
SECOND SUBSTITUTE HOUSE BILL 2449

State of Washington 60th Legislature 2008 Regular Session

By House Appropriations (originally sponsored by Representatives Pettigrew, Conway, Goodman, Kagi, Haler, Priest, Morrell, Green, Appleton, Sullivan, Wood, Sells, Williams, Haigh, Campbell, Simpson, Wallace, Barlow, Ormsby, Kessler, Jarrett, Dunshee, Walsh, Hudgins, Moeller, VanDeWege, Blake, Hasegawa, Hunt, Lias, Miloscia, McIntire, Kenney, Santos, Cody, Nelson, Rolfes, Chase, and Darneille)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to improving quality, access, and stability of
2 child care through providing collective bargaining for child care
3 center directors and workers; amending RCW 41.56.028, 41.56.030,
4 41.56.113, 41.04.810, and 43.01.047; adding a new section to chapter
5 43.215 RCW; adding a new section to chapter 74.08A RCW; adding a new
6 section to chapter 74.12 RCW; and creating new sections.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that, as of 2008, the
9 challenges posed by low wages and lack of training that the legislature
10 identified in enacting the child care career and wage ladder persist,
11 and the availability of quality child care in the state continues to
12 suffer. The legislature intends to address these problems by creating
13 the possibility for a new relationship between child care center
14 directors and workers and the state. Child care center directors and
15 workers are to be given the opportunity to work collectively to improve
16 standards in their profession and to expand opportunities for
17 educational advancement to ensure continuous quality improvement in the
18 delivery of early learning services. Family child care providers in

1 the state have recently been given a similar opportunity, and the
2 results of their efforts have improved standards and quality for that
3 segment of the child care industry.

4 The legislature intends to create a new type of collective
5 bargaining for these directors and workers whereby they can come
6 together and bargain with the state over matters within the state's
7 purview and support for improving the quality of child care for the
8 state's families. Unlike traditional collective bargaining, this new
9 approach will afford these directors and workers the opportunity to
10 bargain with the state only over the state's support for child care
11 centers, a matter of common concern to both directors and workers.
12 Specific terms and conditions of employment at individual centers,
13 which are the subjects of traditional collective bargaining between
14 employers and their employees, fall outside the limited scope of
15 bargaining defined by this act. Accordingly, traditional policy
16 concerns over supervisors and employees being organized into a common
17 bargaining unit are inapplicable. Sharing a community of interest in
18 the subjects of bargaining enables directors and workers to work side
19 by side in the same bargaining unit for common goals.

20 All child care center directors and workers will equally be able to
21 maintain full membership in the organization that represents them in
22 their efforts to improve the quality of child care they provide to the
23 state's children. This new bargaining relationship does not intrude in
24 any manner upon those relationships governed by the national labor
25 relations act (29 U.S.C. Sec. 151 et seq). Child care center directors
26 and workers do not forfeit their rights under the national labor
27 relations act by becoming members of an organization that represents
28 them in their dealings with the state. Under the national labor
29 relations act, an organization that represents child care center
30 directors and workers in bargaining with the state under this act is
31 precluded from representing workers seeking to engage in traditional
32 collective bargaining with their employer over specific terms and
33 conditions of employment at individual child care centers.

34 **Sec. 2.** RCW 41.56.028 and 2007 c 278 s 2 are each amended to read
35 as follows:

36 (1) In addition to the entities listed in RCW 41.56.020, this
37 chapter applies to the governor with respect to family child care

1 providers and to child care center directors and workers. Solely for
2 the purposes of collective bargaining and as expressly limited under
3 subsections (2) and (3) of this section, the governor is the public
4 employer of family child care providers and of child care center
5 directors and workers who, solely for the purposes of collective
6 bargaining, are public employees. The public employer shall be
7 represented for bargaining purposes by the governor or the governor's
8 designee appointed under chapter 41.80 RCW.

9 (2) This chapter governs the collective bargaining relationship
10 between the governor and family child care providers and between the
11 governor and child care center directors and workers, except as
12 follows:

13 (a) (~~(A statewide unit of all family child care providers is)~~) The
14 only units appropriate for purposes of collective bargaining under RCW
15 41.56.060 are:

16 (i) A statewide unit for family child care providers; and

17 (ii) The units for child care center directors and workers
18 determined by the commission which shall conform to the unit requested
19 in the application for certification as the bargaining representative
20 if consistent with the terms of this act. In determining the units,
21 the commission shall include in the same unit all child care center
22 directors and workers employed at child care centers located in
23 department of social and health services regions or subregions existing
24 on the effective date of this section, and shall group together regions
25 to minimize the number of units.

26 (b) The exclusive bargaining representative of family child care
27 providers or of child care center directors and workers in the units
28 specified in (a) of this subsection shall be the representative chosen
29 in an election conducted pursuant to RCW 41.56.070, except that:

30 (i) In the initial election conducted under chapter 54, Laws of
31 2006, or this act, if more than one labor organization is on the ballot
32 and none of the choices receives a majority of the votes cast, a
33 run-off election shall be held; and

34 (ii) To show at least thirty percent representation within a unit
35 to accompany a request for an initial election under this act, the
36 written proof of representation is valid only if collected not more
37 than two years prior to the date the request is filed with the
38 commission.

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

13 (ii) Notwithstanding the definition of "collective bargaining" in
14 RCW 41.56.030(4), the scope of collective bargaining for child care
15 center directors and workers under this section shall be limited solely
16 to these matters within the purview of the state and within the
17 community of interest of child care center directors and workers: (A)
18 Professional development and training; (B) mechanisms and funding to
19 improve the access of child care centers to health care insurance and
20 other benefit programs; (C) economic compensation to child care
21 centers, such as manner and rate of subsidy and reimbursement,
22 including tiered reimbursements; (D) other economic support for child
23 care centers; and (E) grievance procedures related to (c)(ii)(A)
24 through (D) of this subsection. Retirement benefits shall not be
25 subject to collective bargaining. By such obligation neither party
26 shall be compelled to agree to a proposal or be required to make a
27 concession unless otherwise provided in this chapter.

28 (d) The mediation and interest arbitration provisions of RCW
29 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

30 (i) With respect to commencement of negotiations between the
31 governor and the exclusive bargaining representative of family child
32 care providers or of child care center directors and workers,
33 negotiations shall be commenced initially upon certification of an
34 exclusive bargaining representative under (a) of this subsection and,
35 thereafter, by February 1st of any even-numbered year; and

36 (ii) The decision of the arbitration panel is not binding on the
37 legislature and, if the legislature does not approve the request for

1 funds necessary to implement the compensation and benefit provisions of
2 the arbitrated collective bargaining agreement, is not binding on the
3 state.

4 (e) Nothing in chapter 54, Laws of 2006, or this act grants family
5 child care providers ((do not have)) and child care center directors
6 and workers the right to strike.

7 (3) Family child care providers and child care center directors and
8 workers who are public employees solely for the purposes of collective
9 bargaining under subsection (1) of this section are not, for that
10 reason, employees of the state for any purpose. This section applies
11 only to the governance of the collective bargaining relationship
12 between the employer and family child care providers and between the
13 employer and child care center directors and workers as provided in
14 subsections (1) and (2) of this section.

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

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

19 (b) The child care centers' right to choose, direct, and terminate
20 the services of any child care worker who provides care in the center;

21 (c) The rights of employers and employees under the national labor
22 relations act, 29 U.S.C. Secs. 151 et seq.;

23 (d) The secretary of the department of social and health services'
24 right to adopt requirements under RCW 74.15.030, except for
25 requirements related to grievance procedures and collective
26 negotiations on personnel matters as specified in subsection (2)(c) of
27 this section;

28 ((+e)) (e) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and
29 74.15.130; and

30 ((+d)) (f) The legislature's right to make programmatic
31 modifications to the delivery of state services through child care
32 subsidy programs, including standards of eligibility of parents, legal
33 guardians, ((and)) family child care providers, and child care centers
34 participating in child care subsidy programs, ((and)) the nature of
35 services provided, and the right to determine standards for
36 professional development and training, quality criteria, or ratings
37 through programs such as a quality rating system. The governor shall

1 not enter into, extend, or renew any agreement under this section that
2 does not expressly reserve the legislative rights described in this
3 subsection (4)(~~(d)~~) (f).

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

11 (6) A request for funds necessary to implement the compensation and
12 benefit provisions of ((a)) collective bargaining agreements entered
13 into under this section shall not be submitted by the governor to the
14 legislature unless such request has been:

15 (a) Submitted to the director of financial management by October
16 1st before the legislative session at which the request is to be
17 considered, except that, for initial negotiations under this section
18 for family child care providers, the request must be submitted by
19 November 15, 2006, and for child care center directors and workers, the
20 request must be submitted by November 15, 2008; and

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

24 (7) The legislature must approve or reject the submission of the
25 request for funds as a whole. If the legislature rejects or fails to
26 act on the submission, any such agreement will be reopened solely for
27 the purpose of renegotiating the funds necessary to implement the
28 agreement.

29 (8) The governor shall periodically consult with the joint
30 committee on employment relations established by RCW 41.80.010
31 regarding appropriations necessary to implement the compensation and
32 benefit provisions of any collective bargaining agreement and, upon
33 completion of negotiations, advise the committee on the elements of the
34 agreement and on any legislation necessary to implement such agreement.

35 (9) After the expiration date of any collective bargaining
36 agreement entered into under this section, all of the terms and
37 conditions specified in any such agreement remain in effect until the

1 effective date of a subsequent agreement, not to exceed one year from
2 the expiration date stated in the agreement, except as provided in
3 subsection (4)((~~d~~)) (f) of this section.

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

10 (11) In enacting this section, the legislature intends to provide
11 state action immunity under federal and state antitrust laws for the
12 joint activities of family child care providers and their exclusive
13 bargaining representative and of child care center directors and
14 workers and their exclusive bargaining representatives to the extent
15 such activities are authorized by this chapter.

16 **Sec. 3.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read
17 as follows:

18 As used in this chapter:

19 (1) "Public employer" means any officer, board, commission,
20 council, or other person or body acting on behalf of any public body
21 governed by this chapter, or any subdivision of such public body. For
22 the purposes of this section, the public employer of district court or
23 superior court employees for wage-related matters is the respective
24 county legislative authority, or person or body acting on behalf of the
25 legislative authority, and the public employer for nonwage-related
26 matters is the judge or judge's designee of the respective district
27 court or superior court.

28 (2) "Public employee" means any employee of a public employer
29 except any person (a) elected by popular vote, or (b) appointed to
30 office pursuant to statute, ordinance or resolution for a specified
31 term of office as a member of a multimember board, commission, or
32 committee, whether appointed by the executive head or body of the
33 public employer, or (c) whose duties as deputy, administrative
34 assistant or secretary necessarily imply a confidential relationship to
35 (i) the executive head or body of the applicable bargaining unit, or
36 (ii) any person elected by popular vote, or (iii) any person appointed
37 to office pursuant to statute, ordinance or resolution for a specified

1 term of office as a member of a multimember board, commission, or
2 committee, whether appointed by the executive head or body of the
3 public employer, or (d) who is a court commissioner or a court
4 magistrate of superior court, district court, or a department of a
5 district court organized under chapter 3.46 RCW, or (e) who is a
6 personal assistant to a district court judge, superior court judge, or
7 court commissioner. For the purpose of (e) of this subsection, no more
8 than one assistant for each judge or commissioner may be excluded from
9 a bargaining unit.

10 (3) "Bargaining representative" means any lawful organization which
11 has as one of its primary purposes the representation of employees in
12 their employment relations with employers.

13 (4) "Collective bargaining" means the performance of the mutual
14 obligations of the public employer and the exclusive bargaining
15 representative to meet at reasonable times, to confer and negotiate in
16 good faith, and to execute a written agreement with respect to
17 grievance procedures and collective negotiations on personnel matters,
18 including wages, hours and working conditions, which may be peculiar to
19 an appropriate bargaining unit of such public employer, except that by
20 such obligation neither party shall be compelled to agree to a proposal
21 or be required to make a concession unless otherwise provided in this
22 chapter.

23 (5) "Commission" means the public employment relations commission.

24 (6) "Executive director" means the executive director of the
25 commission.

26 (7) "Uniformed personnel" means: (a) Law enforcement officers as
27 defined in RCW 41.26.030 employed by the governing body of any city or
28 town with a population of two thousand five hundred or more and law
29 enforcement officers employed by the governing body of any county with
30 a population of ten thousand or more; (b) correctional employees who
31 are uniformed and nonuniformed, commissioned and noncommissioned
32 security personnel employed in a jail as defined in RCW 70.48.020(5),
33 by a county with a population of seventy thousand or more, and who are
34 trained for and charged with the responsibility of controlling and
35 maintaining custody of inmates in the jail and safeguarding inmates
36 from other inmates; (c) general authority Washington peace officers as
37 defined in RCW 10.93.020 employed by a port district in a county with
38 a population of one million or more; (d) security forces established

1 under RCW 43.52.520; (e) firefighters as that term is defined in RCW
2 41.26.030; (f) employees of a port district in a county with a
3 population of one million or more whose duties include crash fire
4 rescue or other fire fighting duties; (g) employees of fire departments
5 of public employers who dispatch exclusively either fire or emergency
6 medical services, or both; or (h) employees in the several classes of
7 advanced life support technicians, as defined in RCW 18.71.200, who are
8 employed by a public employer.

9 (8) "Institution of higher education" means the University of
10 Washington, Washington State University, Central Washington University,
11 Eastern Washington University, Western Washington University, The
12 Evergreen State College, and the various state community colleges.

13 (9) "Home care quality authority" means the authority under chapter
14 74.39A RCW.

15 (10) "Individual provider" means an individual provider as defined
16 in RCW 74.39A.240(4) who, solely for the purposes of collective
17 bargaining, is a public employee as provided in RCW 74.39A.270.

18 (11) "Child care subsidy" means a payment from the state through a
19 child care subsidy program established pursuant to RCW 74.12.340 or
20 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
21 program.

22 (12) "Family child care provider" means a person who: (a) Provides
23 regularly scheduled care for a child or children in the home of the
24 provider or in the home of the child or children for periods of less
25 than twenty-four hours or, if necessary due to the nature of the
26 parent's work, for periods equal to or greater than twenty-four hours;
27 (b) receives child care subsidies; and (c) is either licensed by the
28 state under RCW 74.15.030 or is exempt from licensing under chapter
29 74.15 RCW.

30 (13) "Adult family home provider" means a provider as defined in
31 RCW 70.128.010 who receives payments from the medicaid and state-funded
32 long-term care programs.

33 (14) "Child care center directors and workers" includes all
34 employees of child care centers who work on-site at the centers.
35 "Child care center directors and workers" also includes owners of child
36 care centers.

37 (15)(a) "Child care center" means a child care center licensed by

1 the state under RCW 74.15.030 that has at least one child care slot
2 filled by a child for whom it receives a child care subsidy.

3 (b) "Child care center" does not include a child care center:

4 (i) Operated directly by another unit of government or a tribe;

5 (ii) Operated by an individual, partnership, profit or nonprofit
6 corporation, or other entity that operates ten or more child care
7 centers statewide; or

8 (iii) Operated by a local organization that pays membership dues or
9 assessments to or is otherwise affiliated with a national organization
10 exempt from income tax with more than five million dollars in
11 membership dues and assessments annually, as reported to the internal
12 revenue service.

13 **Sec. 4.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read
14 as follows:

15 (1) Upon the written authorization of an individual provider, a
16 family child care provider, or an adult family home provider within the
17 bargaining unit and after the certification or recognition of the
18 bargaining unit's exclusive bargaining representative, the state as
19 payor, but not as the employer, shall, subject to subsection (3) of
20 this section, deduct from the payments to an individual provider, a
21 family child care provider, or an adult family home provider the
22 monthly amount of dues as certified by the secretary of the exclusive
23 bargaining representative and shall transmit the same to the treasurer
24 of the exclusive bargaining representative.

25 (2) If the governor and the exclusive bargaining representative of
26 a bargaining unit of individual providers, family child care providers,
27 or adult family home providers enter into a collective bargaining
28 agreement that:

29 (a) Includes a union security provision authorized in RCW
30 41.56.122, the state as payor, but not as the employer, shall, subject
31 to subsection (3) of this section, enforce the agreement by deducting
32 from the payments to bargaining unit members the dues required for
33 membership in the exclusive bargaining representative, or, for
34 nonmembers thereof, a fee equivalent to the dues; or

35 (b) Includes requirements for deductions of payments other than the
36 deduction under (a) of this subsection, the state, as payor, but not as

1 the employer, shall, subject to subsection (3) of this section, make
2 such deductions upon written authorization of the individual provider,
3 family child care provider, or adult family home provider.

4 (3)(a) The initial additional costs to the state in making
5 deductions from the payments to individual providers, family child care
6 providers, and adult family home providers under this section shall be
7 negotiated, agreed upon in advance, and reimbursed to the state by the
8 exclusive bargaining representative.

9 (b) The allocation of ongoing additional costs to the state in
10 making deductions from the payments to individual providers, family
11 child care providers, or adult family home providers under this section
12 shall be an appropriate subject of collective bargaining between the
13 exclusive bargaining representative and the governor unless prohibited
14 by another statute. If no collective bargaining agreement containing
15 a provision allocating the ongoing additional cost is entered into
16 between the exclusive bargaining representative and the governor, or if
17 the legislature does not approve funding for the collective bargaining
18 agreement as provided in RCW 74.39A.300, 41.56.028, or 41.56.029, as
19 applicable, the ongoing additional costs to the state in making
20 deductions from the payments to individual providers, family child care
21 providers, or adult family home providers under this section shall be
22 negotiated, agreed upon in advance, and reimbursed to the state by the
23 exclusive bargaining representative.

24 (4) The governor and the exclusive bargaining representative of a
25 bargaining unit of family child care providers may not enter into a
26 collective bargaining agreement that contains a union security
27 provision unless the agreement contains a process, to be administered
28 by the exclusive bargaining representative of a bargaining unit of
29 family child care providers, for hardship dispensation for license-
30 exempt family child care providers who are also temporary assistance
31 for needy families recipients or WorkFirst participants.

32 (5) In lieu of the deductions authorized under subsections (1) and
33 (2) of this section, and the union security provisions authorized under
34 RCW 41.56.122, the governor and the exclusive representative of a
35 bargaining unit of child care center directors and workers shall agree
36 to a representation fee to be paid to the exclusive representative for
37 the costs of representation of child care center directors and workers
38 as provided in this chapter. The state shall deduct the representation

1 fee from the monthly amount of the child care subsidy due to a child
2 care center and transmit the representation fee to the secretary of the
3 exclusive bargaining representative. Any child care center that is
4 operated by a church or other religious body for which payment of a
5 representative fee is contrary to bona fide religious tenets shall pay
6 an amount equivalent to the representation fee to a nonreligious
7 charity or to another charitable organization mutually agreed upon by
8 the child care center and the exclusive representative to which the
9 center would otherwise pay the representation fee. The child care
10 center shall furnish written proof that such payment has been made. If
11 the child care center and the exclusive representative do not reach
12 agreement on such matter, the commission shall designate the charitable
13 organization.

14 **Sec. 5.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
15 as follows:

16 Individual providers, as defined in RCW 74.39A.240, family child
17 care providers, as defined in RCW 41.56.030, child care center
18 directors and workers, as defined in RCW 41.56.030, and adult family
19 home providers, as defined in RCW 41.56.030, are not employees of the
20 state or any of its political subdivisions and are specifically and
21 entirely excluded from all provisions of this title, except as provided
22 in RCW 74.39A.270, 41.56.028, and 41.56.029.

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, child care center directors and workers
28 under RCW 41.56.028, or adult family home providers under RCW
29 41.56.029.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.215 RCW
31 to read as follows:

32 (1) Every child care center shall provide to the department a list
33 of the names and addresses of all current child care center directors
34 and workers, as defined in RCW 41.56.030, annually by January 30th,

1 except that initially the lists shall be provided within thirty days of
2 the effective date of this section.

3 (2) The department shall, upon request, provide to a labor
4 organization seeking to organize child care center directors and
5 workers, a list of all directors and workers in the unit that the
6 organization seeks to organize. The list shall contain the information
7 collected with regard to the directors and workers pursuant to
8 subsection (1) of this section.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.08A RCW
10 to read as follows:

11 The department shall adjust the rates of child care subsidies, as
12 defined in RCW 41.56.030, paid to all child care centers to reflect the
13 rate provisions in a collective bargaining agreement for child care
14 center directors and workers negotiated under RCW 41.56.028 and funded
15 by the legislature.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.12 RCW
17 to read as follows:

18 The department shall adjust the rates of child care subsidies, as
19 defined in RCW 41.56.030, paid to all child care centers to reflect the
20 rate provisions in a collective bargaining agreement for child care
21 center directors and workers negotiated under RCW 41.56.028 and funded
22 by the legislature.

23 NEW SECTION. **Sec. 10.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 11.** If any part of this act is found to be in
28 conflict with federal requirements that are a prescribed condition to
29 the allocation of federal funds to the state, the conflicting part of
30 this act is inoperative solely to the extent of the conflict and with
31 respect to the agencies directly affected, and this finding does not
32 affect the operation of the remainder of this act in its application to
33 the agencies concerned. Rules adopted under this act must meet federal

1 requirements that are a necessary condition to the receipt of federal
2 funds by the state.

3 NEW SECTION. **Sec. 12.** This act may be known and cited as the
4 access to quality child care workforce act.

5 NEW SECTION. **Sec. 13.** If specific funding for the purposes of
6 this act, referencing this act by bill or chapter number, is not
7 provided by June 30, 2008, in the omnibus appropriations act, this act
8 is null and void.

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