
HOUSE BILL 2353

State of Washington

59th Legislature

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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

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1 AN ACT Relating to improving access to and the stability of quality
2 child care through providing collective bargaining and other
3 representation rights for family child care providers and licensees;
4 amending RCW 41.56.030, 41.56.113, 41.04.810, and 43.01.047; adding a
5 new section to chapter 41.56 RCW; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** The purpose of this act is to improve access
8 to and the quality of family child care services. Thousands of
9 Washington families depend upon family child care providers to care for
10 their children while the parents are at work or school. Early
11 educational opportunities improve the chances of academic and career
12 success for the many young children cared for by these providers. To
13 ensure that children receive the highest quality services from these
14 providers, it is necessary to achieve and maintain a stable, well-
15 trained work force. To accomplish, these goals, it is the policy of
16 this state to encourage family child care providers and licensees to
17 have a voice in the development of child care assistance and other
18 programs through collective bargaining and other joint activities.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56 RCW
2 to read as follows:

3 (1) In addition to the entities listed in RCW 41.56.020, this
4 chapter applies to the governor with respect to family child care
5 providers. Solely for the purposes of collective bargaining and as
6 expressly limited under subsections (2) and (3) of this section, the
7 governor is the public employer of family child care providers who,
8 solely for the purposes of collective bargaining, are public employees.
9 The public employer shall be represented for bargaining purposes by the
10 governor or the governor's designee appointed under chapter 41.80 RCW.

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

14 (a) A statewide unit of all family child care providers is the only
15 unit appropriate for purposes of collective bargaining under RCW
16 41.56.060.

17 (b) A statewide unit of all family child care licensees is
18 appropriate for purposes other than collective bargaining and may
19 engage through a representative in negotiated rule making under RCW
20 34.05.310.

21 (c) As of the effective date of this act, the exclusive bargaining
22 representative of family child care providers in the unit specified in
23 (a) of this subsection and the representative of family child care
24 licensees in the unit specified in (b) of this subsection shall be the
25 representatives selected as the majority representatives in elections
26 held pursuant to the directive of the governor to the secretary of the
27 department of social and health services, dated September 16, 2005. If
28 family child care providers or family child care licensees seek to
29 select different representatives thereafter, the procedures specified
30 in RCW 41.56.040 through 41.56.080 apply.

31 (d) In addition to the matters subject to collective bargaining in
32 RCW 41.56.030(4), child care subsidies shall be subject to collective
33 bargaining.

34 (e) The mediation and interest arbitration provisions of RCW
35 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

36 (i) With respect to commencement of negotiations between the
37 governor and the exclusive bargaining representative of family child

1 care providers, negotiations shall be commenced initially by February
2 1, 2007, and thereafter, by February 1 of any year prior to the year in
3 which an existing collective bargaining agreement expires;

4 (ii) In addition to the factors to be taken into consideration by
5 an interest arbitration panel under RCW 41.56.465, the panel shall
6 consider the financial ability of the state to pay for the
7 compensation, fringe benefit, and child care subsidy provisions of a
8 collective bargaining agreement; and

9 (iii) The decision of the arbitration panel is not binding on the
10 legislature and, if the legislature does not approve the request for
11 funds necessary to implement the compensation, fringe benefit, and
12 child care subsidy provisions of the arbitrated collective bargaining
13 agreement, is not binding on the state.

14 (f) Family child care providers do not have the right to strike.

15 (3) Family child care providers who are public employees solely for
16 the purposes of collective bargaining under subsection (1) of this
17 section are not, for that reason, employees of the state for any
18 purpose. This section applies only to the governance of the collective
19 bargaining relationship between the employer and family child care
20 providers as provided in subsections (1) and (2) of this section.

21 (4) This section does not modify:

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

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

33 (5) Upon meeting the requirements of subsection (6) of this
34 section, the governor must submit, as a part of the proposed biennial
35 or supplemental operating budget submitted to the legislature under RCW
36 43.88.030, a request for funds necessary to implement the compensation,
37 fringe benefit, and child care subsidy provisions of a collective

1 bargaining agreement entered into under this section or for legislation
2 necessary to implement such agreement.

3 (6) A request for funds necessary to implement the compensation,
4 fringe benefit, and child care subsidy provisions of a collective
5 bargaining agreement entered into under this section shall not be
6 submitted by the governor to the legislature unless such request:

7 (a) Has been submitted to the director of financial management
8 prior to the legislative session at which the request is to be
9 considered; and

10 (b) Has been certified by the director of financial management as
11 being feasible financially for the state or reflects the binding
12 decision of an arbitration panel reached under this section.

13 (7) The legislature must approve or reject the submission of the
14 request for funds as a whole. If the legislature rejects or fails to
15 act on the submission by April 1 of an odd-numbered year or March 1 of
16 an even-numbered year, any such agreement will be reopened solely for
17 the purpose of renegotiating the funds necessary to implement the
18 agreement and resubmitted to the legislature before the end of the
19 session in which the rejection or failure to act occurs.

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

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

33 (10) If, after the compensation and benefit provisions of an
34 agreement are approved by the legislature, a significant revenue
35 shortfall occurs resulting in reduced appropriations, as declared by
36 proclamation of the governor or by resolution of the legislature, both
37 parties shall immediately enter into collective bargaining for a
38 mutually agreed upon modification of the agreement.

1 **Sec. 3.** RCW 41.56.030 and 2004 c 3 s 6 are each amended to read as
2 follows:

3 As used in this chapter:

4 (1) "Public employer" means any officer, board, commission,
5 council, or other person or body acting on behalf of any public body
6 governed by this chapter, or any subdivision of such public body. For
7 the purposes of this section, the public employer of district court or
8 superior court employees for wage-related matters is the respective
9 county legislative authority, or person or body acting on behalf of the
10 legislative authority, and the public employer for nonwage-related
11 matters is the judge or judge's designee of the respective district
12 court or superior court.

13 (2) "Public employee" means any employee of a public employer
14 except any person (a) elected by popular vote, or (b) appointed to
15 office pursuant to statute, ordinance or resolution for a specified
16 term of office as a member of a multimember board, commission, or
17 committee, whether appointed by the executive head or body of the
18 public employer, or (c) whose duties as deputy, administrative
19 assistant or secretary necessarily imply a confidential relationship to
20 (i) the executive head or body of the applicable bargaining unit, or
21 (ii) any person elected by popular vote, or (iii) any person appointed
22 to office pursuant to statute, ordinance or resolution for a specified
23 term of office as a member of a multimember board, commission, or
24 committee, whether appointed by the executive head or body of the
25 public employer, or (d) who is a court commissioner or a court
26 magistrate of superior court, district court, or a department of a
27 district court organized under chapter 3.46 RCW, or (e) who is a
28 personal assistant to a district court judge, superior court judge, or
29 court commissioner(~~(, or (f) excluded from a bargaining unit under RCW~~
30 ~~41.56.201(2)(a))~~). For the purpose of (e) of this subsection, no more
31 than one assistant for each judge or commissioner may be excluded from
32 a bargaining unit.

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

36 (4) "Collective bargaining" means the performance of the mutual
37 obligations of the public employer and the exclusive bargaining
38 representative to meet at reasonable times, to confer and negotiate in

1 good faith, and to execute a written agreement with respect to
2 grievance procedures and collective negotiations on personnel matters,
3 including wages, hours and working conditions, which may be peculiar to
4 an appropriate bargaining unit of such public employer, except that by
5 such obligation neither party shall be compelled to agree to a proposal
6 or be required to make a concession unless otherwise provided in this
7 chapter.

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

9 (6) "Executive director" means the executive director of the
10 commission.

11 (7) "Uniformed personnel" means: (a) Law enforcement officers as
12 defined in RCW 41.26.030 employed by the governing body of any city or
13 town with a population of two thousand five hundred or more and law
14 enforcement officers employed by the governing body of any county with
15 a population of ten thousand or more; (b) correctional employees who
16 are uniformed and nonuniformed, commissioned and noncommissioned
17 security personnel employed in a jail as defined in RCW 70.48.020(5),
18 by a county with a population of seventy thousand or more, and who are
19 trained for and charged with the responsibility of controlling and
20 maintaining custody of inmates in the jail and safeguarding inmates
21 from other inmates; (c) general authority Washington peace officers as
22 defined in RCW 10.93.020 employed by a port district in a county with
23 a population of one million or more; (d) security forces established
24 under RCW 43.52.520; (e) fire fighters as that term is defined in RCW
25 41.26.030; (f) employees of a port district in a county with a
26 population of one million or more whose duties include crash fire
27 rescue or other fire fighting duties; (g) employees of fire departments
28 of public employers who dispatch exclusively either fire or emergency
29 medical services, or both; or (h) employees in the several classes of
30 advanced life support technicians, as defined in RCW 18.71.200, who are
31 employed by a public employer.

32 (8) "Institution of higher education" means the University of
33 Washington, Washington State University, Central Washington University,
34 Eastern Washington University, Western Washington University, The
35 Evergreen State College, and the various state community colleges.

36 (9) "Home care quality authority" means the authority under chapter
37 74.39A RCW.

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

4 (11) "Child care subsidy" means a payment from the state through a
5 subsidy program.

6 (12) "Family child care licensee" means a person who: (a) Provides
7 regularly scheduled care for a child or children in the home of the
8 provider or in the home of the child or children for periods of less
9 than twenty-four hours or, if necessary due to the nature of the
10 parent's work, for periods equal to or greater than twenty-four hours;
11 (b) does not receive child care subsidies; and (c) is licensed by the
12 state pursuant to RCW 74.15.030.

13 (13) "Family child care provider" means a person who: (a) Provides
14 regularly scheduled care for a child or children in the home of the
15 provider or in the home of the child or children for periods of less
16 than twenty-four hours or, if necessary due to the nature of the
17 parent's work, for periods equal to or greater than twenty-four hours;
18 (b) receives child care subsidies; and (c) may or may not be licensed
19 by the state pursuant to RCW 74.15.030.

20 (14) "Subsidy program" means a child care subsidy program
21 established pursuant to RCW 74.12.340 or any successor program.

22 **Sec. 4.** RCW 41.56.113 and 2004 c 3 s 7 are each amended to read as
23 follows:

24 (1) Upon the written authorization of an individual provider or a
25 family child care provider within the bargaining unit and after the
26 certification or recognition of the bargaining unit's exclusive
27 bargaining representative, the state as payor, but not as the employer,
28 shall, subject to subsection (3) of this section, deduct from the
29 payments to an individual provider or a family child care provider the
30 monthly amount of dues as certified by the secretary of the exclusive
31 bargaining representative and shall transmit the same to the treasurer
32 of the exclusive bargaining representative.

33 (2) If the governor and the exclusive bargaining representative of
34 a bargaining unit of individual providers or family child care
35 providers enter into a collective bargaining agreement that:

36 (a) Includes a union security provision authorized in RCW
37 41.56.122, the state as payor, but not as the employer, shall, subject

1 to subsection (3) of this section, enforce the agreement by deducting
2 from the payments to bargaining unit members the dues required for
3 membership in the exclusive bargaining representative, or, for
4 nonmembers thereof, a fee equivalent to the dues; or

5 (b) Includes requirements for deductions of payments other than the
6 deduction under (a) of this subsection, the state, as payor, but not as
7 the employer, shall, subject to subsection (3) of this section, make
8 such deductions upon written authorization of the individual provider
9 or the family child care provider.

10 (3)(a) The initial additional costs to the state in making
11 deductions from the payments to individual providers or family child
12 care providers under this section shall be negotiated, agreed upon in
13 advance, and reimbursed to the state by the exclusive bargaining
14 representative.

15 (b) The allocation of ongoing additional costs to the state in
16 making deductions from the payments to individual providers or family
17 child care providers under this section shall be an appropriate subject
18 of collective bargaining between the exclusive bargaining
19 representative and the governor unless prohibited by another statute.
20 If no collective bargaining agreement containing a provision allocating
21 the ongoing additional cost is entered into between the exclusive
22 bargaining representative and the governor, or if the legislature does
23 not approve funding for the collective bargaining agreement as provided
24 in RCW 74.39A.300 or section 2 of this act, as applicable, the ongoing
25 additional costs to the state in making deductions from the payments to
26 individual providers or family child care providers under this section
27 shall be negotiated, agreed upon in advance, and reimbursed to the
28 state by the exclusive bargaining representative.

29 **Sec. 5.** RCW 41.04.810 and 2004 c 3 s 3 are each amended to read as
30 follows:

31 Individual providers, as defined in RCW 74.39A.240, and family
32 child care providers, as defined in RCW 41.56.030, are not employees of
33 the state or any of its political subdivisions and are specifically and
34 entirely excluded from all provisions of this title, except as provided
35 in RCW 74.39A.270 and section 2 of this act.

1 **Sec. 6.** RCW 43.01.047 and 2004 c 3 s 4 are each amended to read as
2 follows:

3 RCW 43.01.040 through 43.01.044 do not apply to individual
4 providers under RCW 74.39A.220 through 74.39A.300 or to family child
5 care providers under section 2 of this act.

6 NEW SECTION. **Sec. 7.** If any part of this act is found to be in
7 conflict with federal requirements that are a prescribed condition to
8 the allocation of federal funds to the state, the conflicting part of
9 this act is inoperative solely to the extent of the conflict and with
10 respect to the agencies directly affected, and this finding does not
11 affect the operation of the remainder of this act in its application to
12 the agencies concerned. Rules adopted under this act must meet federal
13 requirements that are a necessary condition to the receipt of federal
14 funds by the state.

15 NEW SECTION. **Sec. 8.** This act may be known and cited as the
16 access to quality family child care act.

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