union dues from payments to individual providers. The union will cover the cost by reimbursing the state.

(With Concerns) There are some practical and technical issues that need to be resolved. The social services payroll system is very old and has limited capacity. It does not function like a payroll system. There are also concerns that these providers will be considered state employees if they are subject to "payroll" deductions.

Testimony For: (Appropriations) The union believes that the state is responsible for collecting union dues from individual providers. The state already deducts FICA and FUTA and does payroll for these workers. This bill clarifies that the state is authorized to make union dues deductions. The union and the department have been in negotiations to get the fiscal note down to zero. The department and the union will need to negotiate what a reasonable cost would be and then the union would reimburse the department for administrative costs associated with implementing the bill.

Testimony Against: (Commerce & Labor) None.

Testimony Against: (Appropriations) None.

Testified: (Commerce & Labor) (In support) Representative McDermott, prime sponsor; and David Rolf, Service Employees International Union.

(In support, with concerns) Ken Harden, Department of Social and Health Services.

Testified: (Appropriations) Ellie Menzies, Service Employees International Union; Ken Harden, Management Services, Department of Social and Health Services.