

SENATE BILL REPORT

SB 5572

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 23, 2009
Ways & Means, March 2, 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: Senators Marr, Kohl-Welles, Zarelli, Roach, Jarrett, Swecker, Kilmer, Kline, Franklin, Rockefeller, Keiser, Benton, McAuliffe, Carrell, Pridemore, Haugen, Kauffman, Fairley and Eide.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/10/09, 2/23/09 [DP-WM, DNP].

Ways & Means: 2/26/09, 3/02/09 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass 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: That Substitute Senate Bill No. 5572 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Carrell, Keiser, Kline, Kohl-Welles, McDermott, Oemig, Pridemore and Rockefeller.

Minority Report: Do not pass.
Signed by Senator 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 and Parlette.

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 Substitute): 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 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 four children 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 ten 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.

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 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 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:

- if none of the choices receives a majority of the votes cast in the initial election, there is a run-off election,

- 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; and
- the initial election for the exclusive bargaining representatives may not occur 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 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, 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 of a church or other religious body. 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 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.

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.

Appropriations. The act is in effect only if funds are specifically appropriated for this purpose.

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 CHANGES MADE BY WAYS & MEANS COMMITTEE
(Recommended Substitute):**

- Delays the request for funds necessary to implement the collective bargaining agreement by one year to 2011.
- Delays the exclusive collective bargaining election until July 1, 2010.
- Specifies that the act is only in effect if funds are specifically appropriated for this purpose.

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 Original Bill (Labor, Commerce & Consumer Protection): PRO: This bill is about children and the people we entrust with their care. The

bill focuses on the independent businesses who care for most of this state's at-risk kids. After last Legislative session, the proponents heard the concerns of others and the bill here is much improved. There are a lot of ways to go about early learning, but this brings the voice of the providers to the table. This provides a mechanism for getting input from providers of these programs and is consistent with federal labor law. The providers covered by this bill are small businesses, dispersed throughout the state and are struggling to provide vital services to families.

This bill reflects our economic reality. It guarantees no unfunded mandates and adds an management rights clause. The religious exemption language is expanded and centers with three or less subsidized children have been removed. This will improve the lives of working people and children.

This will address education for children and will allow education to improve for young children. From the student's perspective and teacher's perspective, this is strongly endorsed. This is the only bill that gives providers a voice and a place at the decision-making table. Early learning staff are stakeholders on what happens in the state and should have a place at the table when decisions are made. Teachers look for educational opportunities and ways to teach children to love learning; it is a virtual impossibility because they cannot pay for higher education and training on their low wages. The family child care model works and shows that child care providers can raise their standards through bargaining. This directly relates to the quality of early learning.

Quality of child care depends on the stability of the work force. This will empower child care centers to bargain and will ensure they get the support they need. This will maintain quality professional development. We are the first teachers of young children and build the social, emotional, and cognitive skills of young children. Day-care workers are unsung heroes and need their voice heard.

CON: The representative fees need to be clarified. People need to be able to choose whether they will be in the union. This bill does not accommodate people's religious beliefs. Increasing expenses make it difficult for centers to stay open, and the subsidy does not cover the costs of taking care of children. Under this bill, a portion of the subsidy will go towards the representation fee and will reduce the subsidy further; centers may have to stop taking subsidized children. The Legislature can raise the subsidy rate, and we do not need to collectively bargain to do that. We have a voice. It will not increase workers' wages or benefits. All workers are mandated into the bargaining unit and would not be able to vote on it. Paying the representation may force people out of child care. Workers have the right to organize in law, and this right would be taken away by this bill by being placed in the same bargaining unit.

This also takes away the right to choose exclusive representation. Workers will not get to vote; if the center takes in subsidized children, they will become part of the unit without voting. This will cause centers to not take in subsidized children and will result in lost jobs. The subsidy rate needs to increase and quality is important, but the best system is not through the bill. Money from the subsidy will go towards union dues, this money could go to the families and make a difference there. Centers not included in the union will not have a

voice. There are better ways to address quality and the subsidy rate. This does not address the quality of care provided by workers and there must be a way to filter out poor quality.

The family child care provider bill does not provide quality in the home, and there is no proof that the model will work here. This is not the right piece of legislation to improve child care. This will result in less slots available to subsidized children. A more direct funding method is preferred.

OTHER: This is likely to raise the cost of day care to working families who pay the full rate of care now. This is aimed at small businesses that are providing jobs and it is likely to reduce their ability to provide jobs. It provides for an unnecessary shift of public money toward labor unions. Fiscal control is shifted from the Legislature. Funding problems can be solved without extending collective bargaining rights. The bill does not protect people with religious objections. The triggering mechanism can result in centers not taking in children.

Persons Testifying (Labor, Commerce & Consumer Protection): PRO: Senator Marr, prime sponsor; Kim Cook, Megan Price, Nancy Gerber, Barb Tristan, Julie Schroath, Service Employees International Union # 925; Lucinda Young, Washington Education Association, Washington Educators in Early Learning; April Korbaly, Washington Educators in Early Learning; Shannon Seldal, Service Employees International Union, Little Farmers Learning Center; Fred Feinstein, University of Maryland; Diane Gaile, Washington Educators in Early Learning, Mariah Collaborative Arts Center; Hannah Lidman, Economic Opportunity Institute; Molly Boyajian, League of Education Voters; Teresa Mosqueda, Children's Alliance.

CON: Colleen Hill, Country Kids Playhouse; Ginger Still, Washington Childcare Alliance; Tom Emery, Love and Laughter Learning Center; Kim Pressel, Midland's Kiddie Korral Inc.; Bonny Lucas, School Kids Clubhouse; Nayda Amadeo, Kidzone Learning; Carrie Magel, Washington Coalition Child Care; Stu Jacobson, Washington Parents for Safe Child Care; Bob Romero, Yakima Family YMCA; Margo Logan, Washington Parents for Safe Child Care.

OTHER: Scott Dilley, Evergreen Freedom Foundation; Liv Finne, Washington Policy Center.

Staff Summary of Public Testimony on Original Bill (Ways & Means): PRO: This is a bill about children and the people who care about children. This bill has been improved from last year because of good constructive conversations with providers, representatives, and stakeholders. This bill makes changes from last year to address fiscal issues. The first contract that will come before the Legislature will not come until 2011. This allows time to set the structure and put the system in place to organize. When the downturn ends, the providers can come and discuss subsidies, professional development, training needs, and stability to their workforce.

This bill makes other key changes. The bill strengthens the management rights clause and clarifies that there will be no unfunded mandates to a child care center. The bill guarantees that centers excluded from the bill, because they are national chains either for-profit or non-profit, would receive the subsidy rates bargained under the bargaining agreement should

there be bargained subsidy rate increases. The bill also excludes child care centers that take only three or less subsidized children and extends a right of religious objection for owners of child care centers.

CON: This bill will cost the state money both in the short term and in the long term. The bill is not proven to raise the quality of child care or benefit child care workers in any measurable way and potentially cause harm to the industry. The fiscal note is \$1.4 million per biennium, but this is only the administrative costs. The fiscal note does not include the other cost increases in DSHS' subsidy rates to centers that make about one-half what it costs for state subsidized children. These other costs include the large legal costs to the state for setting aside RCW 49.36.010 which guarantees that workers can organize and choose their own representation. The other cost also includes the unemployment cost to the state. Because of the gap between subsidy rates and cost, centers will have to cut significantly the number of DSHS subsidized children, which would result in layoffs. At least two major newspapers have called this bill bureaucratic and heavy-handed.

OTHER: Locking the state into potential collective bargaining agreements decreases the amount of flexibility the Legislature has in dealing with child care subsidies. Passing some amount of fiscal oversight to the Governor's negotiators and labor unions is not in sync with the Legislature's constitutional oversight of state government and state finances.

Persons Testifying (Ways & Means): PRO: Senator Marr, prime sponsor; Lucinda Young, WEA; Adair Dammann, SEIU 925.

CON: Ginger Still, Kids World; Tom Emory, Washington Child Care Alliance.

OTHER: Scott Dilley, Evergreen Freedom Foundation.