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SENATE BILL 5724

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Kohl-Welles, Benson, Franklin, Benton, Keiser, Esser, Pridemore, Kline, Roach, Regala and McAuliffe

Read first time 02/03/2005.                      Referred to Committee on Labor, Commerce, Research & Development.

1            AN ACT Relating to collective bargaining regarding hours of work  
2 for individual providers; amending RCW 74.39A.270; and declaring an  
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 74.39A.270 and 2004 c 3 s 1 are each amended to read  
6 as follows:

7            (1) Solely for the purposes of collective bargaining and as  
8 expressly limited under subsections (2) and (3) of this section, the  
9 governor is the public employer, as defined in chapter 41.56 RCW, of  
10 individual providers, who, solely for the purposes of collective  
11 bargaining, are public employees as defined in chapter 41.56 RCW. To  
12 accommodate the role of the state as payor for the community-based  
13 services provided under this chapter and to ensure coordination with  
14 state employee collective bargaining under chapter 41.80 RCW and the  
15 coordination necessary to implement RCW 74.39A.300, the public employer  
16 shall be represented for bargaining purposes by the governor or the  
17 governor's designee appointed under chapter 41.80 RCW. The governor or  
18 governor's designee shall periodically consult with the authority

1 during the collective bargaining process to allow the authority to  
2 communicate issues relating to the long-term in-home care services  
3 received by consumers.

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

7 (a) The only unit appropriate for the purpose of collective  
8 bargaining under RCW 41.56.060 is a statewide unit of all individual  
9 providers;

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

13 (c) The mediation and interest arbitration provisions of RCW  
14 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

23 (iii) The decision of the arbitration panel is not binding on the  
24 legislature and, if the legislature does not approve the request for  
25 funds necessary to implement the compensation and fringe benefit  
26 provisions of the arbitrated collective bargaining agreement, is not  
27 binding on the authority or the state;

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

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

32 (3) Individual providers who are public employees solely for the  
33 purposes of collective bargaining under subsection (1) of this section  
34 are not, for that reason, employees of the state, its political  
35 subdivisions, or an area agency on aging for any purpose. Chapter  
36 41.56 RCW applies only to the governance of the collective bargaining  
37 relationship between the employer and individual providers as provided  
38 in subsections (1) and (2) of this section.

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

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

11 (6) Except as expressly limited in this section and RCW 74.39A.300,  
12 the wages, hours, and working conditions of individual providers are  
13 determined solely through collective bargaining as provided in this  
14 chapter. No agency or department of the state, other than the  
15 authority, may establish policies or rules governing the wages or hours  
16 of individual providers. However, this subsection does not modify:

17 (a) The department's authority to establish a plan of care for each  
18 consumer and to determine the hours of care that each consumer is  
19 eligible to receive. However, if the department proposes a policy or  
20 rule, other than a policy or rule implementing a programmatic  
21 modification adopted under (f) of this subsection, that is likely to  
22 result in a significant decrease in the number of hours worked by  
23 individual providers, the proposed policy or rule is a mandatory  
24 subject of bargaining;

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

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

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

34 (e) The department's obligation to comply with the federal medicaid  
35 statute and regulations and the terms of any community-based waiver  
36 granted by the federal department of health and human services and to  
37 ensure federal financial participation in the provision of the  
38 services; and

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

8 (7)(a) The state, the department, the authority, the area agencies  
9 on aging, or their contractors under this chapter may not be held  
10 vicariously or jointly liable for the action or inaction of any  
11 individual provider or prospective individual provider, whether or not  
12 that individual provider or prospective individual provider was  
13 included on the authority's referral registry or referred to a consumer  
14 or prospective consumer. The existence of a collective bargaining  
15 agreement, the placement of an individual provider on the referral  
16 registry, or the development or approval of a plan of care for a  
17 consumer who chooses to use the services of an individual provider and  
18 the provision of case management services to that consumer, by the  
19 department or an area agency on aging, does not constitute a special  
20 relationship with the consumer.

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

23 (8) Nothing in this section affects the state's responsibility with  
24 respect to unemployment insurance for individual providers. However,  
25 individual providers are not to be considered, as a result of the state  
26 assuming this responsibility, employees of the state.

27 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of the  
29 state government and its existing public institutions, and takes effect  
30 immediately.

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