
Commerce & Labor Committee

HB 1329

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

Sponsors: 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 Summary of Bill

- Provides for collective bargaining between the Governor and child care center directors and workers under the Public Employees' Collective Bargaining Act.
- 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.

Hearing Date: 1/27/09

Staff: Jill Reinmuth (786-7134)

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

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.

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 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.

Rules Authority: The bill requires the Director of the Department of Early Learning to engage in negotiated rule making under the Administrative Procedures Act with exclusive representatives of child care center directors and workers and with other affected interests.

Appropriation: None.

Fiscal Note: Requested on 1/21/09.

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