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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3145

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State of Washington

60th Legislature

2008 Regular Session

**By** House Appropriations (originally sponsored by Representatives Kagi, Haler, Roberts, Walsh, Pettigrew, Dickerson, Conway, Green, Goodman, Kenney, Wood, and Ormsby)

READ FIRST TIME 02/14/08.

1 AN ACT Relating to implementing a program of tiered classification  
2 for foster parent licensing; amending RCW 41.04.810, 41.56.113, and  
3 43.01.047; adding new sections to chapter 74.13 RCW; adding a new  
4 section to chapter 41.56 RCW; creating new sections; and providing an  
5 effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.13 RCW  
8 to read as follows:

9 The legislature finds that foster parents are an essential partner  
10 in the child welfare system, with responsibility for the care of  
11 vulnerable children whose families are unable to meet their needs.  
12 Because children who enter the foster care system have experienced  
13 varying degrees of stress and trauma before placement, foster parents  
14 sometimes are called upon to provide care for children with significant  
15 behavioral challenges and intensive developmental needs. Other  
16 children who enter foster care may require extraordinary care due to  
17 health care needs or medical fragility. The legislature also finds  
18 that foster parents with specialized skills and experience, or  
19 professional training and expertise, can contribute significantly to a

1 child's well-being by promoting placement stability and supporting the  
2 child's developmental growth while in foster care. The legislature  
3 intends to implement a specialized foster home program to enhance the  
4 continuum of care options and to promote permanency and positive  
5 outcomes for children served in the child welfare system by authorizing  
6 the department to contract for specialized foster home services.

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

9 (1) The department shall select two or more geographic areas with  
10 high concentrations of children with significant needs in foster care  
11 for the implementation of phase one of a specialized foster home  
12 program. In determining the scope of the first phase of the program,  
13 the department shall: (a) Examine areas where there are concentrations  
14 of children with significant behavioral challenges and intensive  
15 developmental or medical needs who are being served in family foster  
16 homes; (b) consider areas of appropriate size that will allow for  
17 careful analysis of the impact of the specialized foster home program  
18 on the array of out-of-home care providers, including providers of  
19 behavioral rehabilitation services; and (c) determine the number of  
20 children to be served in these selected areas. During phase one of the  
21 implementation of the program, only licensed foster parents under the  
22 supervision of the department shall be eligible to participate in the  
23 program. Implementation of the program at the phase one sites also  
24 shall be structured to support the long-term goal of eventual expansion  
25 of the program statewide.

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

29 (a) Seek recommendations from foster parents and other out-of-home  
30 service providers in the program sites regarding the qualifications and  
31 requirements of specialized foster home providers, the needs of the  
32 children to be served, and the desired outcomes to be measured or  
33 monitored at the respective program sites; and

34 (b) Consult with experts in child welfare, children's mental  
35 health, and children's health care to identify the evidence-based or  
36 promising practice models to be employed in the program and the

1 appropriate supports to ensure program fidelity, including, but not  
2 limited to, the necessary training and clinical consultation and  
3 oversight to be provided to specialized foster homes.

4 (3) Using the recommendations from foster parents, the  
5 consultations with professionals from appropriate disciplines, and the  
6 information provided in the report to the legislature under chapter  
7 413, Laws of 2007, including the information presented to the work  
8 group convened to prepare and present the report, the department shall  
9 implement the program through contracts with foster parents who are  
10 determined by the department to meet the eligibility criteria for the  
11 specialized foster home program. The department shall:

12 (a) Define the criteria for specialized foster home providers,  
13 which shall include a requirement that the foster parent be licensed by  
14 the department as a foster parent, as well as meet additional  
15 requirements relating to relevant experience, education, training, and  
16 professional expertise necessary to meet the high needs of children  
17 identified as eligible for this program;

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

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

27 (d) Establish a limit on the number and ages of children with high  
28 needs that may be placed in a specialized foster home pursuant to the  
29 specialized foster home program contract. Such limitation shall  
30 recognize that children with externalizing behaviors are most likely to  
31 experience long-term improvements in their behavior when care is  
32 provided in settings that minimize exposure to peers with challenging  
33 behaviors;

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

36 (f) Specify the training and consultation requirements that support  
37 the models of service;

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

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

6 (i) Establish clearly defined responsibilities of specialized  
7 foster home providers, who have a specialized foster home contract  
8 including responsibilities to promote permanency and connections with  
9 birth parents; and

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

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

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

17 (b) The training and ongoing professional consultation to be  
18 provided;

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

21 (d) The desired outcomes to be measured;

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

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

25 (g) The term of the contract and the processes for an annual  
26 performance review of the specialized foster home provider and an  
27 annual assessment of the child.

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

32 (6) Nothing in this act gives an eligible foster parent the right  
33 to a contract under the specialized foster home program, and nothing in  
34 this act gives a specialized foster home provider that has a contract  
35 under the program a right to have a child or children placed in the  
36 home pursuant to the contract.

37 (7) "Specialized foster home providers" means foster parents who

1 are determined by the department to be eligible foster parents, who  
2 have a specialized foster home program contract with the department.

3 (8) The department shall provide an implementation status update to  
4 the governor and the legislature by January 30, 2009. Based on the  
5 experiences and lessons learned from implementation of the program  
6 during phase one, the department shall recommend a process and timeline  
7 for expanding the program and implementing it statewide. The  
8 department shall report to the governor and the appropriate members of  
9 the legislature by September 1, 2009, and shall identify the essential  
10 elements of the specialized foster home program that should be  
11 addressed or replicated as the program is expanded to the next phase.

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

14 (1) In addition to the entities listed in RCW 41.56.020, this  
15 chapter applies to the governor with respect to specialized foster home  
16 providers. Solely for the purposes of collective bargaining and as  
17 expressly limited under subsections (2) and (3) of this section, the  
18 governor is the employer of specialized foster home providers who,  
19 solely for the purposes of collective bargaining, are public employees.  
20 The public employer shall be represented for bargaining purposes by the  
21 governor or the governor's designee.

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

24 (a) A statewide unit of all specialized foster home providers is  
25 the only unit appropriate for purposes of collective bargaining. The  
26 commission shall adopt reasonable rules providing for the inclusion of  
27 unrepresented specialized foster home providers when, after  
28 implementation of phase one of the specialized foster home program  
29 described in section 2 of this act: (i) The labor organization  
30 certified as the exclusive bargaining representative of the specialized  
31 foster home providers petitions to represent one or more new groups of  
32 specialized foster home providers and demonstrates that it has majority  
33 support among those groups; or (ii) when any labor organization  
34 petitions to represent the entire bargaining unit of specialized foster  
35 home providers and demonstrates that it has at least a thirty percent  
36 showing of interest to warrant an election.

1 (b) The exclusive bargaining representative of specialized foster  
2 home providers in the unit specified in (a) of this subsection shall be  
3 the representative chosen in an election conducted pursuant to RCW  
4 41.56.070. Bargaining authorization cards furnished as the showing of  
5 interest in support of any representation petition or motion for  
6 intervention filed under this section shall be exempt from disclosure  
7 under chapter 42.56 RCW.

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

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

18 (d) In addition to the entities listed in the mediation and  
19 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and  
20 41.56.480, the provisions apply to the governor or the governor's  
21 designee and the exclusive bargaining representative of specialized  
22 foster home providers, except that:

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

27 (ii) The decision of the arbitration panel is not binding on the  
28 legislature and, if the legislature does not approve the request for  
29 funds necessary to implement the compensation and benefit provisions of  
30 the arbitrated collective bargaining agreement, the decision is not  
31 binding on the state.

32 (e) Specialized foster home providers do not have the right to  
33 strike.

34 (3) Specialized foster home providers who are public employees  
35 solely for the purposes of collective bargaining under subsection (1)  
36 of this section are not, for that reason, employees of the state for  
37 any other purpose. This section applies only to the governance of the

1 collective bargaining relationship between the employer and specialized  
2 foster home providers as provided in subsections (1) and (2) of this  
3 section.

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

5 (a) The department's authority to establish a plan of care for each  
6 foster child or its core responsibility to manage foster care services,  
7 including determination of the level of care that each foster child is  
8 eligible to receive. This subsection shall not be interpreted to  
9 require collective bargaining over an individual foster child's plan of  
10 care;

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

16 (c) The legislature's right to make programmatic modifications to  
17 the delivery of state services including standards of eligibility of  
18 children in foster care and specialized foster home providers  
19 participating in the programs and the nature of services provided. The  
20 governor shall not enter into, extend, or renew any agreement under  
21 this chapter that does not expressly reserve the legislative rights  
22 described in this subsection (4)(c);

23 (d) The right of the court, the department, or any other agency or  
24 individual acting with proper legal authority, to remove a child from  
25 the care of a specialized foster home provider. The right or action of  
26 the court, the department, or any other agency or individual acting  
27 with proper legal authority to remove a child from the care of a  
28 specialized foster home provider shall not constitute an unfair labor  
29 practice;

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

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

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

4 (h) The department's authority to define the criteria for  
5 specialized foster homes, including training, education, relevant  
6 experience, and professional expertise, and the department's authority  
7 to define the criteria for identifying high needs children who may be  
8 eligible for placement in a specialized foster home; or

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

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

14 (6) Upon meeting the requirements of subsection (7) of this  
15 section, the governor must submit, as a part of the proposed biennial  
16 or supplemental operating budget submitted to the legislature under RCW  
17 43.88.030, a request for funds necessary to implement the stipend and  
18 benefit provisions of a collective bargaining agreement entered into  
19 under this section or for legislation necessary to implement such  
20 agreement.

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

25 (a) Submitted to the director of financial management by October  
26 1st before the legislative session at which the request is to be  
27 considered, except that, for initial negotiations under this section,  
28 the request must be submitted after July 1, 2009; and

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

32 (8) The legislature must approve or reject the submission of the  
33 request for funds as a whole. If the legislature rejects or fails to  
34 act on the submission, any such agreement will be reopened solely for  
35 the purpose of renegotiating the funds necessary to implement the  
36 agreement.

37 (9) The governor shall periodically consult with the joint  
38 committee on employment relations established by RCW 41.80.010



1 regarding appropriations necessary to implement the stipend and benefit  
2 provisions of any collective bargaining agreement and, upon completion  
3 of negotiations, advise the committee on the elements of the agreement  
4 and on any legislation necessary to implement such agreement.

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

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

17 (12) In enacting this section, the legislature intends to provide  
18 state action immunity under federal and state antitrust laws for the  
19 joint activities of specialized foster home providers and their  
20 exclusive bargaining representative to the extent such activities are  
21 authorized by this chapter.

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

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

29 Individual providers, as defined in RCW 74.39A.240, family child  
30 care providers, as defined in RCW 41.56.030, ~~((and))~~ adult family home  
31 providers, as defined in RCW 41.56.030, and specialized foster home  
32 providers, as defined in section 3 of this act, are not employees of  
33 the state or any of its political subdivisions and are specifically and  
34 entirely excluded from all provisions of this title, except as provided  
35 in RCW 74.39A.270, 41.56.028, ~~((and))~~ 41.56.029, and section 3 of this  
36 act.

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

3       (1) Upon the written authorization of an individual provider, a  
4 family child care provider, ~~((or))~~ an adult family home provider, or a  
5 specialized foster home provider within the bargaining unit and after  
6 the certification or recognition of the bargaining unit's exclusive  
7 bargaining representative, the state as payor, but not as the employer,  
8 shall, subject to subsection (3) of this section, deduct from the  
9 payments to an individual provider, a family child care provider,  
10 ~~((or))~~ an adult family home provider, or from the stipends paid to a  
11 specialized foster home provider the monthly amount of dues as  
12 certified by the secretary of the exclusive bargaining representative  
13 and shall transmit the same to the treasurer of the exclusive  
14 bargaining representative.

15       (2) If the governor and the exclusive bargaining representative of  
16 a bargaining unit of individual providers, family child care providers,  
17 ~~((or))~~ adult family home providers, or specialized foster home  
18 providers enter into a collective bargaining agreement that:

19       (a) Includes a union security provision authorized in RCW  
20 41.56.122, the state as payor, but not as the employer, shall, subject  
21 to subsection (3) of this section, enforce the agreement by deducting  
22 from the payments or stipends, as applicable, to bargaining unit  
23 members the dues required for membership in the exclusive bargaining  
24 representative, or, for nonmembers thereof, a fee equivalent to the  
25 dues; or

26       (b) Includes requirements for deductions of payments other than the  
27 deduction under (a) of this subsection, the state, as payor, but not as  
28 the employer, shall, subject to subsection (3) of this section, make  
29 such deductions upon written authorization of the individual provider,  
30 family child care provider, ~~((or))~~ adult family home provider, or the  
31 specialized foster home provider.

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

37       (b) The allocation of ongoing additional costs to the state in  
38 making deductions ~~((from the payments to individual providers, family~~

1 ~~child care providers, or adult family home providers))~~ under this  
2 section shall be an appropriate subject of collective bargaining  
3 between the exclusive bargaining representative and the governor unless  
4 prohibited by another statute. If no collective bargaining agreement  
5 containing a provision allocating the ongoing additional cost is  
6 entered into between the exclusive bargaining representative and the  
7 governor, or if the legislature does not approve funding for the  
8 collective bargaining agreement as provided in RCW 74.39A.300,  
9 41.56.028, ~~((or))~~ 41.56.029, or section 3 of this act, as applicable,  
10 the ongoing additional costs to the state in making deductions ~~((from~~  
11 ~~the payments to individual providers, family child care providers, or~~  
12 ~~adult family home providers))~~ under this section shall be negotiated,  
13 agreed upon in advance, and reimbursed to the state by the exclusive  
14 bargaining representative.

15 (4) The governor and the exclusive bargaining representative of a  
16 bargaining unit of family child care providers may not enter into a  
17 collective bargaining agreement that contains a union security  
18 provision unless the agreement contains a process, to be administered  
19 by the exclusive bargaining representative of a bargaining unit of  
20 family child care providers, for hardship dispensation for license-  
21 exempt family child care providers who are also temporary assistance  
22 for needy families recipients or WorkFirst participants.

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

25 RCW 43.01.040 through 43.01.044 do not apply to individual  
26 providers under RCW 74.39A.220 through 74.39A.300, family child care  
27 providers under RCW 41.56.028, ~~((or))~~ adult family home providers under  
28 RCW 41.56.029, or specialized foster home providers under section 3 of  
29 this act.

30 NEW SECTION. **Sec. 7.** If any part of this act is found to be in  
31 conflict with federal requirements that are a prescribed condition of  
32 federal funds which support the operations and services provided by the  
33 department of social and health services, the conflicting part of this  
34 act is inoperative solely to the extent of the conflict and with  
35 respect to the agencies directly affected, and this finding does not  
36 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal  
2 requirements that are a necessary condition to the receipt of federal  
3 funds by the state.

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

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

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