HOUSE BILL REPORT
HB 2449

As Reported by House Committee On:
Commerce & Labor
Appropriations

Title: An act relating to improving quality, access, and stability of child care through providing collective bargaining for child care center directors and workers.

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

Sponsors: Representatives Pettigrew, Conway, Goodman, Kagi, Haler, Priest, Morrell, Green, Appleton, Sullivan, Wood, Sells, Williams, Haigh, Campbell, Simpson, Wallace, Barlow, Ormsby, Kessler, Jarrett, Dunshee, Walsh, Hudgins, Moeller, VanDeWege, Blake, Hasegawa, Hunt, Liias, Miloscia, McIntire, Kenney, Santos, Cody, Nelson, Rolfes, Chase and Darneille.

Brief History:
Committee Activity:
Commerce & Labor: 1/25/08, 2/4/08 [DPS];
Appropriations: 2/8/08, 2/11/08 [DP2S(w/o sub CL)].

Brief Summary of Second Substitute Bill

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

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

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.

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 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 Substitute 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 directors and workers' exclusive bargaining representatives.

<u>Public Employees and Employer</u>

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 of 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 organization that pays membership dues to or is otherwise affiliated with a national organization exempt from income tax with more than $5 million in membership dues and assessments annually.

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

<u>Bargaining Units</u>

For purposes of collective bargaining, appropriate units must be determined by the Public Employment Relations Commission and must conform to the requested unit if consistent with the act. The units must include directors and workers employed at centers in existing Department of Social and Health Services (DSHS) regions or subregions.

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.

<u>Exclusive Representatives</u>

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.

<u>Mandatory Subjects of Bargaining</u>

The exclusive representatives of child care center directors and workers and the Governor have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining. Mandatory subjects, which must be within the purview of the state and within the community of interest of directors and workers, are limited to:

- professional development and training;
- mechanisms and funding to improve access of centers to health care insurance and other benefit programs;
- economic compensation to centers, such as child care subsidies and reimbursements, including tiered reimbursements;
- other economic support for child care centers; and
- related grievance procedures.

<u>Requests for Funds and Legislative Changes</u>

The Governor must submit a request to the Legislature for any funds and legislative changes necessary to implement collective bargaining agreements covering child care center directors and workers. 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, a collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

<u>Mediation and Arbitration; No Right to Strike</u>

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 child care center 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 the compensation and benefit provisions of the agreement. The panel may consider: the public's interest in reducing turnover and increasing retention; the state's interest in promoting a stable child care workforce; and the state's fiscal interest in reducing reliance upon public benefit programs. 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.

Child care center directors and workers do not have the right to strike.

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.

Other Collective Bargaining Provisions

The following are not modified:

- the rights of child care centers to choose, direct, and terminate the services of child care workers who provide care in the centers;
- the rights of employers and employees under the National Labor Relations Act are not modified; and
- 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.

Parity

The DSHS must adjust subsidy rates paid to all child care centers to match subsidy rates in collective bargaining agreements for child care center directors and workers.

Substitute Bill Compared to Original Bill:

The intent section is modified to: (1) distinguish bargaining under the act from traditional collective bargaining; and (2) note that, under the National Labor Relations Act, an organization that represents directors and workers in bargaining under the act is precluded from representing workers in traditional collective bargaining. The unit determination provisions are modified to specify that appropriate bargaining units must be determined by the Public Employment Relations Commission and must conform to the requested unit if consistent with the act. The units must include directors and workers employed at centers in existing

Department of Social and Health Services (DSHS) regions or subregions. The scope of bargaining is limited to matters not only within the purview of the state, but also within the community of interest of directors and workers. The mandatory subjects of bargaining include "other economic support for child care centers" (instead of "other economic matters"). The definition of "child care center directors and workers" includes all owners of child care centers (instead of only those who regularly work on-site at centers). A parity provision is added which requires the DSHS to adjust subsidy rates paid to all child care centers to match subsidy rates in collective bargaining agreements for child care center directors and workers. The provisions modifying the child care career and wage ladder are stricken. The emergency clause is also stricken.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is about our commitment to children and early learning. The child care centers in my district rely on subsidies. The current subsidy rates do not allow them to make ends meet, or to provide the education and care that our state seeks to provide.

Family child care providers successfully negotiated increased subsidy rates. Center directors and workers similarly want to negotiate subsidy rates and subjects related to training and quality.

The argument that this model does not work for larger centers is convincing. There is a willingness to exempt them from coverage, and there is room for compromise. Only the status quo is not acceptable.

The argument that centers will stop taking children for whom care is subsidized is not persuasive. For family child care providers, the number of children for whom care is subsidized is up 10 percent. Various hassles related to the reimbursement process, as well as other obstacles, have been overcome.

It will be easier to provide quality care in all centers. Turnover is a problem. If subsidy rates were higher, teacher pay and teacher retention would be higher.

Many of us need a second job to make ends meet. However, issues of schedules and wages make it impossible to get that second job. Professional development and living wage rates are needed.

Consistency and stability are critical. Higher subsidies will not mean higher profits.

The quality of the teachers is the most important factor. The lack of funding for professional development is a problem. Directors must choose between paying the electric bill or providing training. Teachers must spend their own dollars from their small paychecks for professional development.

This legislation results from an innovative and exciting movement, one that promotes partnerships to achieve better results. It will give these directors and workers an organized voice, and an opportunity to set standards and working conditions. Directors and workers have a community of interest when it comes to state policy.

There are questions as to whether this is collective bargaining, and whether this would be preempted by the National Labor Relations Act. It results in a multi-employer association, with supervisors and teachers in the same bargaining units, and with centers with more than $250,000 in gross revenues in the units. There is no assurance that bargaining would benefit teachers, or that legislation would impact strike rights.

(With concerns) There are technical concerns about the unit determination provisions. Unit determination should be based on policy, rather than geography.

(Undecided) This bill may conflict with bargaining provisions in HB 2361 (2007).

(Opposed) Our centers are concerned about the impact of collective bargaining on them. They already provide many benefits (health care, pensions, paid time off, discounted child care, and professional development).

Washington's subsidy rate is one of the lowest in the nation. Why not just increase subsidy rates? Representation fees will reduce the amounts available for low-income children. There are better and more cost-effective ways to achieve these outcomes.

Center-based care is different than family child care. Centers are able to offer more training and other benefits. Competitors should not be in the same bargaining units. Managers and teachers should not be in the same bargaining unit. Personal information should be protected. The state should continue developing the quality rating and improvement system, and it should raise reimbursement rates. This legislation is not necessary.

There are a lot of ways to work on quality. Collective bargaining could have unintended consequences. It may not address quality, and it could reduce accessibility. Let's continue the dialogue in the future instead of passing legislation in 2008.

There are impacts not only on young children, but also on school-age children. When standards are monolithic, centers are not able to address special needs.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; Kim Cook, Service Employees International Union 925; Carol Gilmore, Child's Time 3; Amy Kells, Washington Educators in Early Learning; Patti Gamble, Ages in Stages; Lucinda Young, Washington Education Association; Fred Feinstein, University of Maryland; Cathy Callahan, Public Employment Relations Commission; George Scarola, League of Education Voters; Angelina Maxie, Tiny Tots; Kari Koen, Tomorrow's Future CDC, Inc.; Diane Gaile, Mariah

Collaborative Arts Center; Lynn Reid, Learning Way School and Daycare; Shannon Seldal, Little Farmer's Learning Center; and Bertha Simpson, Foot-Hills Learning Center.

(With concerns) Dennis Eagle, Washington Federation of State Employees.

(Undecided) Ginger Still, Kid's World Child Care; and Jane Vroman, Western Washington University.

(Opposed) Carrie Magel, Jim Kindle, Maureen Hodge, and Jim Greenman, Washington Child Care United; Amy Bell, YMCAs of Washington; Bob Gilbertson and Aaron Franco, YMCA of Greater Seattle; Kacie Nesby, YMCA of Pierce County; Margo Logan, Washington Parents for Safe Child Care; and Liv Finne, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: (In support) Renee Asplin, Tender Years Academy; Shelly Dawson and Kimberly Dunn, Toddler Tech CC; and Patricia Horning and Bev Curtis, Our Savior's Lutheran Child Care.

(Neutral) Joanna Carlson, Martha and Mary Children's Services.

(Neutral with concerns) Fred Yancey, Boys and Girls Club Alliance; and Scott Dilley, Evergreen Freedom Foundation.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 22 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Kretz, Ross, Schmick and Walsh.

Staff: David Pringle (786-7310).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

The Appropriation Committee excluded retirement benefits from the scope of collective bargaining between the state and child care center directors and workers, and specified that the grant of collective bargaining rights does not modify the Legislature's right to determine standards for professional development and training, quality criteria, or ratings for child care centers. Additionally, a null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 8, 2008.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is about raising quality and resources for kids. Raising standards across the board for children and workers is the goal. This is not a traditional bargaining bill, with both directors and employees coming together to support better care and stability. The larger centers have been exempted from the bill. Some small centers don't like this, but thousands do. The fiscal note for the bill was $300,000 in earlier versions, so hopefully hard questions will be asked about why it is the way it is now. These mechanisms act to increase provider reimbursements, and who need such increases more than child care providers?

(Opposed) We can all agree that more resources are needed for child care centers. This bill is not needed though. Increasing subsidy rates today, instead, and provide real assistance to child care centers that would have an immediate effect. And increasing rates would leave control over more of the policies around child care centers in the hands of the Legislature. The YMCAs have been partially removed from the bill, but the whole child care system is going to be affected by the changes to the centers that are covered by the collective bargaining provisions of the bill. The bill appears to be declaring thousands of private sector employees to be public sector employees. Put the resources that are contemplated here into increased direct subsidies - that will make a real difference. The quality rating system that was just put in the budget is a better alternative than this bill. This bill does not benefit anyone but the Service Employees International Union. Many centers now limit state placements because reimbursement rates are so low, and this bill will just cause more centers to eliminate the slots at their centers that are available to state supported clients now. Adding the costs of the union dues onto centers' budgets could be better spent on direct wage increases, or increases to the wage ladder. The union is not a good fit for our industry.

Persons Testifying: (In support) Kim Cook, Service Employees International Union 925; and Dennis Eagle, Washington Federation of State Employees.

(Opposed) Amy Bell, YMCAs of Washington; Candi Doran, Little Orca Childcare; and David Foster, Washington Childcare United.

Persons Signed In To Testify But Not Testifying: None.