

SHB 1329 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

OUT OF ORDER 04/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that, as of 2009, the
4 challenges posed by low wages and lack of training that the legislature
5 identified in enacting the child care career and wage ladder persist,
6 and the availability of quality child care in the state continues to
7 suffer. The legislature intends to address these problems by creating
8 the possibility for a new relationship between child care center
9 directors and workers and the state. Child care center directors and
10 workers are to be given the opportunity to work collectively to improve
11 standards in their profession and to expand opportunities for
12 educational advancement to ensure continuous quality improvement in the
13 delivery of early learning services. Family child care providers in
14 the state have recently been given a similar opportunity, and the
15 results of their efforts have improved standards and quality for that
16 segment of the child care industry.

17 The legislature intends to create a new type of collective
18 bargaining for these directors and workers whereby they can come
19 together and bargain with the state over matters within the state's
20 purview to improve the quality of child care for the state's families.
21 Unlike traditional collective bargaining, this new approach will afford
22 these directors and workers the opportunity to bargain with the state
23 only over the state's support for child care centers, a matter of
24 common concern to both directors and workers. Specific terms and
25 conditions of employment at individual centers, which are the subjects
26 of traditional collective bargaining between employers and their
27 employees, fall outside the limited scope of bargaining defined by this
28 act. Accordingly, traditional policy concerns over supervisors and
29 employees being organized into a common bargaining unit are

1 inapplicable. Sharing a community of interest in the subjects of
2 bargaining enables directors and workers to work side by side in the
3 same bargaining unit for common goals.

4 All child care center directors and workers will equally be able to
5 maintain full membership in the organization that represents them in
6 their efforts to improve the quality of child care they provide to the
7 state's children. This new bargaining relationship does not intrude in
8 any manner upon those relationships governed by the national labor
9 relations act (29 U.S.C. Sec. 151 et seq.). Child care center
10 directors and workers do not forfeit their rights under the national
11 labor relations act by becoming members of an organization that
12 represents them in their dealings with the state. Under the national
13 labor relations act, an organization that represents child care center
14 directors and workers in bargaining with the state under this act is
15 precluded from representing workers seeking to engage in traditional
16 collective bargaining with their employer over specific terms and
17 conditions of employment at individual child care centers.

18 Nothing in this act is intended to create any unfunded mandates or
19 financial obligations on child care centers covered by this act.

20 **Sec. 2.** RCW 41.56.028 and 2007 c 278 s 2 are each amended to read
21 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 family child care
24 providers and to child care center directors and workers. Solely for
25 the purposes of collective bargaining and as expressly limited under
26 subsections (2) and (3) of this section, the governor is the public
27 employer of family child care providers and of child care center
28 directors and workers who, solely for the purposes of collective
29 bargaining, are public employees. The public employer shall be
30 represented for bargaining purposes by the governor or the governor's
31 designee appointed under chapter 41.80 RCW.

32 (2) This chapter governs the collective bargaining relationship
33 between the governor and family child care providers and between the
34 governor and child care center directors and workers, except as
35 follows:

36 (a) (~~(A statewide unit of all family child care providers is)~~) The

1 only units appropriate for purposes of collective bargaining under RCW
2 41.56.060 are:

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

4 (ii) The units for child care center directors and workers
5 determined by the commission which shall conform to the unit requested
6 in the application for certification as the bargaining representative
7 if consistent with the terms of this act. In determining the units,
8 the commission shall include in the same unit all child care center
9 directors and workers employed at child care centers located in
10 department of social and health services regions existing on the
11 effective date of this section, and may group together regions to
12 minimize the number of units.

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

17 (i) In the initial election conducted under chapter 54, Laws of
18 2006, or this act, if more than one labor organization is on the ballot
19 and none of the choices receives a majority of the votes cast, a
20 run-off election shall be held;

21 (ii) To show at least thirty percent representation within a unit
22 to accompany a request for an initial election under this act, the
23 written proof of representation is valid only if collected not more
24 than two years prior to the date the request is filed with the
25 commission; and

26 (iii) The initial election may not occur before July 1, 2010.

27 (c) For the exclusive bargaining representatives certified by the
28 commission to represent units of child care center directors and
29 workers, negotiations of a collective bargaining agreement shall be
30 conducted jointly by all certified representatives. The
31 representatives shall bargain for one collective bargaining agreement
32 covering all of the represented child care center directors and
33 workers.

34 (d)(i) Notwithstanding the definition of "collective bargaining" in
35 RCW 41.56.030(4), the scope of collective bargaining for family child
36 care providers under this section shall be limited solely to: ((+i))

37 (A) Economic compensation, such as manner and rate of subsidy and
38 reimbursement, including tiered reimbursements; ((+ii)) (B) health and

1 welfare benefits; ~~((+iii))~~ (C) professional development and training;
2 ~~((+iv))~~ (D) labor-management committees; ~~((+v))~~ (E) grievance
3 procedures; and ~~((+vi))~~ (F) other economic matters. Retirement
4 benefits shall not be subject to collective bargaining. By such
5 obligation neither party shall be compelled to agree to a proposal or
6 be required to make a concession unless otherwise provided in this
7 chapter.

8 ~~((+d))~~ (ii) Notwithstanding the definition of "collective
9 bargaining" in RCW 41.56.030(4), the matters subject to bargaining
10 under this section shall be within the purview of the state and within
11 the community of interest of child care center directors and workers.
12 The public employer is: (A) Required to bargain over the manner and
13 rate of subsidy and reimbursement, so long as any agreement is
14 consistent with the provisions of any quality rating and improvement
15 system; (B) permitted, but not required, to bargain over: (I) Funding
16 for professional development and training; (II) mechanisms and funding
17 to improve the access of child care centers to health care insurance
18 and other benefit programs; (III) other economic support for child care
19 centers; and (IV) grievance procedures to resolve disputes arising out
20 of the interpretation or application of the collective bargaining
21 agreement; and (C) prohibited from bargaining over retirement benefits.
22 By such obligation neither party shall be compelled to agree to a
23 proposal or be required to make a concession unless otherwise provided
24 in this chapter.

25 (e) The mediation and interest arbitration provisions of RCW
26 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

34 (ii) The decision of the arbitration panel is not binding on the
35 legislature and, if the legislature does not approve the request for
36 funds necessary to implement the compensation and benefit provisions of
37 ~~((+the))~~ an arbitrated collective bargaining agreement for family child

1 care providers or the subsidy and reimbursement provisions of an
2 arbitrated collective bargaining agreement for child care center
3 directors and workers, is not binding on the state.

4 ~~((e))~~ (f) Nothing in chapter 54, Laws of 2006, or this act grants
5 family child care providers ~~((do not have))~~ and child care center
6 directors 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 or any child care center
18 that provides care for 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 and unless otherwise provided in this chapter, to manage and operate
22 facilities and programs, including rights to plan, direct, and control
23 the use of resources;

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

26 (d) The ~~((secretary of the department of social and health~~
27 ~~services' right to adopt requirements under RCW 74.15.030))~~ director of
28 the department of early learning's right to adopt requirements under
29 chapter 43.215 RCW, except for requirements related to grievance
30 procedures and collective negotiations on personnel matters as
31 specified in subsection (2)~~((e))~~ (d) of this section;

32 ~~((e))~~ (e) Chapter 26.44 or 43.215 RCW~~((r))~~ or RCW 43.43.832~~((r))~~
33 or 43.20A.205~~((r and 74.15.130))~~; and

34 ~~((d))~~ (f) The legislature's right to make programmatic
35 modifications to the delivery of state services through child care
36 subsidy programs, including standards of eligibility of parents, legal
37 guardians, ~~((and))~~ family child care providers and child care centers
38 participating in child care subsidy programs, ~~((and))~~ the nature of

1 services provided, and the legislature's right to determine standards
2 for professional development and training, quality criteria, ratings
3 through programs such as a quality rating system, and incentives for
4 improving quality. The governor shall not enter into, extend, or renew
5 any agreement under this section that does not expressly reserve the
6 legislative rights described in this subsection (4)~~((d))~~ (f).

7 (5) Upon meeting the requirements of subsection (6) of this
8 section, the governor must submit, as a part of the proposed biennial
9 or supplemental operating budget submitted to the legislature under RCW
10 43.88.030, ~~((a))~~ requests for funds necessary to implement the
11 compensation and benefit provisions of a collective bargaining
12 agreement for family child care providers and a collective bargaining
13 agreement for child care center directors and workers entered into
14 under this section or for legislation necessary to implement such
15 agreements.

16 (6) ~~((A))~~ Requests for funds necessary to implement the
17 compensation and benefit provisions of a collective bargaining
18 agreement for family child care providers and a collective bargaining
19 agreement for child care center directors and workers entered into
20 under this section shall not be submitted by the governor to the
21 legislature unless such ~~((request has))~~ requests have been:

22 (a) Submitted to the director of financial management by October
23 1st before the legislative session at which the request is to be
24 considered, except that, for initial negotiations under this section
25 for family child care providers, the request must be submitted by
26 November 15, 2006, and for child care center directors and workers, the
27 request may not be submitted before July 1, 2011; and

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

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

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

1 benefit provisions of (~~any~~) a collective bargaining agreement for
2 family child care providers and a collective bargaining agreement for
3 child care center directors and workers and, upon completion of
4 negotiations, advise the committee on the elements of the agreements
5 and on any legislation necessary to implement such agreements.

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

12 (10) If, after the compensation and benefit provisions of (~~an~~) a
13 collective bargaining agreement for family child care providers or for
14 a collective bargaining agreement for child care center directors and
15 workers are approved by the legislature, a significant revenue
16 shortfall occurs resulting in reduced appropriations, as declared by
17 proclamation of the governor or by resolution of the legislature, both
18 parties shall immediately enter into collective bargaining for a
19 mutually agreed upon modification of the agreement.

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

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

28 As used in this chapter:

29 (1) "Public employer" means any officer, board, commission,
30 council, or other person or body acting on behalf of any public body
31 governed by this chapter, or any subdivision of such public body. For
32 the purposes of this section, the public employer of district court or
33 superior court employees for wage-related matters is the respective
34 county legislative authority, or person or body acting on behalf of the
35 legislative authority, and the public employer for nonwage-related
36 matters is the judge or judge's designee of the respective district
37 court or superior court.

1 (2) "Public employee" means any employee of a public employer
2 except any person (a) elected by popular vote, or (b) appointed to
3 office pursuant to statute, ordinance or resolution for a specified
4 term of office as a member of a multimember board, commission, or
5 committee, whether appointed by the executive head or body of the
6 public employer, or (c) whose duties as deputy, administrative
7 assistant or secretary necessarily imply a confidential relationship to
8 (i) the executive head or body of the applicable bargaining unit, or
9 (ii) any person elected by popular vote, or (iii) any person appointed
10 to office pursuant to statute, ordinance or resolution for a specified
11 term of office as a member of a multimember board, commission, or
12 committee, whether appointed by the executive head or body of the
13 public employer, or (d) who is a court commissioner or a court
14 magistrate of superior court, district court, or a department of a
15 district court organized under chapter 3.46 RCW, or (e) who is a
16 personal assistant to a district court judge, superior court judge, or
17 court commissioner. For the purpose of (e) of this subsection, no more
18 than one assistant for each judge or commissioner may be excluded from
19 a bargaining unit.

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

23 (4) "Collective bargaining" means the performance of the mutual
24 obligations of the public employer and the exclusive bargaining
25 representative to meet at reasonable times, to confer and negotiate in
26 good faith, and to execute a written agreement with respect to
27 grievance procedures and collective negotiations on personnel matters,
28 including wages, hours and working conditions, which may be peculiar to
29 an appropriate bargaining unit of such public employer, except that by
30 such obligation neither party shall be compelled to agree to a proposal
31 or be required to make a concession unless otherwise provided in this
32 chapter.

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

34 (6) "Executive director" means the executive director of the
35 commission.

36 (7) "Uniformed personnel" means: (a) Law enforcement officers as
37 defined in RCW 41.26.030 employed by the governing body of any city or
38 town with a population of two thousand five hundred or more and law

1 enforcement officers employed by the governing body of any county with
2 a population of ten thousand or more; (b) correctional employees who
3 are uniformed and nonuniformed, commissioned and noncommissioned
4 security personnel employed in a jail as defined in RCW 70.48.020(5),
5 by a county with a population of seventy thousand or more, and who are
6 trained for and charged with the responsibility of controlling and
7 maintaining custody of inmates in the jail and safeguarding inmates
8 from other inmates; (c) general authority Washington peace officers as
9 defined in RCW 10.93.020 employed by a port district in a county with
10 a population of one million or more; (d) security forces established
11 under RCW 43.52.520; (e) firefighters as that term is defined in RCW
12 41.26.030; (f) employees of a port district in a county with a
13 population of one million or more whose duties include crash fire
14 rescue or other fire fighting duties; (g) employees of fire departments
15 of public employers who dispatch exclusively either fire or emergency
16 medical services, or both; or (h) employees in the several classes of
17 advanced life support technicians, as defined in RCW 18.71.200, who are
18 employed by a public employer.

19 (8) "Institution of higher education" means the University of
20 Washington, Washington State University, Central Washington University,
21 Eastern Washington University, Western Washington University, The
22 Evergreen State College, and the various state community colleges.

23 (9) "Home care quality authority" means the authority under chapter
24 74.39A RCW.

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

28 (11) "Child care subsidy" means a payment from the state through a
29 child care subsidy program established pursuant to RCW 74.12.340 or
30 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
31 program.

32 (12) "Family child care provider" means a person who: (a) Provides
33 regularly scheduled care for a child or children in the home of the
34 provider or in the home of the child or children for periods of less
35 than twenty-four hours or, if necessary due to the nature of the
36 parent's work, for periods equal to or greater than twenty-four hours;
37 (b) receives child care subsidies; and (c) is either licensed by the

1 state under (~~RCW 74.15.030~~) chapter 43.215 RCW or is exempt from
2 licensing under chapter (~~74.15~~) 43.215 RCW.

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

6 (14) "Child care center directors and workers" includes all
7 employees of child care centers who work on-site at the centers.
8 "Child care center directors and workers" also includes owners of child
9 care centers.

10 (15)(a) "Child care center" means a child care center licensed by
11 the state under chapter 43.215 RCW that has at least four child care
12 slots filled by children for whom it receives a child care subsidy.

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

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

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

18 (iii) Operated by a local nonprofit organization whose primary
19 mission is to provide social services, including serving children and
20 families, and that pays membership dues or assessments to either: (A)
21 A national organization, exempt from income tax under section 501(c)(3)
22 of the internal revenue code, with more than three million dollars in
23 membership dues and assessments annually, as reported to the internal
24 revenue service; or (B) a regional council that is affiliated with a
25 national organization, exempt from income tax under section 501(c)(3)
26 of the internal revenue code, with more than two hundred affiliates.

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

29 (1) Upon the written authorization of an individual provider, a
30 family child care provider, or an adult family home provider within the
31 bargaining unit and after the certification or recognition of the
32 bargaining unit's exclusive bargaining representative, the state as
33 payor, but not as the employer, shall, subject to subsection (~~(+3)~~)
34 (4) of this section, deduct from the payments to an individual
35 provider, a family child care provider, or an adult family home
36 provider the monthly amount of dues as certified by the secretary of

1 the exclusive bargaining representative and shall transmit the same to
2 the treasurer of the exclusive bargaining representative.

3 (2) If the governor and the exclusive bargaining representative of
4 a bargaining unit of individual providers, family child care providers,
5 or adult family home providers enter into a collective bargaining
6 agreement that:

7 (a) Includes a union security provision authorized in RCW
8 41.56.122, the state as payor, but not as the employer, shall, subject
9 to subsection (~~((3))~~) (4) of this section, enforce the agreement by
10 deducting from the payments to bargaining unit members the dues
11 required for membership in the exclusive bargaining representative, or,
12 for nonmembers thereof, a fee equivalent to the dues; or

13 (b) Includes requirements for deductions of payments other than the
14 deduction under (a) of this subsection, the state, as payor, but not as
15 the employer, shall, subject to subsection (~~((3))~~) (4) of this section,
16 make such deductions upon written authorization of the individual
17 provider, family child care provider, or adult family home provider.

18 (3) In lieu of the deductions authorized under subsections (1) and
19 (2) of this section, and the union security provisions authorized under
20 RCW 41.56.122, the governor and the exclusive representative of a
21 bargaining unit of child care center directors and workers shall agree
22 to a mechanism for collecting a representation fee to be paid to the
23 exclusive representative for the costs of representation of child care
24 center directors and workers as provided in this chapter. The state
25 shall deduct the representation fee from the monthly amount of the
26 child care subsidy due to a child care center and transmit the
27 representation fee to the secretary of the exclusive bargaining
28 representative. However:

29 (a) Any agreement to pay a representation fee must safeguard the
30 child care center owner's and operator's rights of nonassociation based
31 on bona fide religious tenets or teachings of a church or other
32 religious body of which the owner or operator is a member. The child
33 care center owner or operator shall pay an amount equivalent to the
34 representation fee to a nonreligious charity or to another charitable
35 organization; and

36 (b) The child care center shall furnish written proof that such
37 payment has been made.

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

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

22 (~~(+4)~~) (5) The governor and the exclusive bargaining
23 representative of a bargaining unit of family child care providers may
24 not enter into a collective bargaining agreement that contains a union
25 security provision unless the agreement contains a process, to be
26 administered by the exclusive bargaining representative of a bargaining
27 unit of family child care providers, for hardship dispensation for
28 license- exempt family child care providers who are also temporary
29 assistance for needy families recipients or WorkFirst participants.

30 **Sec. 5.** RCW 41.56.465 and 2007 c 278 s 1 are each amended to read
31 as follows:

32 (1) In making its determination, the panel shall be mindful of the
33 legislative purpose enumerated in RCW 41.56.430 and, as additional
34 standards or guidelines to aid it in reaching a decision, the panel
35 shall consider:

36 (a) The constitutional and statutory authority of the employer;

37 (b) Stipulations of the parties;

1 (c) The average consumer prices for goods and services, commonly
2 known as the cost of living;

3 (d) Changes in any of the circumstances under (a) through (c) of
4 this subsection during the pendency of the proceedings; and

5 (e) Such other factors, not confined to the factors under (a)
6 through (d) of this subsection, that are normally or traditionally
7 taken into consideration in the determination of wages, hours, and
8 conditions of employment. For those employees listed in RCW
9 41.56.030(7)(a) who are employed by the governing body of a city or
10 town with a population of less than fifteen thousand, or a county with
11 a population of less than seventy thousand, consideration must also be
12 given to regional differences in the cost of living.

13 (2) For employees listed in RCW 41.56.030(7) (a) through (d), the
14 panel shall also consider a comparison of the wages, hours, and
15 conditions of employment of personnel involved in the proceedings with
16 the wages, hours, and conditions of employment of like personnel of
17 like employers of similar size on the west coast of the United States.

18 (3) For employees listed in RCW 41.56.030(7) (e) through (h), the
19 panel shall also consider a comparison of the wages, hours, and
20 conditions of employment of personnel involved in the proceedings with
21 the wages, hours, and conditions of employment of like personnel of
22 public fire departments of similar size on the west coast of the United
23 States. However, when an adequate number of comparable employers
24 exists within the state of Washington, other west coast employers may
25 not be considered.

26 (4) For (~~employees~~) family child care providers listed in RCW
27 41.56.028:

28 (a) The panel shall also consider:

29 (i) A comparison of child care provider subsidy rates and
30 reimbursement programs by public entities, including counties and
31 municipalities, along the west coast of the United States; and

32 (ii) The financial ability of the state to pay for the compensation
33 and benefit provisions of a collective bargaining agreement; and

34 (b) The panel may consider:

35 (i) The public's interest in reducing turnover and increasing
36 retention of child care providers;

37 (ii) The state's interest in promoting, through education and

1 training, a stable child care workforce to provide quality and reliable
2 child care from all providers throughout the state; and

3 (iii) In addition, for employees exempt from licensing under
4 chapter ((74.15)) 43.215 RCW, the state's fiscal interest in reducing
5 reliance upon public benefit programs including but not limited to
6 medical coupons, food stamps, subsidized housing, and emergency medical
7 services.

8 (5) For child care center directors and workers listed in RCW
9 41.56.028, the panel shall also consider:

10 (a) A comparison of child care provider subsidy rates and
11 reimbursement programs by public entities, including counties and
12 municipalities, along the west coast of the United States; and

13 (b) The financial ability of the state to pay for a collective
14 bargaining agreement.

15 (6) For employees listed in RCW 74.39A.270:

16 (a) The panel shall consider:

17 (i) A comparison of wages, hours, and conditions of employment of
18 publicly reimbursed personnel providing similar services to similar
19 clients, including clients who are elderly, frail, or have
20 developmental disabilities, both in the state and across the United
21 States; and

22 (ii) The financial ability of the state to pay for the compensation
23 and fringe benefit provisions of a collective bargaining agreement; and

24 (b) The panel may consider:

25 (i) A comparison of wages, hours, and conditions of employment of
26 publicly employed personnel providing similar services to similar
27 clients, including clients who are elderly, frail, or have
28 developmental disabilities, both in the state and across the United
29 States;

30 (ii) The state's interest in promoting a stable long-term care
31 workforce to provide quality and reliable care to vulnerable elderly
32 and disabled recipients;

33 (iii) The state's interest in ensuring access to affordable,
34 quality health care for all state citizens; and

35 (iv) The state's fiscal interest in reducing reliance upon public
36 benefit programs including but not limited to medical coupons, food
37 stamps, subsidized housing, and emergency medical services.

1 (~~(6)~~) (7) Subsections (2) and (3) of this section may not be
2 construed to authorize the panel to require the employer to pay,
3 directly or indirectly, the increased employee contributions resulting
4 from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required
5 under chapter 41.26 RCW.

6 **Sec. 6.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
7 as follows:

8 Individual providers, as defined in RCW 74.39A.240, family child
9 care providers, as defined in RCW 41.56.030, child care center
10 directors and workers, as defined in RCW 41.56.030, and adult family
11 home providers, as defined in RCW 41.56.030, are not employees of the
12 state or any of its political subdivisions and are specifically and
13 entirely excluded from all provisions of this title, except as provided
14 in RCW 74.39A.270, 41.56.028, and 41.56.029.

15 **Sec. 7.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read
16 as follows:

17 RCW 43.01.040 through 43.01.044 do not apply to individual
18 providers under RCW 74.39A.220 through 74.39A.300, family child care
19 providers under RCW 41.56.028, child care center directors and workers
20 under RCW 41.56.028, or adult family home providers under RCW
21 41.56.029.

22 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.215 RCW
23 to read as follows:

24 (1) Every child care center shall provide to the department a list
25 of the names and addresses of all current child care center directors
26 and workers, as defined in RCW 41.56.030, annually by January 30th,
27 except that initially the lists shall be provided within thirty days of
28 the effective date of this section.

29 (2) The department shall, upon request, provide to a labor
30 organization seeking to organize child care center directors and
31 workers, a list of all directors and workers in the unit that the
32 organization seeks to organize. The list shall contain the information
33 collected with regard to the directors and workers pursuant to
34 subsection (1) of this section.

1 (3) A labor organization receiving information under subsection (2)
2 of this section may not release that information to any other party and
3 may only use that information for collective bargaining and for the
4 purposes specified in subsection (2) of this section.

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

7 The department shall adjust the rates of child care subsidies and
8 reimbursements, as defined in RCW 41.56.030, paid to all child care
9 centers located in a department of social and health services region to
10 reflect the rate provisions in a collective bargaining agreement for
11 child care center directors and workers employed at child care centers
12 located in the same region that was negotiated under RCW 41.56.028 and
13 funded by the legislature.

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 74.12 RCW
15 to read as follows:

16 The department shall adjust the rates of child care subsidies and
17 reimbursements, as defined in RCW 41.56.030, paid to all child care
18 centers located in a department of social and health services region to
19 reflect the rate provisions in a collective bargaining agreement for
20 child care center directors and workers employed at child care centers
21 located in the same region that was negotiated under RCW 41.56.028 and
22 funded by the legislature.

23 **Sec. 11.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are
24 each reenacted and amended to read as follows:

25 The definitions in this section apply throughout this chapter
26 unless the context clearly requires otherwise.

27 (1) "Agency" means any person, firm, partnership, association,
28 corporation, or facility that provides child care and early learning
29 services outside a child's own home and includes the following
30 irrespective of whether there is compensation to the agency:

31 (a) "Child day care center" means an agency that regularly provides
32 child day care and early learning services for a group of children for
33 periods of less than twenty-four hours;

34 (b) "Early learning" includes but is not limited to programs and
35 services for child care; state, federal, private, and nonprofit

1 preschool; child care subsidies; child care resource and referral;
2 parental education and support; and training and professional
3 development for early learning professionals;

4 (c) "Family day care provider" means a child day care provider who
5 regularly provides child day care and early learning services for not
6 more than twelve children in the provider's home in the family living
7 quarters;

8 (d) "Nongovernmental private-public partnership" means an entity
9 registered as a nonprofit corporation in Washington state with a
10 primary focus on early learning, school readiness, and parental
11 support, and an ability to raise a minimum of five million dollars in
12 contributions;

13 (e) "Service provider" means the entity that operates a community
14 facility.

15 (2) "Agency" does not include the following:

16 (a) Persons related to the child in the following ways:

17 (i) Any blood relative, including those of half-blood, and
18 including first cousins, nephews or nieces, and persons of preceding
19 generations as denoted by prefixes of grand, great, or great-great;

20 (ii) Stepfather, stepmother, stepbrother, and stepsister;

21 (iii) A person who legally adopts a child or the child's parent as
22 well as the natural and other legally adopted children of such persons,
23 and other relatives of the adoptive parents in accordance with state
24 law; or

25 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
26 subsection (2)(a), even after the marriage is terminated;

27 (b) Persons who are legal guardians of the child;

28 (c) Persons who care for a neighbor's or friend's child or
29 children, with or without compensation, where the person providing care
30 for periods of less than twenty-four hours does not conduct such
31 activity on an ongoing, regularly scheduled basis for the purpose of
32 engaging in business, which includes, but is not limited to,
33 advertising such care;

34 (d) Parents on a mutually cooperative basis exchange care of one
35 another's children;

36 (e) Nursery schools or kindergartens that are engaged primarily in
37 educational work with preschool children and in which no child is
38 enrolled on a regular basis for more than four hours per day;

1 (f) Schools, including boarding schools, that are engaged primarily
2 in education, operate on a definite school year schedule, follow a
3 stated academic curriculum, accept only school-age children, and do not
4 accept custody of children;

5 (g) Seasonal camps of three months' or less duration engaged
6 primarily in recreational or educational activities;

7 (h) Facilities providing care to children for periods of less than
8 twenty-four hours whose parents remain on the premises to participate
9 in activities other than employment;

10 (i) Any agency having been in operation in this state ten years
11 before June 8, 1967, and not seeking or accepting moneys or assistance
12 from any state or federal agency, and is supported in part by an
13 endowment or trust fund;

14 (j) An agency operated by any unit of local, state, or federal
15 government or an agency, located within the boundaries of a federally
16 recognized Indian reservation, licensed by the Indian tribe;

17 (k) An agency located on a federal military reservation, except
18 where the military authorities request that such agency be subject to
19 the licensing requirements of this chapter;

20 (l) An agency that offers early learning and support services, such
21 as parent education, and does not provide child care services on a
22 regular basis.

23 (3) "Applicant" means a person who requests or seeks employment in
24 an agency.

25 (4) "Child care center directors and workers" means the same as in
26 RCW 41.56.030.

27 (5) "Department" means the department of early learning.

28 ~~((+5))~~ (6) "Director" means the director of the department.

29 ~~((+6))~~ (7) "Employer" means a person or business that engages the
30 services of one or more people, especially for wages or salary to work
31 in an agency.

32 ~~((+7))~~ (8) "Enforcement action" means denial, suspension,
33 revocation, modification, or nonrenewal of a license pursuant to RCW
34 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW
35 43.215.300(3).

36 ~~((+8))~~ (9) "Family child care licensee" means a person who: (a)
37 Provides regularly scheduled care for a child or children in the home
38 of the provider for periods of less than twenty-four hours or, if

1 necessary due to the nature of the parent's work, for periods equal to
2 or greater than twenty-four hours; (b) does not receive child care
3 subsidies; and (c) is licensed by the state under RCW 43.215.200.

4 (10) "Probationary license" means a license issued as a
5 disciplinary measure to an agency that has previously been issued a
6 full license but is out of compliance with licensing standards.

7 ~~((+9))~~ (11) "Requirement" means any rule, regulation, or standard
8 of care to be maintained by an agency.

9 **Sec. 12.** RCW 43.215.350 and 2007 c 17 s 15 are each amended to
10 read as follows:

11 The director shall have the power and it shall be the director's
12 duty to engage in negotiated rule making pursuant to RCW
13 34.05.310(2)(a) with:

14 (1) The exclusive representative of the unit of family child care
15 licensees selected in accordance with RCW 43.215.355 and with other
16 affected interests before adopting requirements that affect family
17 child care licensees; and

18 (2) The exclusive representative or representatives of the unit or
19 units of child care center directors and workers selected in accordance
20 with RCW 41.56.028 and with other affected interests before adopting
21 requirements that affect child care center directors and workers.

22 **Sec. 13.** RCW 74.15.020 and 2007 c 412 s 1 are each amended to read
23 as follows:

24 For the purpose of this chapter and RCW 74.13.031, and unless
25 otherwise clearly indicated by the context thereof, the following terms
26 shall mean:

27 (1) "Agency" means any person, firm, partnership, association,
28 corporation, or facility which receives children, expectant mothers, or
29 persons with developmental disabilities for control, care, or
30 maintenance outside their own homes, or which places, arranges the
31 placement of, or assists in the placement of children, expectant
32 mothers, or persons with developmental disabilities for foster care or
33 placement of children for adoption, and shall include the following
34 irrespective of whether there is compensation to the agency or to the
35 children, expectant mothers or persons with developmental disabilities
36 for services rendered:

1 (a) "Child-placing agency" means an agency which places a child or
2 children for temporary care, continued care, or for adoption;

3 (b) "Community facility" means a group care facility operated for
4 the care of juveniles committed to the department under RCW 13.40.185.
5 A county detention facility that houses juveniles committed to the
6 department under RCW 13.40.185 pursuant to a contract with the
7 department is not a community facility;

8 (c) "Crisis residential center" means an agency which is a
9 temporary protective residential facility operated to perform the
10 duties specified in chapter 13.32A RCW, in the manner provided in RCW
11 74.13.032 through 74.13.036;

12 (d) "Emergency respite center" is an agency that may be commonly
13 known as a crisis nursery, that provides emergency and crisis care for
14 up to seventy-two hours to children who have been admitted by their
15 parents or guardians to prevent abuse or neglect. Emergency respite
16 centers may operate for up to twenty-four hours a day, and for up to
17 seven days a week. Emergency respite centers may provide care for
18 children ages birth through seventeen, and for persons eighteen through
19 twenty with developmental disabilities who are admitted with a sibling
20 or siblings through age seventeen. Emergency respite centers may not
21 substitute for crisis residential centers or HOPE centers, or any other
22 services defined under this section, and may not substitute for
23 services which are required under chapter 13.32A or 13.34 RCW;

24 (e) "Foster-family home" means an agency which regularly provides
25 care on a twenty-four hour basis to one or more children, expectant
26 mothers, or persons with developmental disabilities in the family abode
27 of the person or persons under whose direct care and supervision the
28 child, expectant mother, or person with a developmental disability is
29 placed;

30 (f) "Group-care facility" means an agency, other than a foster-
31 family home, which is maintained and operated for the care of a group
32 of children on a twenty-four hour basis;

33 (g) "HOPE center" means an agency licensed by the secretary to
34 provide temporary residential placement and other services to street
35 youth. A street youth may remain in a HOPE center for thirty days
36 while services are arranged and permanent placement is coordinated. No
37 street youth may stay longer than thirty days unless approved by the
38 department and any additional days approved by the department must be

1 based on the unavailability of a long-term placement option. A street
2 youth whose parent wants him or her returned to home may remain in a
3 HOPE center until his or her parent arranges return of the youth, not
4 longer. All other street youth must have court approval under chapter
5 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

6 (h) "Maternity service" means an agency which provides or arranges
7 for care or services to expectant mothers, before or during
8 confinement, or which provides care as needed to mothers and their
9 infants after confinement;

10 (i) "Responsible living skills program" means an agency licensed by
11 the secretary that provides residential and transitional living
12 services to persons ages sixteen to eighteen who are dependent under
13 chapter 13.34 RCW and who have been unable to live in his or her
14 legally authorized residence and, as a result, the minor lived outdoors
15 or in another unsafe location not intended for occupancy by the minor.
16 Dependent minors ages fourteen and fifteen may be eligible if no other
17 placement alternative is available and the department approves the
18 placement;

19 (j) "Service provider" means the entity that operates a community
20 facility.

21 (2) "Agency" shall not include the following:

22 (a) Persons related to the child, expectant mother, or person with
23 developmental disability in the following ways:

24 (i) Any blood relative, including those of half-blood, and
25 including first cousins, second cousins, nephews or nieces, and persons
26 of preceding generations as denoted by prefixes of grand, great, or
27 great-great;

28 (ii) Stepfather, stepmother, stepbrother, and stepsister;

29 (iii) A person who legally adopts a child or the child's parent as
30 well as the natural and other legally adopted children of such persons,
31 and other relatives of the adoptive parents in accordance with state
32 law;

33 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
34 subsection (2)(a), even after the marriage is terminated;

35 (v) Relatives, as named in (i), (ii), (iii), or (iv) of this
36 subsection (2)(a), of any half sibling of the child; or

37 (vi) Extended family members, as defined by the law or custom of
38 the Indian child's tribe or, in the absence of such law or custom, a

1 person who has reached the age of eighteen and who is the Indian
2 child's grandparent, aunt or uncle, brother or sister, brother-in-law
3 or sister-in-law, niece or nephew, first or second cousin, or
4 stepparent who provides care in the family abode on a twenty-four-hour
5 basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

6 (b) Persons who are legal guardians of the child, expectant mother,
7 or persons with developmental disabilities;

8 (c) Persons who care for a neighbor's or friend's child or
9 children, with or without compensation, where the parent and person
10 providing care on a twenty-four-hour basis have agreed to the placement
11 in writing and the state is not providing any payment for the care;

12 (d) A person, partnership, corporation, or other entity that
13 provides placement or similar services to exchange students or
14 international student exchange visitors or persons who have the care of
15 an exchange student in their home;

16 (e) A person, partnership, corporation, or other entity that
17 provides placement or similar services to international children who
18 have entered the country by obtaining visas that meet the criteria for
19 medical care as established by the United States immigration and
20 naturalization service, or persons who have the care of such an
21 international child in their home;

22 (f) Schools, including boarding schools, which are engaged
23 primarily in education, operate on a definite school year schedule,
24 follow a stated academic curriculum, accept only school-age children
25 and do not accept custody of children;

26 (g) Hospitals licensed pursuant to chapter 70.41 RCW when
27 performing functions defined in chapter 70.41 RCW, nursing homes
28 licensed under chapter 18.51 RCW and boarding homes licensed under
29 chapter 18.20 RCW;

30 (h) Licensed physicians or lawyers;

31 (i) Facilities approved and certified under chapter 71A.22 RCW;

32 (j) Any agency having been in operation in this state ten years
33 prior to June 8, 1967, and not seeking or accepting moneys or
34 assistance from any state or federal agency, and is supported in part
35 by an endowment or trust fund;

36 (k) Persons who have a child in their home for purposes of
37 adoption, if the child was placed in such home by a licensed child-

1 placing agency, an authorized public or tribal agency or court or if a
2 replacement report has been filed under chapter 26.33 RCW and the
3 placement has been approved by the court;

4 (1) An agency operated by any unit of local, state, or federal
5 government or an agency licensed by an Indian tribe pursuant to RCW
6 74.15.190;

7 (m) A maximum or medium security program for juvenile offenders
8 operated by or under contract with the department;

9 (n) An agency located on a federal military reservation, except
10 where the military authorities request that such agency be subject to
11 the licensing requirements of this chapter.

12 (3) "Department" means the state department of social and health
13 services.

14 ~~((("Family child care licensee" means a person who: (a)~~
15 ~~Provides regularly scheduled care for a child or children in the home~~
16 ~~of the provider for periods of less than twenty four hours or, if~~
17 ~~necessary due to the nature of the parent's work, for periods equal to~~
18 ~~or greater than twenty four hours; (b) does not receive child care~~
19 ~~subsidies; and (c) is licensed by the state under RCW 74.15.030.~~

20 ~~(+5))~~ "Juvenile" means a person under the age of twenty-one who has
21 been sentenced to a term of confinement under the supervision of the
22 department under RCW 13.40.185.

23 ~~((+6))~~ (5) "Probationary license" means a license issued as a
24 disciplinary measure to an agency that has previously been issued a
25 full license but is out of compliance with licensing standards.

26 ~~((+7))~~ (6) "Requirement" means any rule, regulation, or standard
27 of care to be maintained by an agency.

28 ~~((+8))~~ (7) "Secretary" means the secretary of social and health
29 services.

30 ~~((+9))~~ (8) "Street youth" means a person under the age of eighteen
31 who lives outdoors or in another unsafe location not intended for
32 occupancy by the minor and who is not residing with his or her parent
33 or at his or her legally authorized residence.

34 ~~((+10))~~ (9) "Transitional living services" means at a minimum, to
35 the extent funds are available, the following:

36 (a) Educational services, including basic literacy and
37 computational skills training, either in local alternative or public

1 high schools or in a high school equivalency program that leads to
2 obtaining a high school equivalency degree;

3 (b) Assistance and counseling related to obtaining vocational
4 training or higher education, job readiness, job search assistance, and
5 placement programs;

6 (c) Counseling and instruction in life skills such as money
7 management, home management, consumer skills, parenting, health care,
8 access to community resources, and transportation and housing options;

9 (d) Individual and group counseling; and

10 (e) Establishing networks with federal agencies and state and local
11 organizations such as the United States department of labor, employment
12 and training administration programs including the job training
13 partnership act which administers private industry councils and the job
14 corps; vocational rehabilitation; and volunteer programs.

15 NEW SECTION. **Sec. 14.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 15.** If any part of this act is found to be in
20 conflict with federal requirements that are a prescribed condition to
21 the allocation of federal funds to the state, the conflicting part of
22 this act is inoperative solely to the extent of the conflict and with
23 respect to the agencies directly affected, and this finding does not
24 affect the operation of the remainder of this act in its application to
25 the agencies concerned. Rules adopted under this act must meet federal
26 requirements that are a necessary condition to the receipt of federal
27 funds by the state."

SHB 1329 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

OUT OF ORDER 04/13/2009

28 On page 1, line 3 of the title, after "workers;" strike the

1 remainder of the title and insert "amending RCW 41.56.028, 41.56.030,
2 41.56.113, 41.56.465, 41.04.810, 43.01.047, 43.215.350, and 74.15.020;
3 reenacting and amending RCW 43.215.010; adding a new section to chapter
4 43.215 RCW; adding a new section to chapter 74.08A RCW; adding a new
5 section to chapter 74.12 RCW; and creating new sections."

EFFECT: References to the Department of Social and Health Services are changed to the Department of Early Learning. The definition of "child care center directors and workers" is modified to include all owners, regardless of whether they work on-site or not. The definition of "child care center" is modified to apply to those centers that have at least four children for whom they receive a subsidy, rather than one child. The provision directing the governor and the exclusive representative of the bargaining unit to agree to a representation fee is modified to require the governor and the exclusive representative to agree to a mechanism for collecting a representation fee. Any agreement to pay a representation fee must safeguard the child care center owner's and operator's rights of nonassociation based on bona fide religious tenets or teachings of a church or other religious body of which the owner or operator is a member. A labor organization receiving the personal information of child care centers directors and workers may only use that information for collective bargaining and may not release it for any other purposes. The parity language is modified to provide that the rates of the child care subsidies and reimbursements be adjusted to reflect the rate provisions of a collective bargaining agreement, rather than only the subsidy rate. The short title is removed.

--- END ---