
SUBSTITUTE SENATE BILL 6522

State of Washington 60th Legislature 2008 Regular Session

By Senate Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, Zarelli, Hargrove, Benton, Kauffman, Murray, Kline, Kilmer, Keiser, Tom, Shin, Delvin, Marr, Prentice, McAuliffe, Roach, Pridemore, Franklin, Rockefeller, Weinstein, Rasmussen, and Eide)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to improving quality, access, and stability of
2 child care through providing collective bargaining for child care
3 center directors and workers; amending RCW 41.56.028, 41.56.030,
4 41.56.113, 41.04.810, and 43.01.047; adding a new section to chapter
5 43.215 RCW; adding a new section to chapter 74.08A RCW; adding a new
6 section to chapter 74.12 RCW; and creating new sections.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The legislature finds that, as of 2008, the
9 challenges posed by low wages and lack of training that the legislature
10 identified in enacting the child care career and wage ladder persist,
11 and the availability of quality child care in the state continues to
12 suffer. The legislature intends to address these problems by creating
13 the possibility for a new relationship between child care center
14 directors and workers and the state. Child care center directors and
15 workers are to be given the opportunity to work collectively to improve
16 standards in their profession and to expand opportunities for
17 educational advancement to ensure continuous quality improvement in the
18 delivery of early learning services. Family child care providers in

1 the state have recently been given a similar opportunity, and the
2 results of their efforts have improved standards and quality for that
3 segment of the child care industry.

4 The legislature intends to create a new type of collective
5 bargaining for these directors and workers whereby they can come
6 together and bargain with the state over matters within the state's
7 purview and support for improving the quality of child care for the
8 state's families. Unlike traditional collective bargaining, this new
9 approach will afford these directors and workers the opportunity to
10 bargain with the state only over the state's support for child care
11 centers, a matter of common concern to both directors and workers.
12 Specific terms and conditions of employment at individual centers,
13 which are the subjects of traditional collective bargaining between
14 employers and their employees, fall outside the limited scope of
15 bargaining defined by this act. Accordingly, traditional policy
16 concerns over supervisors and employees being organized into a common
17 bargaining unit are inapplicable. Sharing a community of interest in
18 the subjects of bargaining enables directors and workers to work side
19 by side in the same bargaining unit for common goals.

20 All child care center directors and workers will equally be able to
21 maintain full membership in the organization that represents them in
22 their efforts to improve the quality of child care they provide to the
23 state's children. This new bargaining relationship does not intrude in
24 any manner upon those relationships governed by the national labor
25 relations act (29 U.S.C. Sec. 151 et seq). Child care center directors
26 and workers do not forfeit their rights under the national labor
27 relations act by becoming members of an organization that represents
28 them in their dealings with the state. Under the national labor
29 relations act, an organization that represents child care center
30 directors and workers in bargaining with the state under this act is
31 precluded from representing workers seeking to engage in traditional
32 collective bargaining with their employer over specific terms and
33 conditions of employment at individual child care centers.

34 **Sec. 2.** RCW 41.56.028 and 2007 c 278 s 2 are each amended to read
35 as follows:

36 (1) In addition to the entities listed in RCW 41.56.020, this
37 chapter applies to the governor with respect to family child care

1 providers and to child care center directors and workers. Solely for
2 the purposes of collective bargaining and as expressly limited under
3 subsections (2) and (3) of this section, the governor is the public
4 employer of family child care providers and of child care center
5 directors and workers who, solely for the purposes of collective
6 bargaining, are public employees. The public employer shall be
7 represented for bargaining purposes by the governor or the governor's
8 designee appointed under chapter 41.80 RCW.

9 (2) This chapter governs the collective bargaining relationship
10 between the governor and family child care providers and between the
11 governor and child care center directors and workers, except as
12 follows:

13 (a) (~~(A statewide unit of all family child care providers is)~~) The
14 only units appropriate for purposes of collective bargaining under RCW
15 41.56.060 are:

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

17 (ii) The units for child care center directors and workers
18 determined by the commission which shall conform to the unit requested
19 in the application for certification as the bargaining representative
20 if consistent with the terms of this act. In determining the units,
21 the commission shall include in the same unit all child care center
22 directors and workers employed at child care centers located in
23 department of social and health services regions or subregions existing
24 on the effective date of this section, and shall group together regions
25 to minimize the number of units.

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

30 (i) In the initial election conducted under chapter 54, Laws of
31 2006, or this act, if more than one labor organization is on the ballot
32 and none of the choices receives a majority of the votes cast, a
33 run-off election shall be held; and

34 (ii) To show at least thirty percent representation within a unit
35 to accompany a request for an initial election under this act, the
36 written proof of representation is valid only if collected not more
37 than two years prior to the date the request is filed with the
38 commission.

1 (c)(i) Notwithstanding the definition of "collective bargaining" in
2 RCW 41.56.030(4), the scope of collective bargaining for family child
3 care providers under this section shall be limited solely to: ~~((i))~~
4 (A) Economic compensation, such as manner and rate of subsidy and
5 reimbursement, including tiered reimbursements; ~~((ii))~~ (B) health and
6 welfare benefits; ~~((iii))~~ (C) professional development and training;
7 ~~((iv))~~ (D) labor-management committees; ~~((v))~~ (E) grievance
8 procedures; and ~~((vi))~~ (F) other economic matters. Retirement
9 benefits shall not be subject to collective bargaining. By such
10 obligation neither party shall be compelled to agree to a proposal or
11 be required to make a concession unless otherwise provided in this
12 chapter.

13 (ii) Notwithstanding the definition of "collective bargaining" in
14 RCW 41.56.030(4), the scope of collective bargaining for child care
15 center directors and workers under this section shall be limited solely
16 to these matters within the purview of the state and within the
17 community of interest of child care center directors and workers: (A)
18 Professional development and training, but not curriculum requirements;
19 (B) mechanisms and funding to improve the access of child care centers
20 to health care insurance and other benefit programs; (C) economic
21 compensation to child care centers, such as manner and rate of subsidy
22 and reimbursement, including tiered reimbursements; (D) other economic
23 support for child care centers; and (E) grievance procedures related to
24 (c)(ii)(A) through (D) of this subsection. By such obligation neither
25 party shall be compelled to agree to a proposal or be required to make
26 a concession unless otherwise provided in this chapter.

27 (d) The mediation and interest arbitration provisions of RCW
28 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

35 (ii) The decision of the arbitration panel is not binding on the
36 legislature and, if the legislature does not approve the request for
37 funds necessary to implement the compensation and benefit provisions of

1 the arbitrated collective bargaining agreement, is not binding on the
2 state.

3 (e) Nothing in chapter 54, Laws of 2006, or this act grants family
4 child care providers (~~do not have~~) and child care center directors
5 and workers the right to strike.

6 (3) Family child care providers and child care center directors and
7 workers who are public employees solely for the purposes of collective
8 bargaining under subsection (1) of this section are not, for that
9 reason, employees of the state for any purpose. This section applies
10 only to the governance of the collective bargaining relationship
11 between the employer and family child care providers and between the
12 employer and child care center directors and workers as provided in
13 subsections (1) and (2) of this section.

14 (4) This section does not create or modify:

15 (a) The parents' or legal guardians' right to choose and terminate
16 the services of any family child care provider that provides care for
17 their child or children;

18 (b) The child care centers' right to choose, direct, and terminate
19 the services of any child care worker who provides care in the center;

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

22 (d) The secretary of the department of social and health services'
23 right to adopt requirements under RCW 74.15.030, except for
24 requirements related to grievance procedures and collective
25 negotiations on personnel matters as specified in subsection (2)(c) of
26 this section;

27 (~~(e)~~) (e) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and
28 74.15.130; and

29 (~~(d)~~) (f) The legislature's right to make programmatic
30 modifications to the delivery of state services through child care
31 subsidy programs, including standards of eligibility of parents, legal
32 guardians, (~~and~~) family child care providers, and child care centers
33 participating in child care subsidy programs, and the nature of
34 services provided. The governor shall not enter into, extend, or renew
35 any agreement under this section that does not expressly reserve the
36 legislative rights described in this subsection (4)(~~(d)~~) (f).

37 (5) Upon meeting the requirements of subsection (6) of this
38 section, the governor must submit, as a part of the proposed biennial

1 or supplemental operating budget submitted to the legislature under RCW
2 43.88.030, a request for funds necessary to implement the compensation
3 and benefit provisions of ~~((a))~~ collective bargaining agreements
4 entered into under this section or for legislation necessary to
5 implement such agreements.

6 (6) A request for funds necessary to implement the compensation and
7 benefit provisions of ~~((a))~~ collective bargaining agreements entered
8 into under this section shall not be submitted by the governor to the
9 legislature unless such request has been:

10 (a) Submitted to the director of financial management by October
11 1st before the legislative session at which the request is to be
12 considered, except that, for initial negotiations under this section
13 for family child care providers, the request must be submitted by
14 November 15, 2006, and for child care center directors and workers, the
15 request must be submitted by November 15, 2008; and

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

19 (7) The legislature must approve or reject the submission of the
20 request for funds as a whole. If the legislature rejects or fails to
21 act on the submission, any such agreement will be reopened solely for
22 the purpose of renegotiating the funds necessary to implement the
23 agreement.

24 (8) The governor shall periodically consult with the joint
25 committee on employment relations established by RCW 41.80.010
26 regarding appropriations necessary to implement the compensation and
27 benefit provisions of any collective bargaining agreement and, upon
28 completion of negotiations, advise the committee on the elements of the
29 agreement and on any legislation necessary to implement such agreement.

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

36 (10) If, after the compensation and benefit provisions of an
37 agreement are approved by the legislature, a significant revenue
38 shortfall occurs resulting in reduced appropriations, as declared by

1 proclamation of the governor or by resolution of the legislature, both
2 parties shall immediately enter into collective bargaining for a
3 mutually agreed upon modification of the agreement.

4 (11) In enacting this section, the legislature intends to provide
5 state action immunity under federal and state antitrust laws for the
6 joint activities of family child care providers and their exclusive
7 bargaining representative and of child care center directors and
8 workers and their exclusive bargaining representatives to the extent
9 such activities are authorized by this chapter.

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

12 As used in this chapter:

13 (1) "Public employer" means any officer, board, commission,
14 council, or other person or body acting on behalf of any public body
15 governed by this chapter, or any subdivision of such public body. For
16 the purposes of this section, the public employer of district court or
17 superior court employees for wage-related matters is the respective
18 county legislative authority, or person or body acting on behalf of the
19 legislative authority, and the public employer for nonwage-related
20 matters is the judge or judge's designee of the respective district
21 court or superior court.

22 (2) "Public employee" means any employee of a public employer
23 except any person (a) elected by popular vote, or (b) appointed to
24 office pursuant to statute, ordinance or resolution for a specified
25 term of office as a member of a multimember board, commission, or
26 committee, whether appointed by the executive head or body of the
27 public employer, or (c) whose duties as deputy, administrative
28 assistant or secretary necessarily imply a confidential relationship to
29 (i) the executive head or body of the applicable bargaining unit, or
30 (ii) any person elected by popular vote, or (iii) any person appointed
31 to office pursuant to statute, ordinance or resolution for a specified
32 term of office as a member of a multimember board, commission, or
33 committee, whether appointed by the executive head or body of the
34 public employer, or (d) who is a court commissioner or a court
35 magistrate of superior court, district court, or a department of a
36 district court organized under chapter 3.46 RCW, or (e) who is a
37 personal assistant to a district court judge, superior court judge, or

1 court commissioner. For the purpose of (e) of this subsection, no more
2 than one assistant for each judge or commissioner may be excluded from
3 a bargaining unit.

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

7 (4) "Collective bargaining" means the performance of the mutual
8 obligations of the public employer and the exclusive bargaining
9 representative to meet at reasonable times, to confer and negotiate in
10 good faith, and to execute a written agreement with respect to
11 grievance procedures and collective negotiations on personnel matters,
12 including wages, hours and working conditions, which may be peculiar to
13 an appropriate bargaining unit of such public employer, except that by
14 such obligation neither party shall be compelled to agree to a proposal
15 or be required to make a concession unless otherwise provided in this
16 chapter.

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

18 (6) "Executive director" means the executive director of the
19 commission.

20 (7) "Uniformed personnel" means: (a) Law enforcement officers as
21 defined in RCW 41.26.030 employed by the governing body of any city or
22 town with a population of two thousand five hundred or more and law
23 enforcement officers employed by the governing body of any county with
24 a population of ten thousand or more; (b) correctional employees who
25 are uniformed and nonuniformed, commissioned and noncommissioned
26 security personnel employed in a jail as defined in RCW 70.48.020(5),
27 by a county with a population of seventy thousand or more, and who are
28 trained for and charged with the responsibility of controlling and
29 maintaining custody of inmates in the jail and safeguarding inmates
30 from other inmates; (c) general authority Washington peace officers as
31 defined in RCW 10.93.020 employed by a port district in a county with
32 a population of one million or more; (d) security forces established
33 under RCW 43.52.520; (e) firefighters as that term is defined in RCW
34 41.26.030; (f) employees of a port district in a county with a
35 population of one million or more whose duties include crash fire
36 rescue or other fire fighting duties; (g) employees of fire departments
37 of public employers who dispatch exclusively either fire or emergency

1 medical services, or both; or (h) employees in the several classes of
2 advanced life support technicians, as defined in RCW 18.71.200, who are
3 employed by a public employer.

4 (8) "Institution of higher education" means the University of
5 Washington, Washington State University, Central Washington University,
6 Eastern Washington University, Western Washington University, The
7 Evergreen State College, and the various state community colleges.

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

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

13 (11) "Child care subsidy" means a payment from the state through a
14 child care subsidy program established pursuant to RCW 74.12.340 or
15 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
16 program.

17 (12) "Family child care provider" means a person who: (a) Provides
18 regularly scheduled care for a child or children in the home of the
19 provider or in the home of the child or children for periods of less
20 than twenty-four hours or, if necessary due to the nature of the
21 parent's work, for periods equal to or greater than twenty-four hours;
22 (b) receives child care subsidies; and (c) is either licensed by the
23 state under RCW 74.15.030 or is exempt from licensing under chapter
24 74.15 RCW.

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

28 (14) "Child care center directors and workers" includes all
29 employees of child care centers who work on-site at the centers.
30 "Child care center directors and workers" also includes owners of child
31 care centers.

32 (15)(a) "Child care center" means a child care center licensed by
33 the state under RCW 74.15.030 that has at least one child care slot
34 filled by a child for whom it receives a child care subsidy.

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

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

37 (ii) Operated by an individual, partnership, profit or nonprofit

1 corporation, or other entity that operates ten or more child care
2 centers statewide; or

3 (iii) Operated by a local organization that pays membership dues or
4 assessments to or is otherwise affiliated with a national organization
5 exempt from income tax with more than five million dollars in
6 membership dues and assessments annually, as reported to the internal
7 revenue service.

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

10 (1) Upon the written authorization of an individual provider, a
11 family child care provider, or an adult family home provider within the
12 bargaining unit and after the certification or recognition of the
13 bargaining unit's exclusive bargaining representative, the state as
14 payor, but not as the employer, shall, subject to subsection (3) of
15 this section, deduct from the payments to an individual provider, a
16 family child care provider, or an adult family home provider the
17 monthly amount of dues as certified by the secretary of the exclusive
18 bargaining representative and shall transmit the same to the treasurer
19 of the exclusive bargaining representative.

20 (2) If the governor and the exclusive bargaining representative of
21 a bargaining unit of individual providers, family child care providers,
22 or adult family home providers enter into a collective bargaining
23 agreement that:

24 (a) Includes a union security provision authorized in RCW
25 41.56.122, the state as payor, but not as the employer, shall, subject
26 to subsection (3) of this section, enforce the agreement by deducting
27 from the payments to bargaining unit members the dues required for
28 membership in the exclusive bargaining representative, or, for
29 nonmembers thereof, a fee equivalent to the dues; or

30 (b) Includes requirements for deductions of payments other than the
31 deduction under (a) of this subsection, the state, as payor, but not as
32 the employer, shall, subject to subsection (3) of this section, make
33 such deductions upon written authorization of the individual provider,
34 family child care provider, or adult family home provider.

35 (3)(a) The initial additional costs to the state in making
36 deductions from the payments to individual providers, family child care

1 providers, and adult family home providers under this section shall be
2 negotiated, agreed upon in advance, and reimbursed to the state by the
3 exclusive bargaining representative.

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

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

27 (5) In lieu of the deductions authorized under subsections (1) and
28 (2) of this section, and the union security provisions authorized under
29 RCW 41.56.122, the governor and the exclusive representative of a
30 bargaining unit of child care center directors and workers shall agree
31 to a representation fee to be paid to the exclusive representative for
32 the costs of representation of child care center directors and workers
33 as provided in this chapter. The state shall deduct the representation
34 fee from the monthly amount of the child care subsidy due to a child
35 care center and transmit the representation fee to the secretary of the
36 exclusive bargaining representative. Any child care center that is
37 operated by a church or other religious body for which payment of a
38 representative fee is contrary to bona fide religious tenets shall pay

1 an amount equivalent to the representation fee to a nonreligious
2 charity or to another charitable organization mutually agreed upon by
3 the child care center and the exclusive representative to which the
4 center would otherwise pay the representation fee. The child care
5 center shall furnish written proof that such payment has been made. If
6 the child care center and the exclusive representative do not reach
7 agreement on such matter, the commission shall designate the charitable
8 organization.

9 **Sec. 5.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
10 as follows:

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

18 **Sec. 6.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read
19 as follows:

20 RCW 43.01.040 through 43.01.044 do not apply to individual
21 providers under RCW 74.39A.220 through 74.39A.300, family child care
22 providers under RCW 41.56.028, child care center directors and workers
23 under RCW 41.56.028, or adult family home providers under RCW
24 41.56.029.

25 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.215 RCW
26 to read as follows:

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

32 (2) The department shall, upon request, provide to a labor
33 organization seeking to organize child care center directors and
34 workers, a list of all directors and workers in the unit that the

1 organization seeks to organize. The list shall contain the information
2 collected with regard to the directors and workers pursuant to
3 subsection (1) of this section.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.08A RCW
5 to read as follows:

6 The department shall adjust the rates of child care subsidies, as
7 defined in RCW 41.56.030, paid to all child care centers to reflect the
8 rate provisions in a collective bargaining agreement for child care
9 center directors and workers negotiated under RCW 41.56.028 and funded
10 by the legislature.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.12 RCW
12 to read as follows:

13 The department shall adjust the rates of child care subsidies, as
14 defined in RCW 41.56.030, paid to all child care centers to reflect the
15 rate provisions in a collective bargaining agreement for child care
16 center directors and workers negotiated under RCW 41.56.028 and funded
17 by the legislature.

18 NEW SECTION. **Sec. 10.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 11.** If any part of this act is found to be in
23 conflict with federal requirements that are a prescribed condition to
24 the allocation of federal funds to the state, the conflicting part of
25 this act is inoperative solely to the extent of the conflict and with
26 respect to the agencies directly affected, and this finding does not
27 affect the operation of the remainder of this act in its application to
28 the agencies concerned. Rules adopted under this act must meet federal
29 requirements that are a necessary condition to the receipt of federal
30 funds by the state.

31 NEW SECTION. **Sec. 12.** This act may be known and cited as the

1 access to quality child care workforce act.

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