

# - CENSORED VERSION -

Censored by the Senate Democrat Administration

## Economic Sense - Senator John Braun

# The most [REDACTED] and [REDACTED] bill in Olympia - SB 6199

### Bottom Line Up Front


SB 6199 is an example of why the public is jaded about politics and politicians.

Masquerading as administrative efficiencies, the bill is a [REDACTED] to take away the constitutional rights of individuals who primarily care for family members, costing taxpayers tens of millions of dollars with no public benefit while exempting records from public disclosure and trying to evade the spotlight by presenting the bill as "agency request" legislation.

The agency's publicly stated rationale is grossly misleading in order to appease the primary beneficiary and most interested party, a powerful union giving millions of dollars to [REDACTED].

### A. The goal of SB 6199: forcing family members to pay union dues to care for loved ones

There are more than 30,000 individual provider home care workers in the state. Nearly two-thirds of them care for family members, most predominantly elderly parents or children with developmental disabilities.<sup>1</sup>



In the decade prior to 2014, by state law these individuals had to: join a union (SEIU 775) to receive state reimbursement for caring for their loved one; pay union dues or an equivalent agency fee; and undergo union-mandated training. The union negotiated directly with the governor's office for wages and benefits. State laws surrounding home care workers, union dues, and training were largely put in place by initiatives financed by SEIU 775.<sup>2</sup>

In 2014, the United States Supreme Court ruled in *Harris vs. Quinn* that states could not force pseudo-public employees such as individual providers to pay an "agency fee" to the union, finding such laws unconstitutionally infringed upon an individual's first amendment right to freedom of association.<sup>3</sup>

In 2015, Governor Jay Inslee attempted to minimally comply with *Harris vs. Quinn* by negotiating an "opt out" provision of the collective bargaining agreement with SEIU 775. This no longer forced family members to pay an "agency fee" but gave them the option to opt-out. The CBA said that SEIU 775 would notify the homecare worker they didn't have to join the union, which presented an incredibly concerning conflict of interest and called into question whether family members' constitutional rights were being duly protected.<sup>4</sup> (*Notably, as evidence of the governor's special treatment of SEIU 775, all other CBAs entered into with non-SEIU unions required individuals to opt-in to the union.*)

In December 2017, following the U.S. Supreme Court granting certification to another case calling into question the validity of forced "agency fees" for public employees,<sup>5</sup> the governor's budget was released and proposed that DSHS no longer be the entity that pays individual provider wages, deducts union dues, or maintains the other functions required by Collective Bargaining Agreements. Instead, the governor proposed these functions be "contracted out" to an entity outside of state government.<sup>6</sup>

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**For a governor who has consistently been against any form of "contracting out" of state government work, the new proposal was surprising as it ran against his entire ethos.**

**So what precisely is going on?**

**Has the governor turned over a new leaf and is attempting to make state government more efficient?**

**Sadly, no. What we actually see is an attempt to quietly undo individual protections in a way the costs taxpayers tens of millions of dollars for the same service in order to appease a [REDACTED]**

**B. SB 6199: a [REDACTED] in [REDACTED]**

SB 6199 was presented as DSHS request legislation. The agency, in a letter to legislators, stated:

"[T]he Department's interest in putting this bill forward is to free up case management time that is currently being spent administering the Individual Provider workforce."<sup>7</sup>

This is a laudable rationale, but entirely misleading to the point of being grossly negligent and an outright attempt to deceive the public.

Contracting out the employment administrator role from DSHS to a new private entity will result in four things happening:

**1. Additional \$26 million in administrative costs to taxpayers, with no attendant public benefit - taking away funds from much higher and better uses**

According to the fiscal note for SB 6199, DSHS is able to serve as the employment administrator for a cost of \$72 per individual provider per month. In seeking a Request for Information on a third party administrator doing their role, the responses came back at an average cost of \$101 per individual provider per month to do the task.<sup>8</sup>

*That's right, the cost would be 40% higher for the new third party entity selected to do the current role.* The cost equates to an additional \$13.4 million in cost to taxpayers per year, or more than \$26 million per biennia.<sup>9</sup> This is the exact opposite of good public policy.

The governor has repeatedly fought against contracting out to entities capable of procuring services at a cost cheaper than provided by state employees, but in one instance actually supports contracting out when it will cost taxpayers more funds.

The tens of millions in new costs could instead be spent actually expanding services to the most vulnerable, including the elderly, people with developmental disabilities, mentally ill, or foster children.

## **2. Removing the Public's Right to Know: Exempting from Public Disclosure**

Right now, SEIU's interactions with the governor's office or DSHS are public records subject to disclosure.

As DSHS notes in its communication with legislators, if SB 6199 were passed into law all communication between the union and the new third party administrator would be exempt from public disclosure.<sup>10</sup>

This is very troubling, especially since the arrangement is unlike a normal private employer - union setting. While the public has no right to know the private dealings between an employer like Boeing and its unions. But here SEIU is not satisfied with simply negotiating with the new third party administrator and letting the Legislature decide whether to pay that request. No, SEIU is attempting to functionally replicate its current arrangement by having the governor's office - to whom it donates heavily - involved in the determination of what individual providers are paid.

SB 6199 proposes a four person rate setting board - comprised of the new third party administrator (selected by DSHS); the Governor; DSHS; and the union.<sup>11</sup> This board would agree on the pay, health benefits, and all other compensation for individual providers over a two year period. If the four could not reach agreement, then a fifth voting member - functionally an arbitrator - would decide on the compensation package. The governor would then fund this package in his/her budget and the Legislature would have to fund the package in full or reject it, thus restarting the process over again. If it sounds familiar, it should be: it mirrors in spirit and function the current homecare worker bargaining process.

Yet communications between SEIU and the third party administrator, including any CBA the two enter into, would be completely exempt from public disclosure.



### **3. Family Members Would Again Be Forced to Pay Union Dues**

So, why would legislation that costs \$26 million more a biennia to administer with no increase in services to clients be proposed?

Here's the crux of the matter and the sole purpose for the legislation.

By having a third party private entity as the "legal employer," the *Harris vs. Quinn* decision prohibiting pseudo-public employees from having to pay agency fees to unions no longer applies. DSHS admits this in their letter to legislators.<sup>12</sup>

As such the third party administrator (selected by DSHS which means it functionally will be selected by the governor) will have the power to enter into a CBA with SEIU 775. And, unlike contracts with the state, these CBAs will have the ability to be a "closed shop" that forces individual providers to pay agency fees.

Is there any real doubt that, having been selected by the governor, the third party administrator will enter into precisely such an arrangement with SEIU 775?

### **4. DSHS, Governor's Office & SEIU Colluding to Deceive Public of True Goal**

Perhaps most distressing about this process is the level of deceit that the governor's office, DSHS, and SEIU are all trying to employ on this bill.

DSHS puts forth the bill as "agency request legislation". Even though the functional result of the bill, due to the 40% higher administrative costs, will be to take away tens of millions of dollars that could otherwise be used for the agency's core mission of helping the most vulnerable. To DSHS's credit, the agency has been forthcoming about the impacts of the legislation in its fiscal note and in response to direct questions from legislators.

Finally, the governor's office too has been publicly silent, other than including the initial start-up funding for the third party administrator (only a fraction of its total ultimate cost) in its budget proposal. Again, this is highly unusual for a governor who is now advocating for contracting out state services historically performed by public employees and doing so in a manner that will cost taxpayers tens of millions of dollars. The governor should be questioned and held to account for why he believes this is the right choice.

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## C. SB 6199 is politics at its worst

### **In sum, SB 6199 would:**

- Force family members to pay union dues to receive payment for caring for their loved ones;
- Circumvent a constitutional right granted these individuals;
- Cost taxpayers tens of millions more dollars with absolutely no benefit to the elderly or disabled; their caregivers; or taxpayers;
- Exempt communications between the new administrator and the union from public disclosure laws; and
- Attempt to evade the spotlight where the primary beneficiary, a union donating millions to [REDACTED], presents this as "agency request" legislation.

## **FOOTNOTES**

1. Senate Ways & Means staff
2. I-775 (2001), I-1029 (2008), I-1163 (2011)
3. <http://www.scotusblog.com/case-files/cases/harris-v-quinn/>
4. SEIU 775 CBA (2015-17, Art. 4, sec. 1)  
<https://www.ofm.wa.gov/state-human-resources/labor-relations/collective-bargaining-agreements/2015-17-collective-bargaining-agreements>
5. Janus vs. AFSCME (oral argument scheduled Feb. 26, 2018)  
<http://www.scotusblog.com/case-files/cases/janus-v-american-federation-state-county-municipal-employees-council-31/>
6. See “Individual Provider Management” entry for DSHS-Long Term Care and DSHS-Developmental Disabilities.  
<https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2018-supplemental-budget/agency-recommendation-summaries-2018-supplemental>
7. Bill Moss, Assistant Secretary (Letter to Senators on Senate Health Care Committee, Jan. 26, 2018, p. 1)
8. DSHS Fiscal Note to SB 6199, p. 4. See also last page of fiscal note. In FY 21, when the IPEA contract would be projected to take effect the additional cost in administration compared to current expenditures would be \$13.356 million per year.  
<https://app.leg.wa.gov/CMD/document.aspx?agency=7&year=2018&cid=28241&lid=6199>
9. Id.
10. Bill Moss, Assistant Secretary (Letter to Senators on Senate Health Care Committee, Jan. 26, 2018, p. 2)
11. SSB 6199, sec. 27.  
<http://lawfilesexternal.wa.gov/biennium/2017-18/Htm/Bills/Senate%20Bills/6199-S.htm>
12. Bill Moss, Assistant Secretary (Letter to Senators on Senate Health Care Committee, Jan. 26, 2018, p. 2)