

SENATE BILL REPORT

SB 5949

As of February 23, 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: Senators Keiser, Kohl-Welles, Fairley, Fraser, Weinstein, Roach, Kline, Pridemore, Delvin and McAuliffe.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/20/07.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Staff: Jennifer Strus (786-7316)

Background: An adult family home is a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing care. An adult family home provider is any person licensed by the Department of Social and Health Services to operate an adult family home.

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 (PERC). Individual providers (home care workers) and 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. 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.

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.

Summary of Bill: 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. Solely for the purposes of collective bargaining, adult family home providers are "public employees" and 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 state is to recognize the exclusive bargaining representative upon verification that a majority of providers have designated an exclusive representative. PERC is to conduct the certification of majority status process.

PERC is to grant a prospective intervener status if the organization submits authorization cards from a majority of providers in the unit within five days of the initial request for recognition. If two or more prospective representatives have valid authorization cards from the same person within the unit, PERC is to add the cards to both organizations' total number of cards.

Scope of Collective Bargaining: The scope of collective bargaining for adult family home providers includes: economic compensation, including rate of reimbursement; benefits; expanded training options; provider safety and liability issues; terms and conditions of the current contract; comprehensive assessment reporting evaluation assessment procedures; grievance procedures; and any other matter that would affect the provision of services in adult family homes or the livelihood of the providers.

Interest Arbitration: Adult family home providers have the right to interest arbitration. However, in addition to the factors already required to be accounted for, the interest arbitration panel must also consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement. The decision of the arbitration panel is not binding on the Legislature and if the Legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the agreement, the decision is not binding on the state.

Requests for Funds and Legislative Changes: The Governor is required to submit a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into if the request was submitted to the Director of the Office of Financial Management (OFM) by October 1 prior to the session at which the Legislature will consider the request and certified by the OFM Director as financially feasible or reflective of a binding arbitration panel decision.

The Legislature must approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, any agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

If, after the compensation and benefits portion of the agreement are approved by the Legislature, a significant revenue shortfall occurs resulting in reduced appropriations, both parties must immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

Union Dues: The state must deduct monthly union dues from an adult family home provider's payments upon written authorization of the provider and after certification or recognition of an exclusive bargaining representative of the adult family home providers.

Appropriation: None.

Fiscal Note: Requested on February 14, 2007.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: A number of adult family homes approached the Federation asking to be unionized because they don't feel that they have a voice. Adult family home providers are concerned about training, provider safety issues, and rates. Many feel overwhelmed and under-compensated, and they want a strong central voice. This bill deals with just organizing the providers and not the workers. The bill provides empowerment for providers. Adult Family Home (AFH) providers need to afford to stay in business and not continue to succumb to the 20 percent turnover rate that currently exists. Seasoned professionals are needed and this bill would help keep providers in the business. A union is needed to speak for the providers because they have neither the time nor the expertise to do it themselves. A provider is paid \$36 a day for the same patient for which a nursing home would be paid \$1,500 a day and they both have the same level of responsibilities. There are about 2,400 providers that would be part of the bargaining process. The quality of care residents of adult family homes receive is directly tied to the financial resources available to providers. To best ensure fair wages and benefits is to support this bill because it allows the providers to be fairly represented.

CON: This bill should be part of a larger reform of the system. The providers should not be able to organize without a voice for the workers first. Having to join a union is a violation of the First Amendment to the U.S. Constitution. There is a conflict of interest when the same union organizes adult family home providers as well as the state employees who license those providers. This bill is premature and the providers don't have a clear idea of what they are getting into. This issue should be studied at length. Providers will not be properly represented by the union and should be represented by fellow providers. The Washington State Residential Care Coalition (WSRCC) should be the exclusive bargaining representative.

OTHER: The scope of the bill is a bit broad and would seem to include the adult family homes that are not receiving state money. The method provided for certifying is unusual. There is no provision for mail-in ballots, just a cross check of 50 percent plus one. The scope of collective bargaining is a bit too broad. There are liability insurance issues as well. We want to make sure there are protections for residents in the bill.

Persons Testifying: PRO: Greg Devereaux, Washington Federation of State Employees; Bill Day, Adult Family Home Association; Kim Blume, Della Ethington, Amy Thomas, Adult Family Home Provider; James Colvin, Camelot Court Adult Family Home; Jan Thompson, citizen; Robby Stern, WSLC; Richard Moore, Adult Family Home Association of Washington.

CON: Jack Arntzen, Terry Kohl, Jack Reese, Marilyn Mascararines, Dan Simnionias, WSRCC; Candace Inagi, Service Employees International Union 775; Joseph O'Connor, AAA Residential.

OTHER: Steve McLain, Labor Relations Office, Governor's Office; Louise Ryan, Long Term Care Ombudsman Program; Cathy Callahan, PERC.