

HOUSE BILL REPORT

SHB 1329

As Amended by the Senate

Title: An act relating to improving quality, access, and stability of child care through providing collective bargaining for child care center directors and workers.

Brief Description: Providing collective bargaining for child care center directors and workers.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Pettigrew, Conway, Kagi, Hunt, Seaquist, Sells, Priest, Kenney, Ormsby, Wood, Haigh, White, Chase, Herrera, Morrell, Liias, Green, Cody, Appleton, Hasegawa, Carlyle, Simpson, McCoy, Sullivan, Orwall, Goodman, Campbell, Hudgins, Moeller, Nelson and Santos).

Brief History:

Committee Activity:

Commerce & Labor: 1/27/09, 2/6/09 [DP];

Ways & Means: 2/27/09, 3/2/09 [DPS].

Floor Activity

Passed House: 3/9/09, 65-31.

Senate Amended.

Passed Senate: 4/13/09, 46-2.

Brief Summary of Substitute Bill

- Provides for collective bargaining between the Governor and child care center directors and workers under the Public Employees' Collective Bargaining Act, and provides that agreements must be consistent with legislatively-determined standards and quality rating systems.
- Requires the Director of the Department of Early Learning to engage in negotiated rule making under the Administrative Procedures Act with child care center directors and workers.
- Requires the Department of Social and Health Services to adjust subsidy rates paid to child care centers in particular regions to reflect subsidy rates in collective bargaining agreements for those regions.

HOUSE COMMITTEE ON COMMERCE & LABOR

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler.

Staff: Jill Reinmuth (786-7134)

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Linville, Chair; Ericks, Vice Chair; Dammeier, Assistant Ranking Minority Member; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 6 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Chandler, Hinkle, Ross and Schmick.

Staff: David Pringle (786-7310)

Background:

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), adult family home providers, and family child care providers 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 and some other bargaining units, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation.

Summary of Substitute Bill:

The Public Employees' Collective Bargaining Act (PECBA) is amended to apply to the Governor with respect to child care center directors and workers, and to govern collective

bargaining between the Governor and the exclusive bargaining representatives of the directors and workers. Negotiated rule making and adjustments to certain subsidy rates are required.

Public Employees and Employer.

Solely for purposes of collective bargaining, child care center directors and workers are "public employees." The directors and workers are employees who work on-site at licensed centers that have at least one slot filled by a child for whom they receive child care subsidies, as well as owners who work on-site at these centers.

Employees who work at certain centers are not covered for purposes of collective bargaining. These centers are ones that are operated directly by another unit of government or a tribe, or by an entity that operates 10 or more child care centers statewide. These centers are also ones that are operated by a local nonprofit organization whose primary mission is to provide social services and that pays membership dues to either a national 501(c)(3) organization with more than \$3 million in membership dues annually or a regional council that is affiliated with a national 501(c)(3) organization with more than 200 affiliates.

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

Bargaining Units and Representatives.

For purposes of collective bargaining, appropriate units must be determined by the Public Employment Relations Commission (PERC) and must conform to the requested unit if consistent with the act. The PERC must include in the same unit child care center directors and workers employed at centers in existing Department of Social and Health Services (DSHS) regions, and may group together regions to minimize the number of units.

Each year, child care centers must provide to the Department of Early Learning (DEL) a list of the names and addresses of current directors and workers. Upon request, the DEL must provide to a labor organization a list of all directors and workers in the unit that the organization seeks to organize.

The exclusive representatives are 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; and
- to show at least 30 percent representation within a unit to accompany a request for an initial election, the written proof of representation is valid only if collected not more than two years prior to filing the request.

Collective Bargaining.

The exclusive representatives shall conduct negotiations jointly, and shall bargain for one agreement covering all child care center directors and workers who are represented.

The exclusive representatives and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Matters subject to bargaining must be within the purview of the state and within the community of interest of directors and workers. The Governor is required to bargain over the manner and rate of subsidy and reimbursement, including quality incentives. The Governor is permitted to bargain over funding for professional development and training, mechanisms and funding to improve access of centers to health care insurance and other benefit programs, other economic support for child care centers, and grievance procedures to resolve disputes arising out of the interpretation or application of the collective bargaining agreement. The Governor is prohibited from bargaining over retirement benefits.

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 for child care center directors and workers. A request must not be submitted by the Governor to the Legislature unless it has been certified by the Director of the Office of Financial Management as being feasible financially or it reflects the binding decision of an arbitration panel. A request may not be submitted before July 1, 2010.

The Legislature must approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, a collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement. If the Legislature approves the submission and a significant revenue shortfall occurs, as declared by a proclamation of the Governor or a resolution of the Legislature, the parties must immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

Mediation and Arbitration.

Child care center directors and workers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. For all personnel who are subject to binding interest arbitration under the PECBA, an interest arbitration panel must consider: the employer's authority, the parties' stipulations, and the cost-of-living. For directors and workers, the panel must also consider: a comparison of subsidy rates and reimbursement programs by public entities along the west coast, and the financial ability of the state to pay for a collective bargaining agreement. The 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.

Representation Fees.

The state must deduct representation fees from monthly amounts of child care subsidies due to child care centers and transmit the fees to the exclusive representatives. Child care centers operated by churches or other religious bodies for which payment of fees is contrary to bona fide religious tenets must pay equivalent amounts to nonreligious charities or other charitable organizations mutually agreed upon by the center and the exclusive representative.

Negotiated Rule Making.

Before adopting requirements that affect child care center directors and workers, the Director of the DEL must engage in negotiated rule making under the Administrative Procedures Act with exclusive representatives of directors and workers and with other affected interests.

State Action Immunity.

The Legislature intends to provide state action immunity under antitrust laws for the joint activities of child care center directors and workers and their exclusive representatives.

Parity.

The DSHS must adjust subsidy rates paid to child care centers in particular regions to reflect subsidy rates in collective bargaining agreements for directors and workers employed at child care centers in those regions.

Other Provisions.

The following are not modified:

- the rights of parents and legal guardians to choose and terminate the services of child care centers;
- the rights of child care centers to choose, direct, and terminate the services of child care workers, and unless otherwise provided, to manage and operate facilities and programs;
- the rights of employers and employees under the National Labor Relations Act;
- the right of the Legislature to modify the delivery of state services through child care subsidy programs, including the standards for eligibility of child care centers participating in subsidy programs; and
- the right of the Legislature to determine standards for professional development and training, quality criteria, and ratings.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment was "adopted as amended" by two amendments. Below are descriptions of the effects of the Senate amendment adopted as amended by: (1) Amendment 357; and (2) Amendment 358.

(1) The Senate amendment adopted as amended by Amendment 357 provides for limited collective bargaining and a sunset in 2014 as follows:

(a) authorizes collective bargaining between centers that file notices of intent with the Public Employment Relations Commission (PERC) after June 30, 2010, and before November 2, 2010, and the state;

(b) requires that notices of intent include names and addresses of owners, directors, and workers, and written authorization cards signed by a majority indicating their desire to

opt in, and also requires that the PERC provide lists of owners, directors, and workers to certain labor organizations;

(c) _____ modifies the definition of "child care center directors and workers" to include all owners of child care centers, regardless of whether or not they work on-site;

(d) _____ provides for a statewide bargaining unit, and specifies that the initial election of the exclusive representative may not occur before November 1, 2010;

(e) _____ strikes "other economic support" from the list of permissive subjects of bargaining;

(f) _____ requires that agreements to pay representation fees safeguard rights of nonassociation;

(g) _____ specifies that: (i) initial negotiations may not commence before July 1, 2011; (ii) a request for funds must be submitted by October 1, 2011; (iii) the request must be certified by the director of the Office of Financial Management as financially feasible; and (iv) if an arbitration panel's decision is not certified as financially feasible, the decision is not binding on the Governor and the law on enforcing the decision does not apply.

(h) _____ strikes the section relating to parity in subsidy rates for other child care centers; and

(i) _____ adds a sunset provision terminating the act on June 30, 2014.

(2) _____ The Senate amendment adopted as amended by Amendment 358 provides for a study and a task force as follows:

(a) _____ directs the Department of Early Learning to study issues relating to increasing subsidy and reimbursement rates, and complete the study by August 1, 2010;

(b) _____ establishes a joint legislative task force consisting of four legislators, up to eight child care center representatives, and the director of the Department of Early Learning; requires the task force to review the study; and requires the task force to submit legislation to increase subsidy and reimbursement rates by December 1, 2011;

(c) _____ modifies the definition of "child care center directors and workers" to include owners, regardless of whether or not they work on-site, and the definition of "child care center" to mean centers that have at least four slots filled by children for whom they receive subsidies and which choose to participate in collective bargaining by filing notices of intent; and

(d) _____ strikes sections relating to collective bargaining (including provisions relating to bargaining units, exclusive representatives, subjects of bargaining, mediation and arbitration, and representation fees), as well as sections relating to parity and negotiated rule making.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Commerce & Labor):

(In support) The state only reimburses about half the cost of providing subsidized child care. The state hasn't kept up with the costs. A few years ago, there was a subsidy rate increase. It was the first rate increase in about 15 years.

Many child care facilities that provide subsidized care struggle to make ends meet in ways that do not impact quality. There are facilities that refinance their buildings. There are staff members that go without salaries. There are owners and directors that reach into their own pockets.

Efforts have been made to work with those who oppose this legislation. There is limited fiscal impact during this biennium. An agreement would not come before the Legislature until the 2011-13 budget deliberations. The scope of bargaining has been narrowed. A management rights clause has been added. Parity for other child care centers has been reinserted so that they get the same subsidy rate classes as those that are represented. There is language specifying that there are no unfunded mandates for employers.

The importance of early learning has been a focus over the past few years. The global economic crisis is on the tip of everyone's tongue. Better opportunities for all children, and particularly at-risk children, will help us come out of the economic crisis. With more education and more learning opportunities, our children will be better able to succeed.

Stability in the child care workforce is critical. Child care center directors and workers are the teachers and caregivers. They build the foundation for public education. Turnover in directors and workers is a significant problem. Teachers are constantly rotating because of low wage rates.

Directors and teachers understand the importance of professional development. This bill is a step forward in that direction.

The bill gives child care center directors and workers a chance to be at the table and help solve the problems that they face. They know what is happening with kids. They understand that budgets are tight. They want to be heard.

(Neutral with concerns) Legislators are already able to control subsidy rates. If there is a problem with funding, it can be solved without extending collective bargaining rights. The bill does not protect the rights of individual religious objectors. There is no process for individuals to opt out. The bill will divide children on socio-economic lines. Private centers with one state-subsidized child might decide not to continue accepting those children. It would be better to provide incentives for meeting performance standards, rather than extend collective bargaining.

(Opposed) There are mechanisms already in place to raise subsidy payments. The Legislature can increase subsidy payments without an unnecessary and costly middleman. A union is not the right approach.

The bill would cost millions to implement, not including the costs of defending legal challenges and paying increased subsidies. There is no cost if the Legislature just takes action to increase subsidy payments.

The bill forces workers into a union, but gives them no opportunity to vote. Many family child care providers don't want a union in their lives, and the same may be true for child care centers.

There has not been any training for family providers. There won't be any for center directors and workers.

Accountability for taxpayers and child care providers should be required. Family home providers have asked for accountability, but their concerns have yet to be addressed. Union dues are deducted without oversight or accountability. Union dues do not equate to quality child care.

Staff Summary of Public Testimony (Ways & Means):

(In Support) The subsidized payments are less than one-half the cost of providing care. It is incredibly important with regards to the costs of childhood learning which is an important priority for our state. We are pleased to support this legislation – similar to legislation that passed this year. The first contract will not be dealt with until 2011 under the terms of the bill. This biennium is the time to begin to get ready to leap out of the downturn and improve child care and early learning. The bill has improved since last viewing. The scope of bargaining issues have been addressed, strengthened management rights, and made sure no child care centers would receive unfunded mandates. Some of the Department of Social and Health Services (DSHS) assumptions related to the programming costs are faulty; these are costs reimbursed by the union.

(Opposed) This turns private sector employees into public ones. This adds up to \$1.3 million, plus the DSHS; costs to the costs of child care. We need to raise subsidy rates. The bill also removes parts of the budget from legislative control. We believe that the money could be better spent on services than subsidies; 500 to 1,000 more kids could be paid for from the costs of implementing this bill. Raise the rates yourselves, or adopt an option that will raise rates over time. The \$1.3 million is only the tip of the iceberg, the other part is tens of millions in size. This bill will also cost jobs. The DSHS-subsidized placement of children has been cut and the employment of providers has been reduced.

Persons Testifying (Commerce & Labor): (In support) Representative Pettigrew, prime sponsor; Kim Cook, Megan Price, and Barbara Tristan, Service Employees International Union; Lucinda Young, Washington Education Association and American Federation of Teachers; Diane Gaile, Mariah Collaborative Arts Center and Washington Educators for Early Learning; Molly Boyajian, League of Education Voters; and Kim Gilligan, Washington Educators for Early Learning.

(Neutral with concerns) Scott Dilley, Evergreen Freedom Foundation.

(Opposed) Tom Emery, Love and Laughter Learning Center; Ginger Still, Kid's World Childcare; Candi Doran, Little Orca Learning Center; Colleen Hill, Country Kids Playhouse; Kim Pressell, Middleland Kiddie Korral; and Margo Logan, Washington Parents for Safe Child Care.

Persons Testifying (Ways & Means): (In support) Representative Pettigrew, prime sponsor; Adair Dammon, Service Employees International Union 925; and Lucinda Young, Washington Education Association.

(Opposed) David Foster, Washington Child Care United; Tom Emery, Washington Child Care Alliance; and Amy Bell, YMCA of Washington.

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

Persons Signed In To Testify But Not Testifying (Ways & Means): None.