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HOUSE BILL 2490

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Manweller, Condotta, and Magendanz

Read first time 01/14/16. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to accountability and fairness in public employee  
2 collective bargaining; amending RCW 42.30.140, 74.39A.270, 41.56.028,  
3 41.56.029, and 41.56.510; adding a new section to chapter 42.30 RCW;  
4 adding a new section to chapter 41.56 RCW; adding a new section to  
5 chapter 28B.52 RCW; adding a new section to chapter 41.59 RCW; adding  
6 a new section to chapter 41.76 RCW; adding a new section to chapter  
7 41.80 RCW; adding a new section to chapter 47.64 RCW; adding a new  
8 section to chapter 49.39 RCW; and creating a new section.

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

10 **Sec. 1.** RCW 42.30.140 and 1990 c 98 s 1 are each amended to read  
11 as follows:

12 If any provision of this chapter conflicts with the provisions of  
13 any other statute, the provisions of this chapter shall control:  
14 PROVIDED, That this chapter shall not apply to:

15 (1) The proceedings concerned with the formal issuance of an  
16 order granting, suspending, revoking, or denying any license, permit,  
17 or certificate to engage in any business, occupation, or profession  
18 or to any disciplinary proceedings involving a member of such  
19 business, occupation, or profession, or to receive a license for a  
20 sports activity or to operate any mechanical device or motor vehicle  
21 where a license or registration is necessary; or

1 (2) That portion of a meeting of a quasi-judicial body which  
2 relates to a quasi-judicial matter between named parties as  
3 distinguished from a matter having general effect on the public or on  
4 a class or group; or

5 (3) Matters governed by chapter 34.05 RCW, the Administrative  
6 Procedure Act; or

7 (4)(a) Collective bargaining sessions with employee  
8 organizations, including (~~contract negotiations,~~) grievance  
9 meetings(~~(,)~~) and discussions relating to the interpretation or  
10 application of a labor agreement; or (b) that portion of a meeting  
11 during which the governing body is planning or adopting the strategy  
12 or position to be taken by the governing body during the course of  
13 any collective bargaining, professional negotiations, or grievance or  
14 mediation proceedings, or reviewing the proposals made in the  
15 negotiations or proceedings while in progress.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.30  
17 RCW to read as follows:

18 Collective bargaining sessions with employee organizations  
19 involving contract negotiations must be open to the public.

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

22 Collective bargaining sessions between bargaining representatives  
23 and public employers, or their representatives, involving contract  
24 negotiations under this chapter must be open to the public.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.52  
26 RCW to read as follows:

27 Collective bargaining sessions between employee organizations, or  
28 their representatives, and public employers, or their  
29 representatives, involving contract negotiations under this chapter  
30 must be open to the public.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.59  
32 RCW to read as follows:

33 Collective bargaining sessions between employee organizations, or  
34 their representatives, and public employers, or their  
35 representatives, involving contract negotiations under this chapter  
36 must be open to the public.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 41.76  
2    RCW to read as follows:

3        Collective bargaining sessions between employee organizations, or  
4    their representatives, and public employers, or their  
5    representatives, involving contract negotiations under this chapter  
6    must be open to the public.

7        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 41.80  
8    RCW to read as follows:

9        Collective bargaining sessions between employee organizations, or  
10   their representatives, and public employers, or their  
11   representatives, involving contract negotiations under this chapter  
12   must be open to the public.

13       NEW SECTION.    **Sec. 8.**    A new section is added to chapter 47.64  
14   RCW to read as follows:

15       Collective bargaining sessions between ferry employee  
16   organizations, or their representatives, and public employers, or  
17   their representatives, involving contract negotiations under this  
18   chapter must be open to the public.

19       NEW SECTION.    **Sec. 9.**    A new section is added to chapter 49.39  
20   RCW to read as follows:

21       Collective bargaining sessions between bargaining representatives  
22   and public employers, or their representatives, involving contract  
23   negotiations under this chapter must be open to the public.

24       **Sec. 10.**    RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each  
25   amended to read as follows:

26       (1) Solely for the purposes of collective bargaining and as  
27   expressly limited under subsections (2) and (3) of this section, the  
28   governor is the public employer, as defined in chapter 41.56 RCW, of  
29   individual providers, who, solely for the purposes of collective  
30   bargaining, are public employees as defined in chapter 41.56 RCW. To  
31   accommodate the role of the state as payor for the community-based  
32   services provided under this chapter and to ensure coordination with  
33   state employee collective bargaining under chapter 41.80 RCW and the  
34   coordination necessary to implement RCW 74.39A.300, the public  
35   employer shall be represented for bargaining purposes by the governor  
36   or the governor's designee appointed under chapter 41.80 RCW. The

1 governor or governor's designee shall periodically consult with the  
2 authority during the collective bargaining process to allow the  
3 authority to communicate issues relating to the long-term in-home  
4 care services received by consumers. The department shall solicit  
5 input from the developmental disabilities council, the governor's  
6 committee on disability issues and employment, the state council on  
7 aging, and other consumer advocacy organizations to obtain informed  
8 input from consumers on their interests, including impacts on  
9 consumer choice, for all issues proposed for collective bargaining  
10 under subsections (5) and (6) of this section.

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

14 (a) The only unit appropriate for the purpose of collective  
15 bargaining under RCW 41.56.060 is a statewide unit of all individual  
16 providers;

17 (b) The showing of interest required to request an election under  
18 RCW (~~41.56.060~~) 41.56.070 is ten percent of the unit, and any  
19 intervener seeking to appear on the ballot must make the same showing  
20 of interest;

21 (c) Once a bargaining representative has been certified by the  
22 public employment relations commission to represent the bargaining  
23 unit of individual providers, the public employment relations  
24 commission shall, in April of every even-numbered year, conduct a  
25 secret ballot election to determine the bargaining representative of  
26 individual providers, subject to the following conditions:

27 (i) The existing bargaining representative must be on the ballot  
28 automatically as shall a choice of no union representation. Any other  
29 bargaining representative may petition the public employment  
30 relations commission to appear on the ballot by showing written proof  
31 of interest from at least ten percent of the bargaining unit.

32 (ii) The public employment relations commission shall certify the  
33 bargaining representative that receives the most votes cast by  
34 members of the bargaining unit. If a bargaining representative other  
35 than the current bargaining representative receives the most votes,  
36 it must be certified by the public employment relations commission to  
37 represent individual providers at the expiration of the current  
38 contract. However, nothing prevents the bargaining representative  
39 that received the most votes from, prior to its certification,  
40 negotiating a new contract with the public employer to take effect

1 upon the expiration of the current contract. If more votes are cast  
2 for no union representation than for any bargaining representative,  
3 the public employment relations commission shall decertify the  
4 bargaining representative at the expiration of the collective  
5 bargaining agreement.

6 (iii) No representation election for the bargaining unit of  
7 individual providers may be held for a period of at least one year  
8 following a certification of no union representation.

9 (iv) To the extent not inconsistent with this subsection (2)(c),  
10 elections under this subsection (2)(c) must be conducted in  
11 accordance with RCW 41.56.070;

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

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

19 (ii) The decision of the arbitration panel is not binding on the  
20 legislature and, if the legislature does not approve the request for  
21 funds necessary to implement the compensation and fringe benefit  
22 provisions of the arbitrated collective bargaining agreement, is not  
23 binding on the authority or the state;

24 ~~((d))~~ (e) Individual providers do not have the right to strike;  
25 and

26 ~~((e))~~ (f) Individual providers who are related to, or family  
27 members of, consumers or prospective consumers are not, for that  
28 reason, exempt from this chapter or chapter 41.56 RCW.

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

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

1 (5) Except as expressly limited in this section and RCW  
2 74.39A.300, the wages, hours, and working conditions of individual  
3 providers are determined solely through collective bargaining as  
4 provided in this chapter. No agency or department of the state may  
5 establish policies or rules governing the wages or hours of  
6 individual providers. However, this subsection does not modify:

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

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

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

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

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

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

1 (6) At the request of the exclusive bargaining representative,  
2 the governor or the governor's designee appointed under chapter 41.80  
3 RCW shall engage in collective bargaining, as defined in RCW  
4 41.56.030(4), with the exclusive bargaining representative over  
5 employer contributions to the training partnership for the costs of:  
6 (a) Meeting all training and peer mentoring required under this  
7 chapter; and (b) other training intended to promote the career  
8 development of individual providers.

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

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

26 **Sec. 11.** RCW 41.56.028 and 2007 c 278 s 2 are each amended to  
27 read as follows:

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

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

1 (a) A statewide unit of all family child care providers is the  
2 only unit appropriate for purposes of collective bargaining under RCW  
3 41.56.060.

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

11 (c) Once a bargaining representative has been certified by the  
12 commission to represent the bargaining unit of family child care  
13 providers, the commission shall, in April of every even-numbered  
14 year, conduct a secret ballot election to determine the bargaining  
15 representative of family child care providers, subject to the  
16 following conditions:

17 (i) The existing bargaining representative must be on the ballot  
18 automatically as shall a choice of no union representation. Any other  
19 bargaining representative may petition the commission to appear on  
20 the ballot by showing written proof of interest from at least ten  
21 percent of the bargaining unit.

22 (ii) The commission shall certify the bargaining representative  
23 that receives the most votes cast by members of the bargaining unit.  
24 If a bargaining representative other than the current bargaining  
25 representative receives the most votes, it must be certified by the  
26 commission to represent family child care providers at the expiration  
27 of the current contract. However, nothing prevents the bargaining  
28 representative that received the most votes from, prior to its  
29 certification, negotiating a new contract with the public employer to  
30 take effect upon the expiration of the current contract. If more  
31 votes are cast for no union representation than for any bargaining  
32 representative, the commission shall decertify the bargaining  
33 representative at the expiration of the collective bargaining  
34 agreement.

35 (iii) No representation election for the bargaining unit of  
36 family child care providers may be held for a period of at least one  
37 year following a certification of no union representation.

38 (iv) To the extent not inconsistent with this subsection (2)(c),  
39 elections under this subsection (2)(c) must be conducted in  
40 accordance with RCW 41.56.070.



1        (d) Notwithstanding the definition of "collective bargaining" in  
2 RCW 41.56.030(4), the scope of collective bargaining for child care  
3 providers under this section shall be limited solely to: (i) Economic  
4 compensation, such as manner and rate of subsidy and reimbursement,  
5 including tiered reimbursements; (ii) health and welfare benefits;  
6 (iii) professional development and training; (iv) labor-management  
7 committees; (v) grievance procedures; and (vi) other economic  
8 matters. Retirement benefits shall not be subject to collective  
9 bargaining. By such obligation neither party shall be compelled to  
10 agree to a proposal or be required to make a concession unless  
11 otherwise provided in this chapter.

12        ~~((d))~~ (e) The mediation and interest arbitration provisions of  
13 RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

14        (i) With respect to commencement of negotiations between the  
15 governor and the exclusive bargaining representative of family child  
16 care providers, negotiations shall be commenced initially upon  
17 certification of an exclusive bargaining representative under (a) of  
18 this subsection and, thereafter, by February 1st of any even-numbered  
19 year; and

20        (ii) The decision of the arbitration panel is not binding on the  
21 legislature and, if the legislature does not approve the request for  
22 funds necessary to implement the compensation and benefit provisions  
23 of the arbitrated collective bargaining agreement, is not binding on  
24 the state.

25        ~~((e))~~ (f) Family child care providers do not have the right to  
26 strike.

27        (3) Family child care providers who are public employees solely  
28 for the purposes of collective bargaining under subsection (1) of  
29 this section are not, for that reason, employees of the state for any  
30 purpose. This section applies only to the governance of the  
31 collective bargaining relationship between the employer and family  
32 child care providers as provided in subsections (1) and (2) of this  
33 section.

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

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

38        (b) The secretary of the department of social and health  
39 services' right to adopt requirements under RCW 74.15.030, except for  
40 requirements related to grievance procedures and collective

1 negotiations on personnel matters as specified in subsection (2)  
2 (~~(e)~~) (d) of this section;

3 (c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130;  
4 and

5 (d) The legislature's right to make programmatic modifications to  
6 the delivery of state services through child care subsidy programs,  
7 including standards of eligibility of parents, legal guardians, and  
8 family child care providers participating in child care subsidy  
9 programs, and the nature of services provided. The governor shall not  
10 enter into, extend, or renew any agreement under this section that  
11 does not expressly reserve the legislative rights described in this  
12 subsection (4)(d).

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

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

24 (a) Submitted to the director of financial management by October  
25 1st before the legislative session at which the request is to be  
26 considered, except that, for initial negotiations under this section,  
27 the request must be submitted by November 15, 2006; and

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

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

36 (8) The governor shall periodically consult with the joint  
37 committee on employment relations established by RCW 41.80.010  
38 regarding appropriations necessary to implement the compensation and  
39 benefit provisions of any collective bargaining agreement and, upon  
40 completion of negotiations, advise the committee on the elements of

1 the agreement and on any legislation necessary to implement such  
2 agreement.

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

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

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

20 **Sec. 12.** RCW 41.56.029 and 2007 c 184 s 1 are each amended to  
21 read as follows:

22 (1) In addition to the entities listed in RCW 41.56.020, this  
23 chapter applies to the governor with respect to adult family home  
24 providers. Solely for the purposes of collective bargaining and as  
25 expressly limited under subsections (2) and (3) of this section, the  
26 governor is the public employer of adult family home providers who,  
27 solely for the purposes of collective bargaining, are public  
28 employees. The public employer shall be represented for bargaining  
29 purposes by the governor or the governor's designee.

30 (2) There shall be collective bargaining, as defined in RCW  
31 41.56.030, between the governor and adult family home providers,  
32 except as follows:

33 (a) A statewide unit of all adult family home providers is the  
34 only unit appropriate for purposes of collective bargaining under RCW  
35 41.56.060.

36 (b) The exclusive bargaining representative of adult family home  
37 providers in the unit specified in (a) of this subsection shall be  
38 the representative chosen in an election conducted pursuant to RCW  
39 41.56.070.

1 Bargaining authorization cards furnished as the showing of  
2 interest in support of any representation petition or motion for  
3 intervention filed under this section shall be exempt from disclosure  
4 under chapter 42.56 RCW.

5 (c) Once a bargaining representative has been certified by the  
6 commission to represent the bargaining unit of adult family home  
7 providers, the commission shall, in April of every even-numbered  
8 year, conduct a secret ballot election to determine the bargaining  
9 representative of adult family home providers, subject to the  
10 following conditions:

11 (i) The existing bargaining representative must be on the ballot  
12 automatically as shall a choice of no union representation. Any other  
13 bargaining representative may petition the commission to appear on  
14 the ballot by showing written proof of interest from at least ten  
15 percent of the bargaining unit.

16 (ii) The commission shall certify the bargaining representative  
17 that receives the most votes cast by members of the bargaining unit.  
18 If a bargaining representative other than the current bargaining  
19 representative receives the most votes, it must be certified by the  
20 commission to represent adult family home providers at the expiration  
21 of the current contract. However, nothing prevents the bargaining  
22 representative that received the most votes from, prior to its  
23 certification, negotiating a new contract with the public employer to  
24 take effect upon the expiration of the current contract. If more  
25 votes are cast for no union representation than for any bargaining  
26 representative, the commission shall decertify the bargaining  
27 representative at the expiration of the collective bargaining  
28 agreement.

29 (iii) No representation election for the bargaining unit of adult  
30 family home providers may be held for a period of at least one year  
31 following a certification of no union representation.

32 (iv) To the extent not inconsistent with this subsection (2)(c),  
33 elections under this subsection (2)(c) must be conducted in  
34 accordance with RCW 41.56.070.

35 (d) Notwithstanding the definition of "collective bargaining" in  
36 RCW 41.56.030(4), the scope of collective bargaining for adult family  
37 home providers under this section shall be limited solely to: (i)  
38 Economic compensation, such as manner and rate of subsidy and  
39 reimbursement, including tiered reimbursements; (ii) health and  
40 welfare benefits; (iii) professional development and training; (iv)

1 labor-management committees; (v) grievance procedures; and (vi) other  
2 economic matters. Retirement benefits shall not be subject to  
3 collective bargaining. By such obligation neither party shall be  
4 compelled to agree to a proposal or be required to make a concession  
5 unless otherwise provided in this chapter.

6 ~~((d))~~ (e) In addition to the entities listed in the mediation  
7 and interest arbitration provisions of RCW 41.56.430 through  
8 41.56.470 and 41.56.480, the provisions apply to the governor or the  
9 governor's designee and the exclusive bargaining representative of  
10 adult family home providers, except that:

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

16 (ii) The decision of the arbitration panel is not binding on the  
17 legislature and, if the legislature does not approve the request for  
18 funds necessary to implement the compensation and benefit provisions  
19 of the arbitrated collective bargaining agreement, the decision is  
20 not binding on the state.

21 ~~((e))~~ (f) Adult family home providers do not have the right to  
22 strike.

23 (3) Adult family home providers who are public employees solely  
24 for the purposes of collective bargaining under subsection (1) of  
25 this section are not, for that reason, employees of the state for any  
26 other purpose. This section applies only to the governance of the  
27 collective bargaining relationship between the employer and adult  
28 family home providers as provided in subsections (1) and (2) of this  
29 section.

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

31 (a) The department's authority to establish a plan of care for  
32 each consumer or its core responsibility to manage long-term care  
33 services under chapter 70.128 RCW, including determination of the  
34 level of care that each consumer is eligible to receive. However, at  
35 the request of the exclusive bargaining representative, the governor  
36 or the governor's designee appointed under chapter 41.80 RCW shall  
37 engage in collective bargaining, as defined in RCW 41.56.030(4), with  
38 the exclusive bargaining representative over how the department's  
39 core responsibility affects hours of work for adult family home

1 providers. This subsection shall not be interpreted to require  
2 collective bargaining over an individual consumer's plan of care;

3 (b) The department's obligation to comply with the federal  
4 medicaid statute and regulations and the terms of any community-based  
5 waiver granted by the federal department of health and human services  
6 and to ensure federal financial participation in the provision of the  
7 services;

8 (c) The legislature's right to make programmatic modifications to  
9 the delivery of state services under chapter 70.128 RCW, including  
10 standards of eligibility of consumers and adult family home providers  
11 participating in the programs under chapter 70.128 RCW, and the  
12 nature of services provided. The governor shall not enter into,  
13 extend, or renew any agreement under this chapter that does not  
14 expressly reserve the legislative rights described in this subsection  
15 (4)(c);

16 (d) The residents', parents', or legal guardians' right to choose  
17 and terminate the services of any licensed adult family home  
18 provider; and

19 (e) RCW 43.43.832, 43.20A.205, or 74.15.130.

20 (5) Upon meeting the requirements of subsection (6) of this  
21 section, the governor must submit, as a part of the proposed biennial  
22 or supplemental operating budget submitted to the legislature under  
23 RCW 43.88.030, a request for funds necessary to implement the  
24 compensation and benefit provisions of a collective bargaining  
25 agreement entered into under this section or for legislation  
26 necessary to implement the agreement.

27 (6) A request for funds necessary to implement the compensation  
28 and benefit provisions of a collective bargaining agreement entered  
29 into under this section shall not be submitted by the governor to the  
30 legislature unless the request has been:

31 (a) Submitted to the director of financial management by October  
32 1st prior to the legislative session at which the requests are to be  
33 considered; and

34 (b) Certified by the director of financial management as  
35 financially feasible for the state or reflective of a binding  
36 decision of an arbitration panel reached under subsection (2)((~~d~~))  
37 (e) of this section.

38 (7) The legislature must approve or reject the submission of the  
39 request for funds as a whole. If the legislature rejects or fails to  
40 act on the submission, any collective bargaining agreement must be

1 reopened for the sole purpose of renegotiating the funds necessary to  
2 implement the agreement.

3 (8) If, after the compensation and benefit provisions of an  
4 agreement are approved by the legislature, a significant revenue  
5 shortfall occurs resulting in reduced appropriations, as declared by  
6 proclamation of the governor or by resolution of the legislature,  
7 both parties shall immediately enter into collective bargaining for a  
8 mutually agreed upon modification of the agreement.

9 (9) After the expiration date of any collective bargaining  
10 agreement entered into under this section, all of the terms and  
11 conditions specified in the agreement remain in effect until the  
12 effective date of a subsequent agreement, not to exceed one year from  
13 the expiration date stated in the agreement.

14 (10) In enacting this section, the legislature intends to provide  
15 state action immunity under federal and state antitrust laws for the  
16 joint activities of adult family home providers and their exclusive  
17 bargaining representative to the extent the activities are authorized  
18 by this chapter.

19 **Sec. 13.** RCW 41.56.510 and 2010 c 296 s 2 are each amended to  
20 read as follows:

21 (1) In addition to the entities listed in RCW 41.56.020, this  
22 chapter applies to the governor with respect to language access  
23 providers. Solely for the purposes of collective bargaining and as  
24 expressly limited under subsections (2) and (3) of this section, the  
25 governor is the public employer of language access providers who,  
26 solely for the purposes of collective bargaining, are public  
27 employees. The governor or the governor's designee shall represent  
28 the public employer for bargaining purposes.

29 (2) There shall be collective bargaining, as defined in RCW  
30 41.56.030, between the governor and language access providers, except  
31 as follows:

32 (a) A statewide unit of all language access providers is the only  
33 unit appropriate for purposes of collective bargaining under RCW  
34 41.56.060;

35 (b) The exclusive bargaining representative of language access  
36 providers in the unit specified in (a) of this subsection shall be  
37 the representative chosen in an election conducted pursuant to RCW  
38 41.56.070.

1 Bargaining authorization cards furnished as the showing of  
2 interest in support of any representation petition or motion for  
3 intervention filed under this section are exempt from disclosure  
4 under chapter 42.56 RCW;

5 (c) Once a bargaining representative has been certified by the  
6 commission to represent the bargaining unit of language access  
7 providers, the commission shall, in April of every even-numbered  
8 year, conduct a secret ballot election to determine the bargaining  
9 representative of language access providers, subject to the following  
10 conditions:

11 (i) The existing bargaining representative must be on the ballot  
12 automatically as shall a choice of no union representation. Any other  
13 bargaining representative may petition the commission to appear on  
14 the ballot by showing written proof of interest from at least ten  
15 percent of the bargaining unit.

16 (ii) The commission shall certify the bargaining representative  
17 that receives the most votes cast by members of the bargaining unit.  
18 If a bargaining representative other than the current bargaining  
19 representative receives the most votes, it must be certified by the  
20 commission to represent language access providers at the expiration  
21 of the current contract. However, nothing prevents the bargaining  
22 representative that received the most votes from, prior to its  
23 certification, negotiating a new contract with the public employer to  
24 take effect upon the expiration of the current contract. If more  
25 votes are cast for no union representation than for any bargaining  
26 representative, the commission shall decertify the bargaining  
27 representative at the expiration of the collective bargaining  
28 agreement.

29 (iii) No representation election for the bargaining unit of  
30 language access providers may be held for a period of at least one  
31 year following a certification of no union representation.

32 (iv) To the extent not inconsistent with this subsection (2)(c),  
33 elections under this subsection (2)(c) must be conducted in  
34 accordance with RCW 41.56.070;

35 (d) Notwithstanding the definition of "collective bargaining" in  
36 RCW 41.56.030(4), the scope of collective bargaining for language  
37 access providers under this section is limited solely to: (i)  
38 Economic compensation, such as the manner and rate of payments; (ii)  
39 professional development and training; (iii) labor-management  
40 committees; and (iv) grievance procedures. Retirement benefits are



1 not subject to collective bargaining. By such obligation neither  
2 party may be compelled to agree to a proposal or be required to make  
3 a concession unless otherwise provided in this chapter;

4 ~~((d))~~ (e) In addition to the entities listed in the mediation  
5 and interest arbitration provisions of RCW 41.56.430 through  
6 41.56.470 and 41.56.480, the provisions apply to the governor or the  
7 governor's designee and the exclusive bargaining representative of  
8 language access providers, except that:

9 (i) In addition to the factors to be taken into consideration by  
10 an interest arbitration panel under RCW 41.56.465, the panel shall  
11 consider the financial ability of the state to pay for the  
12 compensation and benefit provisions of a collective bargaining  
13 agreement;

14 (ii) The decision of the arbitration panel is not binding on the  
15 legislature and, if the legislature does not approve the request for  
16 funds necessary to implement the compensation and benefit provisions  
17 of the arbitrated collective bargaining agreement, the decision is  
18 not binding on the state;

19 ~~((e))~~ (f) Language access providers do not have the right to  
20 strike.

21 (3) Language access providers who are public employees solely for  
22 the purposes of collective bargaining under subsection (1) of this  
23 section are not, for that reason, employees of the state for any  
24 other purpose. This section applies only to the governance of the  
25 collective bargaining relationship between the employer and language  
26 access providers as provided in subsections (1) and (2) of this  
27 section.

28 (4) Each party with whom the department of social and health  
29 services contracts for language access services and each of their  
30 subcontractors shall provide to the department an accurate list of  
31 language access providers, as defined in RCW 41.56.030, including  
32 their names, addresses, and other contact information, annually by  
33 January 30th, except that initially the lists must be provided within  
34 thirty days of June 10, 2010. The department shall, upon request,  
35 provide a list of all language access providers, including their  
36 names, addresses, and other contact information, to a labor union  
37 seeking to represent language access providers.

38 (5) This section does not create or modify:

39 (a) The department's obligation to comply with the federal  
40 statute and regulations; and

1 (b) The legislature's right to make programmatic modifications to  
2 the delivery of state services under chapter 74.04 RCW. The governor  
3 may not enter into, extend, or renew any agreement under this chapter  
4 that does not expressly reserve the legislative rights described in  
5 this subsection.

6 (6) Upon meeting the requirements of subsection (7) of this  
7 section, the governor must submit, as a part of the proposed biennial  
8 or supplemental operating budget submitted to the legislature under  
9 RCW 43.88.030, a request for funds necessary to implement the  
10 compensation and benefit provisions of a collective bargaining  
11 agreement entered into under this section or for legislation  
12 necessary to implement the agreement.

13 (7) A request for funds necessary to implement the compensation  
14 and benefit provisions of a collective bargaining agreement entered  
15 into under this section may not be submitted by the governor to the  
16 legislature unless the request has been:

17 (a) Submitted to the director of financial management by October  
18 1st prior to the legislative session at which the requests are to be  
19 considered, except that, for initial negotiations under this section,  
20 the request may not be submitted before July 1, 2011; and

21 (b) Certified by the director of financial management as  
22 financially feasible for the state or reflective of a binding  
23 decision of an arbitration panel reached under subsection (2)((~~d~~))  
24 (e) of this section.

25 (8) The legislature must approve or reject the submission of the  
26 request for funds as a whole. If the legislature rejects or fails to  
27 act on the submission, any collective bargaining agreement must be  
28 reopened for the sole purpose of renegotiating the funds necessary to  
29 implement the agreement.

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

36 (10) After the expiration date of any collective bargaining  
37 agreement entered into under this section, all of the terms and  
38 conditions specified in the agreement remain in effect until the  
39 effective date of a subsequent agreement, not to exceed one year from  
40 the expiration date stated in the agreement.

1           (11) In enacting this section, the legislature intends to provide  
2 state action immunity under federal and state antitrust laws for the  
3 joint activities of language access providers and their exclusive  
4 bargaining representative to the extent the activities are authorized  
5 by this chapter.

6           NEW SECTION.   **Sec. 14.** This act may be known and cited as the  
7 workplace accountability act.

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