

SENATE BILL REPORT

SB 6165

As Reported By Senate Committee On:
Human Services & Corrections, February 2, 2006
Ways & Means, February 7, 2006

Title: An act relating to improving access to and the stability of quality child care through providing collective bargaining and other representation rights for family child care providers and licensees.

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

Sponsors: Senators Hargrove, Zarelli, McAuliffe, Esser, Doumit, Schmidt, Kohl-Welles, Benson, Keiser, Roach, Fairley, Weinstein, Rockefeller, Rasmussen, Franklin, Brown and Kline.

Brief History:

Committee Activity: Human Services & Corrections: 1/23/06, 2/02/06, 2/2/06 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/6/06, 2/7/06 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6165 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; McAuliffe and Thibaudeau.

Minority Report: Do not pass.

Signed by Senator Carrell.

Minority Report: That it be referred without recommendation.

Signed by Senators Stevens, Ranking Minority Member and Brandland.

Staff: Alison Mendiola (786-7483)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6165 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala, Roach, Rockefeller and Thibaudeau.

Minority Report: Do not pass.

Signed by Senator Pflug.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Parlette and Schoesler.

Staff: Chelsea Buchanan (786-7446)

Background: Child Care Services

The state, through the Department of Social and Health Services' (DSHS) 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 or family homes, or from license-exempt 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.

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.

Summary of Second Substitute Bill: 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 are licensed or license-exempt. Solely for purposes of collective bargaining, the Governor is the "public employer."

Bargaining Units and Representatives

For purposes of collective bargaining, the only appropriate unit is a statewide unit of all family child care providers. The Secretary of the DSHS (Secretary) has a duty to engage in negotiated rule making with family child care licensees, family child care providers who do not receive child care subsidies, before adopting any requirements that effect family child care licensees.

The representative of the family child care licensees for purposes of negotiated rule making is initially selected in elections held in accordance with a directive of the Governor to the Secretary of the DSHS, dated September 16, 2005. Thereafter, family child care licensees may request an election to be conducted by the American Arbitration Association if they wish to choose another representative.

The representative of the family child care providers for purposes of collective bargaining will be chosen in an election to be run by the Public Employment Relation Commission.

Initial collective bargaining negotiations for family child care providers may begin within 5 days of the effective date, and by February 1st of any year prior in which an existing collective bargaining agreement expires. Notwithstanding the provisions of PECBA regarding bargaining of hours, working conditions, and wages, the exclusive bargaining representative and the Governor have a mutual obligation to negotiate in good faith on grievance procedures and collective negotiations solely on economic-related personnel matters, including but not 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; and (4) labor-management committees. Clarification is added that retirement benefits are not subject to collective bargaining.

Other Provisions

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 fails to act on the request, the collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

Family child care providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. Family child care providers do not have the right to strike.

A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement must be submitted to the Director of the Office of Financial Management (OFM) by October 1st before the legislative session at which the request is to be considered, except for the first agreement, which must be submitted by November 15th, 2006.

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, the state must deduct the dues or equivalent fees from the payments made to all family child care provider bargaining unit members. If a collective bargaining agreement contains a union security provision, license-exempt child care providers who are also TANF recipients or WorkFirst participants are eligible for hardship dispensation as administered by the exclusive bargaining unit of family child care provider.

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

This Act does not modify the Secretary's right to adopt requirements related to child care licensing, nor does this Act modify the statutes relating to child abuse, background checks for child care providers, the revocation, denial, suspension or modification of a license, or child care licensing.

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

Second Substitute Bill Compared to Substitute Bill: Four provisions are changed from the first substitute: (1) the due date for the first collective bargaining agreement to be submitted to the office of financial management is changed from October 1st to November 15th; (2) the definition of collective bargaining for family child care providers is narrowed to include only grievance procedures and economic-related personnel items excluding retirement benefits; (3) a new election is required to select the sole bargaining representative for family child care providers, conducted according to existing Public Employment Relations Commission statutes; and (4) an emergency clause is added. (No change is made to the portion of the bill dealing with child care licensees.)

Substitute Bill Compared to Original Bill: The definition of collective bargaining is redefined, language is added regarding what is not subject to collective bargaining, initial negotiations may commence within 5 days of the effective date, a hardship dispensation provision is added for license-exempt providers who are also TANF recipients or WorkFirst participants, language is added clarifying that the state is not liable based on any act or omission by a family child care provider based on any claim that the provider is an employee of the state, and the Secretary has a duty to engage in negotiated rule making with family child care licensees prior to adopting any requirements that impact licensees.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Revised for 2nd Substitute: The bill contains an emergency clause and takes effect immediately.

Testimony For (Human Services & Corrections): Reimbursement subsidy rates have been decreasing and many family child care providers are going out of business as a result. This impacts a parent's choice of care and lower reimbursement rates negatively impacts the quality of care. Providers want to address burdensome regulations and increase their subsidy rates. The years a child is in child care are crucial in terms of early learning and brain development so we should be committed to supporting these providers and encouraging such careers.

Testimony Against (Human Services & Corrections): This bill unionizes private businesses. One issue not raised is tax deductions. Union dues are not tax deductible. There is concern that while the reimbursement rates may go up, the funding level stays the same, which could result in less families qualifying for subsidy.

Testimony Other: This bill gives a legislative mandate as to the exclusive bargaining unit; it locks in one union and other unions weren't notified of the election.

Who Testified (Human Services & Corrections): PRO: Donna Horn, SEIU Local 925; Shawn Harris, SEIU Local 925; Nancy Gerber, SEIU Local 925; Kim Cook, SEIU Local 925; Cathy Franklin, Sarah Chernin, Children's Alliance; and George Scorola, League of Ed. Voters.

CON: Alan Beil, Child's Play of Steilacoom.

OTHER: Greg Devereux, WA Federation of State Employees.

Testimony For (Ways & Means): Washington has one of the lowest child care reimbursement rates in the country, and this needs to change. Family child care is most peoples' preferred option for child care, and this bill will help preserve this option for families. An emergency clause is necessary if an amendment is adopted to require a new election, in order to have the agreement finished in time for the next legislative session.

Testimony Against (Ways & Means): None.

Testimony Other (Ways & Means): The Federation is supportive of collective bargaining for family child care providers, however this bill gives a legislative mandate for a set number of bargaining units, and that should be done through a PERC election. The bill also locks in a union that paid for its own election last year and didn't invite others to participate. If a new election is required in an amendment, there shouldn't be an emergency clause.

Who Testified (Ways & Means): PRO: Sanw Harris, SEIU Local 925; Lonnie Johns-Brown, The Collaborative.

OTHER: Greg Devereux, WA Federation of State Employees.