

SENATE BILL REPORT

SHB 1329

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, March 30, 2009
Ways & Means, April 6, 2009

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, Lias, Green, Cody, Appleton, Hasegawa, Carlyle, Simpson, McCoy, Sullivan, Orwall, Goodman, Campbell, Hudgins, Moeller, Nelson and Santos).

Brief History: Passed House: 3/09/09, 65-31.

Committee Activity: Labor, Commerce & Consumer Protection: 3/26/09, 3/30/09 [DPA-WM, DNP].

Ways & Means: 4/03/09, 4/06/09 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.
Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

Staff: Kathleen Buchli (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore and Rockefeller.

Minority Report: Do not pass.
Signed by Senators Honeyford and Schoesler.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Parlette and Pflug.

Staff: Michael Bezanson (786-7449)

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 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. 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 Bill (Recommended Amendments): The 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 rulemaking 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." As well as owners, the directors and workers are employees who work on-site at licensed centers that have at least four children for whom they receive child care subsidies. Child care centers that wish to participate in collective bargaining must file a notice of intent to participate with PERC. Child care centers that do not file a notice with PERC may not be included in a bargaining unit.

Bargaining Units and Representatives. For purposes of collective bargaining, appropriate units must be determined by the PERC and must conform to the requested unit if consistent with the act. The PERC must include in the same unit participating child care center directors and workers employed at centers in existing DSHS regions, and may group together regions to minimize the number of units. Each year, participating 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 and the labor organization may not release that information to any other party and may only use that information for collective bargaining. The exclusive representatives are determined in the manner specified in the PECBA, except that (1) if none of the choices receives a majority of the votes cast in the initial election, there is a run-off election; and (2) 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. Initial elections may not be conducted before July 1, 2010.

Collective Bargaining. The exclusive representatives must conduct negotiations jointly, and must 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 must bargain over the manner and rate of subsidy and reimbursement, so long as any agreement is consistent with the provisions of any quality rating and improvement system. The Governor is permitted to bargain over funding for professional development and training, mechanisms and funding to improve access of child care 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 OFM as being feasible financially. A request may not be submitted before July 1, 2011.

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. 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. The child care center owner or operator must pay an amount equivalent to the representation fee to a nonreligious charity or to another charitable organization.

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

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, ratings, and incentives for improving quality.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): Removes the exemptions from the definition of child care center and instead requires that all child care centers that wish to participate in collective bargaining under the act must file a notice of intent to participate with the PERC. Child care centers that do not file a notice with the Commission may not be included in a bargaining unit.

Removes the parity requirement for DSHS to adjust rates of child care subsidies and reimbursements paid to all child care centers based on the collective bargaining agreement for child care directors and workers.

Specifies that for child care center directors and workers the negotiated agreement or binding arbitration must be certified by the Director of OFM as being financially feasible regardless of whether the agreement reflects the binding decision of the arbitration panel.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Amendments): References to DSHS are changed to DEL. The definition of child care center directors and workers is modified to include all owners. 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. The Governor and the exclusive bargaining representative must 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. A labor organization receiving the personal information of child care center directors and workers may only use that information for collective bargaining purposes. An initial election to determine the exclusive bargaining representative may not occur before July 1, 2010, and the initial request for funds necessary to implement the collective bargaining agreement may not be submitted to the Office of Financial Management before July 1, 2011.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill (Labor, Commerce & Consumer Protection): PRO: There is one reason for this bill and that is to provide children access to child care throughout the state. Many child care centers rely on the subsidy payment provided by the state. The challenge these centers meet has been the difference between the costs of providing child care and the actual subsidy provided by the state. This difference makes it difficult for child care centers to make ends meet. This legislation allows these centers to set a course to close the gap between the costs of providing the care and the support provided by the state for that care.

Stability and consistency must be provided and without this legislation, that will be difficult.

This is a product of much work between the Governor's Office and the affected stakeholders. Kids and their care should come first. Child care is not a place to warehouse kids, but is a portal to a life-long learning experience. This is about the providers having better capabilities to take care of the neediest kids in their school. This provides them a voice they do not have, allows them to bargain with the state, and addresses issues such as the subsidy rate and educational opportunities.

Parity for the exempt organizations is in the bill which also exempts the very small organizations who have three or fewer children. The bill further clarifies a commitment to quality education and the quality rating improvement system. This is for elections only during this biennium and has a huge impact on the fiscal note. The workers can decide now and come back for the bargaining process in a more stable economic environment. Currently, child care providers do not have a voice over their services and they are not treated as professionals, they should have a voice in the decisions being made about their professions.

CON: We do not want employee's private information released pursuant to the bill. This does not affect wages. No research says that this will improve quality. The career and wage ladder is a better model. We have not been contacted for our input on this legislation and our voice has been left unheard. There are questions about the vote to choose a bargaining representative and we have been told that we will not have an opportunity to sign an election card. Unionization would result in lower subsidies and would just take more money away from our centers. If there is extra money, let the centers use it and pay more to their employees. There are concerns that this will cause centers to turn subsidized children away.

This bill is a bad lesson plan and is set up to fail. This will not benefit preschool teachers who do not do their jobs for the money but do it because they love what they do. Children will lose if centers stop taking subsidized children. We are concerned that we will be liable for giving the private information of our employees as required by the bill. There are many groups that are exempt from the bill – why is it acceptable that the large businesses are out and the small centers are left in? We support a fair subsidy and quality to child care, but the union voice is the voice of the provider and there are many questionable providers. The union will support the provider and not the child. The protections for bona fide religious tenets would not protect 501(c)(3) organizations which should have an exemption. There is no evidence that family child care centers have improved after being awarded similar rights.

OTHER: There is one aspect of the bill that has to do with the certification of financial feasibility. We are asking that the director of financial management be able to make the decision whether the agreement is feasible. The amendatory language clarifies that the Governor's Office will be able to react to changing economic conditions whether it is a bargained agreement or an arbitrated agreement or both.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Representative Pettigrew, prime sponsor; Senator Marr; Adair Damman, James Watson, Service Employees International Union #925; Lucinda Young, Washington Education Association; Don Haynes, Pike Market Child Care and Pre School.

CON: Margo Logan, Child Care Consulting; Debbie Arnold, Colleen Hill, Country Kids Playhouse; Lynnda Langston, Kids Country; Susan Rowbauer, Millennium; Stu Jacobson, Washington Parents; Judy Jennings, Washington Federation of Independent Schools.

OTHER: Victor Moore, Office of Financial Management.

Staff Summary of Public Testimony on LCCP Recommended Amended Bill (Ways & Means): PRO: The legislation gives workers the choice so that 1,000 child care centers will have the opportunity to have a voice in the decision process. The legislation does not go into effect until another full biennium. The initial costs to the state will be costs associated with compiling lists and the elections. The costs for performing an election should be very little. It does not contain other costs as these costs will not be incurred until the second year of the next biennium. Subsidies will not have impact unless workers have an opportunity to have a vote. The bill changes dates so that bargaining does not begin until late 2011. The Legislature cannot see any negotiated contract costs related to collective bargaining until the supplemental budget of 2012 at the earliest.

The underlying bill, the bill that addresses the family child care collective bargaining unit, anticipated flexibility in dealing with state budgets. The underlying bill writes in the opportunity to visit affordability at the bargaining table, requires the Labor Relations Office to communicate with the speaker and the majority leader, and has an affirmative mandate to the arbitrator to consider the state's ability to pay and the Legislature's ability to accept or reject the agreement. The Legislature has final authority to call people back to the bargaining table. The legislation aims to give workers a voice and to delay implementation into the future so that we can bargain in a more stabilized situation.

The bill will not serve as an incentive for child care centers to stop serving subsidized children. This bill contains parity. Every center will get the same benefits.

CON: The fiscal note shows that there is a fiscal cost in this biennium and in the next biennium. The state should not move forward with this legislation when services such as Basic Health are being reduced. There is no statistical evidence that shows that quality will be improved. The legislation would result in more lawsuits.

The legislation requires that child care centers will be mandated into the same union as others in their DSHS region. However, workers will not have the opportunity to participate because child care center owners can decide not to take subsidized children or cut staff.

Large child care centers are exempt from this bill. Schools and programs that are faith-based and nonprofit should be able to maintain their independence. Small child care centers should also be given the opportunity not to participate either. This legislation does not provide that choice. The legislation should not force what union to join.

Licensed child care centers should keep health and safety as the most important issue.

OTHER: OFM is seeking clarification in Section 2 related to certification of financial feasibility so that the Director of the OFM has the ability to certify feasibility regardless of whether the contract is agreed to or awarded by an arbitrator. This budget cycle shows that after participating in good faith bargaining, and once the process was over, the state experienced an economic downturn before the Governor's budget submission. Economic conditions can be looked at as a condition regardless of whether the agreement is agreed to or arbitrated.

Persons Testifying (Ways & Means): PRO: Lucinda Young, Washington Education Association; Adair Damman, Service Employees International Union #925.

CON: Tom Emery, Washington Child Care Alliance, Love and Laughter Learning Center; Colleen Hill, Country Kids Playhouse; Candi Doran, Little Orca; Jane Mattson, Greenacres Learning Center; Judy Jennings, Washington Federation of Independent Schools; Stu Jacobson, Parents for Safe Child Care.

OTHER: Julie Murray, OFM.