

# HOUSE BILL REPORT

## E2SHB 2353

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### As Amended by the Senate

**Title:** An act relating to improving access to and the stability of quality child care through providing collective bargaining and other representation rights for family child care providers and licensees.

**Brief Description:** Providing collective bargaining for family child care providers.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Pettigrew, Shabro, Kessler, Priest, Cox, Conway, Haler, P. Sullivan, Appleton, Walsh, Kenney, Green, Armstrong, Hasegawa, Kagi, Hunt, McCoy, Buri, Fromhold, Strow, Curtis, McDermott, Williams, Hudgins, Moeller, Sells, Lantz, Kilmer, Chase, McDonald, Morrell, Murray, Linville, Santos, Springer, Wallace, Dickerson, Roberts, Cody, B. Sullivan, Simpson, Ericks, Upthegrove, Campbell, Ormsby and O'Brien).

### Brief History:

#### Committee Activity:

Commerce & Labor: 1/16/06, 1/30/06 [DPS];  
Appropriations: 2/3/06, 2/4/06 [DP2S(w/o sub CL)].

#### Floor Activity:

Passed House: 2/10/06, 84-14.  
Senate Amended.  
Passed Senate: 2/28/06, 40-8.

### Brief Summary of Engrossed Second Substitute Bill

- Makes the Public Employees' Collective Bargaining Act (PECBA) applicable to the Governor with respect to family child care providers.
- Specifies that the PECBA shall govern collective bargaining between the Governor and the family child care providers' exclusive bargaining representative.
- Recognizes that a statewide unit of family child care licensees is appropriate for purposes of negotiated rule-making under the Administrative Procedure Act.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Holmquist.

**Staff:** Jill Reinmuth (786-7134).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 25 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Alexander, Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Buri, Clements, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Pearson, Priest, Schual-Berke, P. Sullivan and Walsh.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Anderson, Assistant Ranking Minority Member; Bailey, Chandler, Hinkle and Talcott.

**Staff:** Amy Skei (786-7140).

### **Background:**

#### Child Care Services

The state, through the Department of Social and Health Services' Division of Child Care and Early Learning, is responsible for licensing child care homes and centers. The state also subsidizes part of the child care costs for children from low-income families with parents who are working, going to school, homeless, or otherwise eligible. In accordance with federal regulations, the state ties child care subsidy rates to a local market survey of child care market rates conducted at least every two years.

In Fiscal Year 2004, the state subsidized care for approximately 67,000 children per month. These children received subsidized care in a variety of ways, either in licensed centers and family homes, or from unregulated but legal providers. Licensed family home providers cared for about 25 percent of state-subsidized children. Another 20 percent received subsidized care either in their own home or in the home of a relative.

#### Public Employee Collective Bargaining

Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission (PERC). Individual providers (home care workers) also have collective bargaining rights under the PECBA.

The exclusive bargaining representative is determined by the PERC if the public employer and public employees are in disagreement as to the selection of a bargaining representative. The PERC determines the exclusive bargaining representative by conducting either an election or a cross-check of membership records. If there is more than one organization on the ballot and

none of the three or more choices receive a majority vote of the public employees within the bargaining unit in an initial election, there is a run-off election.

The employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining: grievance procedures and personnel matters, including wages, hours, and working conditions. For uniformed personnel, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation. The interest arbitration panel must consider: the employer's authority; the parties' stipulations; comparisons of wages, hours, and conditions of employment of like personnel of like employers; and the cost of living.

### **Summary of Engrossed Second Substitute Bill:**

The Public Employees' Collective Bargaining Act (PECBA) is amended to apply to the Governor with respect to family child care providers, and to govern collective bargaining between the Governor and the providers' exclusive bargaining representative.

#### Public Employees and Employer

Solely for purposes of collective bargaining, family child care providers are "public employees." Family child care providers are persons who:

- regularly care for one or more children in their home or the children's home;
- receive child care subsidies from the state; and
- may be licensed, or exempt from licensing.

Solely for purposes of collective bargaining, the Governor is the "public employer."

#### Bargaining Unit and Representative

For purposes of collective bargaining, the only appropriate unit is a statewide unit of all family child care providers. The representative of the family child care providers is determined in the manner specified in the PECBA, except that, if none of the choices receives a majority of the votes cast in the initial election, there is a run-off election.

#### Mandatory Subjects of Bargaining

Within five days of the effective date, the exclusive bargaining representative of the family child care providers and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Mandatory subjects are grievance procedures and personnel matters, including but not limited to: (1) economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (2) health and welfare benefits; (3) professional development and training; and (4) labor-management committees.

#### Requests for Funds and Legislative Changes

The Governor must submit a request to the Legislature for any funds and legislative changes necessary to implement a collective bargaining agreement covering family child care providers. The Legislature may approve or reject the submission of the request for funds only as a whole. If the Legislature rejects or fails to act on the submission by April 1 of odd-numbered years and March 1 of even-numbered years, the collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

#### Mediation and Arbitration; No Right to Strike

Family child care providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. The interest arbitration panel must consider: the employer's authority, the parties' stipulations; comparisons of wages, hours, and conditions of employment of like personnel of like employers; and the cost-of-living. The interest arbitration panel must also consider the financial ability of the state to pay for the compensation, fringe benefit, and child care subsidy provisions of the agreement. The interest arbitration panel's decision is not binding on the Legislature, and if the Legislature does not approve the decision, it is not binding on the state.

Family child care providers do not have the right to strike.

#### Union Dues

The state must deduct monthly union dues from a family child care provider's payments upon written authorization of the family child care provider and after certification or recognition of an exclusive bargaining representative of the family child care providers.

If a union security clause is included in the agreement, the state must deduct the dues or equivalent fees from the payments made to all family child care provider bargaining unit members.

#### Negotiated Rulemaking

For purposes of negotiated rule-making, the only appropriate unit is a statewide unit of all family child care licensees. Family child care licensees are persons who:

- regularly care for one or more children in their home;
- are licensed; and
- do not receive child care subsidies from the state.

The representative of the family child care licensees is initially selected in elections held in accordance with a directive of the Governor to the Secretary of the Department of Social and Health Services dated September 16, 2005. Thereafter, the representatives are selected in an election conducted by the American Arbitration Association.

#### State Action Immunity

The Legislature intends to provide state action immunity under antitrust laws for the joint activities of: (1) family child care providers and their representative; and (2) family child care licensees and their representative.

#### Other Provisions

Parents and legal guardians have the right to choose and terminate the services of family child care providers.

The Secretary of the Department of Social and Health Services has the right to adopt rules, other than rules related to grievance procedures and collective negotiations on personnel matters.

The Legislature has the right to modify the delivery of state child care services, including the standards for eligibility of parents, legal guardians, and family child care providers and the nature of the services.

Laws governing investigations of child abuse or neglect, background checks, and adverse licensing actions are not modified.

**Rules Authority:** The bill permits a statewide bargaining unit of all family child care licensees to engage through a representative in negotiated rule making under the Administrative Procedures Act. The bill also specifies that rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

#### **EFFECT OF SENATE AMENDMENT(S):**

The scope of collective bargaining is limited to exclude retirement benefits.

The date by which negotiations must commence is modified. Initially, negotiations must commence upon certification of an exclusive bargaining representative. Thereafter, negotiations must commence by February 1 of even-numbered years.

The definition of "child care subsidy" is modified to include all child care subsidy programs (rather than only the child care subsidy program for child welfare cases).

Any agreement that contains a union security provision must also include a process for hardship dispensation of providers who are recipients of Temporary Assistance for Needy Families or participants in WorkFirst.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for sections 1 through 5, which take effect immediately.

**Testimony For:** (Commerce & Labor) We talk about investing in early childhood education, but these providers receive only \$2 to \$4 per hour of work. We need to make a greater

investment and make it earlier. The results will be greater stability and higher quality child care.

We share a common interest in children. My generation had a choice between working or not. This generation does not. Quality day care is key not only for children, but also for parents. The first five years are the most important years for emotional, experiential, and intellectual development. They set the stage for the rest of life. Our brains are hardwired at an early age.

Investing in child care workers and programs pays off considerably in the future. Well paid providers are key. Several years ago, home care workers were allowed to unionize because of the importance of the services they provide. Our children are just as important. This bill reflects the value we place on children and their child care experience. Wages, benefits, and career opportunities are essential to the quality of the providers, and therefore, to the quality of their experience.

I've been providing quality child care for 30 years. My average earnings are \$2.88 per hour. I love the children and their families. I do not have health insurance and will not be able to do post-cancer check-ups. I care for 12 children, six of whom are subsidized by the state and two of whom have special needs. I care for children who are medically fragile. Without care in my home, their parents could not go to school and work. We need to have a stronger, respected voice for child care providers so that we can keep providers in the profession. In recent years, we've lost one-third of the providers. This bill will complement the work of the Early Learning Council.

I am your success story. I was living in poverty on public assistance, and became a child care provider. I care for eight children, six of whom are subsidized by the state. I provide non-standard hours. I used to receive a bonus for non-standard hours, but no longer do so. The result has been a loss of \$700 in monthly income. I'm not sure how much longer I can continue to provide non-standard hours of care. My average earnings are \$3.50 per hour. License-exempt providers earn even less. This bill is needed to give us a voice, and raise the quality of child care.

Over the years, I've watched children grow up, including one that needed special education services when he was young but no longer does. Collective bargaining will give family child care providers an effective voice in the rule-making process. Last year, I stopped taking children that receive subsidized care. Because of changes in forms used by the Department, I may have to pay back thousands of dollars. These are the types of things that are making providers leave the profession. In 2005, one in four providers left the profession. Regulations should be focused on safety and be common sense.

One amendment to consider is changing the date on which the first round of bargaining begins. Instead of February 1, 2007, it should be the effective date of the bill.

Increasing skill levels is a priority. Granting bargaining rights to child care providers will have a positive impact. Children in child care deserve access to a safe, quality environment. High wages and low turnover is the key, but the reverse is common. Many child care

providers have closed their doors. Without adequate compensation, we cannot obtain a safe, quality environment for our children. Our subsidy program is a cornerstone of early learning and after school care. In addition, this bill will give providers a say in rule-making.

This bill will improve the quality of care, and empower the providers. It will result in a more stable and better trained workforce. It will give workers a voice at work. They should have a voice in early learning because they are the experts. They can help steer the state in the right direction. Tens of thousands of parents and workers will benefit from the bill.

**Testimony For:** (Appropriations) Taking subsidized children has been a blessing and a curse. Working with DSHS has been a curse. One time I was not paid for two months because of the DSHS mistakes. Washington has some of the lowest subsidy rates in the country. I make an average of \$3.50 per hour, and license-exempt providers get even less. Licensed and license-exempt providers should work together to build a voice in the regulation of our field. We have 52 pages of regulations but no say as to how they are enforced. We are losing child care providers because they cannot afford to operate. Quality day care is important because we know birth to five are the most formative years for our children. The substitute bill dramatically limits the scope of bargaining issues raised by the DSHS. Subsidy rates already rise every year, and a contract can add some predictability to increases.

(With concerns) Every Washington collective bargaining law since 1975 has required a Public Employment Relations Commission (PERC) conducted election for status as exclusive bargaining representative, so we have concerns about the potential for litigation if that doesn't happen in this legislation. The normal procedure is once the law takes effect, a union files a petition. With a 30 percent showing of interest a union would get on the ballot. The PERC would then conduct an unit determination process if necessary. We then run an election which would be conducted by mail ballot. The PERC counts the ballots and certifies the results. There is a one-week waiting period to raise misconduct objections.

**Testimony Against:** (Commerce & Labor) We are opposed to this bill. Subsidy rates are a problem, but this bill will not improve those rates because there is a lack of funding. Unless there is increased funding, higher subsidy rates means that either parents will not qualify for subsidies or parents will have larger co-pays. Like home care workers, the rates are up but the hours are down because the pot of money did not change. I've participated in the rule-making process in the past and made comments accepted by the Department. There is already a means of participating in that process. In the long run, this bill will hurt parents and day care providers.

**Testimony Against:** (Appropriations) None.

**Persons Testifying:** (Commerce & Labor) (In support) Representative Pettigrew, prime sponsor; Representative Jan Shabro; Kim Cook, Service Employees International Union Local 925; Nancy Gerber; Sisi Harry; Jane Elfering; Shawn Harris; Ogda Burchard, Washington Association for the Education of Young Children and Collaborative 2005; Sarah Cherin, Children's Alliance; Jeff Johnson, Washington State Labor Council; and George Scarola, League of Education Voters.

(Information only) Marv Schurke, Public Employment Relations Commission.

(Opposed) Alan Bell.

**Persons Testifying:** (Appropriations) (In support) Shawn Harris, Service Employees International Union; Representative Shabro; and Kim Cook, Service Employees International Union # 925.

(With concerns) Steve McLain, Office of Financial Management; and Greg Devereux, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** (Commerce & Labor) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.