

# FINAL BILL REPORT

## E2SHB 2353

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Synopsis as Enacted

**Brief Description:** Providing collective bargaining for family child care providers.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Pettigrew, Shabro, Kessler, Priest, Cox, Conway, Haler, P. Sullivan, Appleton, Walsh, Kenney, Green, Armstrong, Hasegawa, Kagi, Hunt, McCoy, Buri, Fromhold, Strow, Curtis, McDermott, Williams, Hudgins, Moeller, Sells, Lantz, Kilmer, Chase, McDonald, Morrell, Murray, Linville, Santos, Springer, Wallace, Dickerson, Roberts, Cody, B. Sullivan, Simpson, Ericks, Upthegrove, Campbell, Ormsby and O'Brien).

**House Committee on Commerce & Labor**

**House Committee on Appropriations**

**Senate Committee on Labor, Commerce, Research & Development**

**Senate Committee on Ways & Means**

### **Background:**

#### Child Care Services

The state, through the Department of Social and Health Services' Division of Child Care and Early Learning, is responsible for licensing child care homes and centers. The state also subsidizes part of the child care costs for children from low-income families with parents who are working, going to school, homeless, or otherwise eligible. In accordance with federal regulations, the state ties child care subsidy rates to a local market survey of child care market rates conducted at least every two years.

In fiscal year 2004, the state subsidized care for approximately 67,000 children per month. These children received subsidized care in a variety of ways, either in licensed centers and family homes, or from unregulated but legal providers. Licensed family home providers cared for about 25 percent of state-subsidized children. Another 20 percent received subsidized care either in their own home or in the home of a relative.

#### Public Employee Collective Bargaining

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) 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, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation. The interest arbitration panel must consider: the employer's authority; the parties' stipulations; comparisons of wages, hours, and conditions of employment of like personnel of like employers; and the cost of living.

### **Summary:**

The Public Employees' Collective Bargaining Act (PECBA) is amended to apply to the Governor with respect to family child care providers, and to govern collective bargaining between the Governor and the providers' exclusive bargaining representative.

### Public Employees and Employer

Solely for purposes of collective bargaining, family child care providers are "public employees." Family child care providers are persons who:

- regularly care for one or more children in their home or the children's home;
- receive child care subsidies from the state; and
- may be licensed, or exempt from licensing.

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

### Bargaining Unit and Representative

For purposes of collective bargaining, the only appropriate unit is a statewide unit of all family child care providers. The exclusive bargaining representative of the family child care providers is 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.

### Mandatory Subjects of Bargaining

The exclusive bargaining representative of the family child care providers and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Mandatory subjects are limited to: (1) economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (2) health and welfare benefits; (3) professional development and training; (4) labor-management committees; (5) grievance procedures; and (6) other economic matters. Retirement benefits are not subject to collective bargaining. Negotiations must be commenced initially upon

certification of the exclusive bargaining representative and, thereafter, by February 1 of even-numbered years.

#### 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 covering family child care providers. The Legislature may approve or reject the submission of the request for funds only as a whole. If the Legislature rejects or fails to act on the submission, the collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

#### Mediation and Arbitration; No Right to Strike

Family child care providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. The interest arbitration panel must consider: the employer's authority, the parties' stipulations; comparisons of wages, hours, and conditions of employment of like personnel of like employers; and the cost-of-living. The interest arbitration panel must also consider the financial ability of the state to pay for the compensation, fringe benefit, and child care subsidy provisions of the agreement. The interest arbitration panel's decision is not binding on the Legislature, and if the Legislature does not approve the funding, it is not binding on the state.

Family child care providers do not have the right to strike.

#### Union Dues

The state must deduct monthly union dues from a family child care provider's payments upon written authorization of the family child care provider and after certification or recognition of an exclusive bargaining representative of the family child care providers.

If a union security clause is included in the agreement: (1) the state must deduct the dues or equivalent fees from the payments made to all family child care provider bargaining unit members; and (2) the agreement must include a process for hardship dispensation of license-exempt members who are recipients of Temporary Assistance for Needy Families or participants in WorkFirst.

#### Negotiated Rulemaking

For purposes of negotiated rule-making under the Administrative Procedures Act, the only appropriate unit is a statewide unit of all family child care licensees. Family child care licensees are persons who:

- regularly care for one or more children in their home;
- are licensed; and
- do not receive child care subsidies from the state.

The representative of the family child care licensees is initially selected in elections held in accordance with a directive of the Governor to the Secretary of the Department of Social and

Health Services dated September 16, 2005. Thereafter, the representatives are selected in an election conducted by the American Arbitration Association.

State Action Immunity

The Legislature intends to provide state action immunity under antitrust laws for the joint activities of: (1) family child care providers and their representative; and (2) family child care licensees and their representative.

Other Provisions

Parents and legal guardians have the right to choose and terminate the services of family child care providers.

The Secretary of the Department of Social and Health Services has the right to adopt rules, other than rules related to grievance procedures and collective negotiations on personnel matters.

The Legislature has the right to modify the delivery of state child care services, including the standards for eligibility of parents, legal guardians, and family child care providers and the nature of the services.

Laws governing investigations of child abuse or neglect, background checks, and adverse licensing actions are not modified.

**Votes on Final Passage:**

|        |    |    |                   |
|--------|----|----|-------------------|
| House  | 84 | 14 |                   |
| Senate | 40 | 8  | (Senate amended)  |
| House  | 86 | 11 | (House concurred) |

**Effective:** June 7, 2006  
March 15, 2006 (Sections 1-5)