

SHB 1329 - S COMM AMD

By Committee on Ways & Means

ADOPTED AS AMENDED 04/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that, as of 2009, the
4 challenges posed by low wages and lack of training that the legislature
5 identified in enacting the child care career and wage ladder persist,
6 and the availability of quality child care in the state continues to
7 suffer. The legislature intends to address these problems by creating
8 the possibility for a new relationship between child care center
9 directors and workers and the state. Child care center directors and
10 workers are to be given the opportunity to work collectively to improve
11 standards in their profession and to expand opportunities for
12 educational advancement to ensure continuous quality improvement in the
13 delivery of early learning services. Family child care providers in
14 the state have recently been given a similar opportunity, and the
15 results of their efforts have improved standards and quality for that
16 segment of the child care industry.

17 The legislature intends to create a new type of collective
18 bargaining for these directors and workers whereby they can come
19 together and bargain with the state over matters within the state's
20 purview to improve the quality of child care for the state's families.
21 Unlike traditional collective bargaining, this new approach will afford
22 these directors and workers the opportunity to bargain with the state
23 only over the state's support for child care centers, a matter of
24 common concern to both directors and workers. Specific terms and
25 conditions of employment at individual centers, which are the subjects
26 of traditional collective bargaining between employers and their
27 employees, fall outside the limited scope of bargaining defined by this
28 act. Accordingly, traditional policy concerns over supervisors and
29 employees being organized into a common bargaining unit are

1 inapplicable. Sharing a community of interest in the subjects of
2 bargaining enables directors and workers to work side by side in the
3 same bargaining unit for common goals.

4 All child care center directors and workers will equally be able to
5 maintain full membership in the organization that represents them in
6 their efforts to improve the quality of child care they provide to the
7 state's children. This new bargaining relationship does not intrude in
8 any manner upon those relationships governed by the national labor
9 relations act (29 U.S.C. Sec. 151 et seq.). Child care center
10 directors and workers do not forfeit their rights under the national
11 labor relations act by becoming members of an organization that
12 represents them in their dealings with the state. Under the national
13 labor relations act, an organization that represents child care center
14 directors and workers in bargaining with the state under this act is
15 precluded from representing workers seeking to engage in traditional
16 collective bargaining with their employer over specific terms and
17 conditions of employment at individual child care centers.

18 Nothing in this act is intended to create any unfunded mandates or
19 financial obligations on child care centers covered by this act.

20 **Sec. 2.** RCW 41.56.028 and 2007 c 278 s 2 are each amended to read
21 as follows:

22 (1) In addition to the entities listed in RCW 41.56.020, this
23 chapter applies to the governor with respect to family child care
24 providers and to child care center directors and workers. Solely for
25 the purposes of collective bargaining and as expressly limited under
26 subsections (2) and (3) of this section, the governor is the public
27 employer of family child care providers and of child care center
28 directors and workers who, solely for the purposes of collective
29 bargaining, are public employees. The public employer shall be
30 represented for bargaining purposes by the governor or the governor's
31 designee appointed under chapter 41.80 RCW.

32 (2) This chapter governs the collective bargaining relationship
33 between the governor and family child care providers and between the
34 governor and child care center directors and workers, except as
35 follows:

36 (a) (~~(A statewide unit of all family child care providers is)~~) The

1 only units appropriate for purposes of collective bargaining under RCW
2 41.56.060 are:

3 (i) A statewide unit for family child care providers; and

4 (ii) The units for child care center directors and workers
5 determined by the commission which shall conform to the unit requested
6 in the application for certification as the bargaining representative
7 if consistent with the terms of this act. In determining the units,
8 the commission shall include in the same unit all child care center
9 directors and workers employed at child care centers located in
10 department of social and health services regions existing on the
11 effective date of this section, and may group together regions to
12 minimize the number of units.

13 (b) The exclusive bargaining representative of family child care
14 providers or of child care center directors and workers in the units
15 specified in (a) of this subsection shall be the representative chosen
16 in an election conducted pursuant to RCW 41.56.070, except that:

17 (i) In the initial election conducted under chapter 54, Laws of
18 2006, or this act, if more than one labor organization is on the ballot
19 and none of the choices receives a majority of the votes cast, a
20 run-off election shall be held;

21 (ii) To show at least thirty percent representation within a unit
22 to accompany a request for an initial election under this act, the
23 written proof of representation is valid only if collected not more
24 than two years prior to the date the request is filed with the
25 commission; and

26 (iii) The initial election may not occur before July 1, 2010.

27 (c) For the exclusive bargaining representatives certified by the
28 commission to represent units of child care center directors and
29 workers, negotiations of a collective bargaining agreement shall be
30 conducted jointly by all certified representatives. The
31 representatives shall bargain for one collective bargaining agreement
32 covering all of the represented child care center directors and
33 workers.

34 (d)(i) Notwithstanding the definition of "collective bargaining" in
35 RCW 41.56.030(4), the scope of collective bargaining for family child
36 care providers under this section shall be limited solely to: ((+i))

37 (A) Economic compensation, such as manner and rate of subsidy and
38 reimbursement, including tiered reimbursements; ((+ii)) (B) health and

1 welfare benefits; ~~((+iii))~~ (C) professional development and training;
2 ~~((+iv))~~ (D) labor-management committees; ~~((+v))~~ (E) grievance
3 procedures; and ~~((+vi))~~ (F) other economic matters. Retirement
4 benefits shall not be subject to collective bargaining. By such
5 obligation neither party shall be compelled to agree to a proposal or
6 be required to make a concession unless otherwise provided in this
7 chapter.

8 ~~((+d))~~ (ii) Notwithstanding the definition of "collective
9 bargaining" in RCW 41.56.030(4), the matters subject to bargaining
10 under this section shall be within the purview of the state and within
11 the community of interest of child care center directors and workers.
12 The public employer is: (A) Required to bargain over the manner and
13 rate of subsidy and reimbursement, so long as any agreement is
14 consistent with the provisions of any quality rating and improvement
15 system; (B) permitted, but not required, to bargain over: (I) Funding
16 for professional development and training; (II) mechanisms and funding
17 to improve the access of child care centers to health care insurance
18 and other benefit programs; (III) other economic support for child care
19 centers; and (IV) grievance procedures to resolve disputes arising out
20 of the interpretation or application of the collective bargaining
21 agreement; and (C) prohibited from bargaining over retirement benefits.
22 By such obligation neither party shall be compelled to agree to a
23 proposal or be required to make a concession unless otherwise provided
24 in this chapter.

25 (e) The mediation and interest arbitration provisions of RCW
26 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

27 (i) With respect to commencement of negotiations between the
28 governor and the exclusive bargaining representative of family child
29 care providers or the exclusive bargaining representative or
30 representatives of child care center directors and workers,
31 negotiations shall be commenced initially upon certification of an
32 exclusive bargaining representative under (a) of this subsection and,
33 thereafter, by February 1st of any even-numbered year; and

34 (ii) The decision of the arbitration panel is not binding on the
35 legislature and, if the legislature does not approve the request for
36 funds necessary to implement the compensation and benefit provisions of
37 ~~((the))~~ an arbitrated collective bargaining agreement for family child

1 care providers or the subsidy and reimbursement provisions of an
2 arbitrated collective bargaining agreement for child care center
3 directors and workers, is not binding on the state.

4 ~~((e))~~ (f) Nothing in chapter 54, Laws of 2006, or this act grants
5 family child care providers ~~((do not have))~~ and child care center
6 directors and workers the right to strike.

7 (3) Family child care providers and child care center directors and
8 workers who are public employees solely for the purposes of collective
9 bargaining under subsection (1) of this section are not, for that
10 reason, employees of the state for any purpose. This section applies
11 only to the governance of the collective bargaining relationship
12 between the employer and family child care providers and between the
13 employer and child care center directors and workers as provided in
14 subsections (1) and (2) of this section.

15 (4) This section does not create or modify:

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

19 (b) The child care centers' right to choose, direct, and terminate
20 the services of any child care worker who provides care in the center,
21 and unless otherwise provided in this chapter, to manage and operate
22 facilities and programs, including rights to plan, direct, and control
23 the use of resources;

24 (c) The rights of employers and employees under the national labor
25 relations act, 29 U.S.C. Sec. 151 et seq.;

26 (d) The ~~((secretary of the department of social and health~~
27 ~~services' right to adopt requirements under RCW 74.15.030))~~ director of
28 the department of early learning's right to adopt requirements under
29 chapter 43.215 RCW, except for requirements related to grievance
30 procedures and collective negotiations on personnel matters as
31 specified in subsection (2)~~((e))~~ (d) of this section;

32 ~~((e))~~ (e) Chapter 26.44 or 43.215 RCW~~((r))~~ or RCW 43.43.832~~((r))~~
33 or 43.20A.205~~((r and 74.15.130))~~; and

34 ~~((d))~~ (f) The legislature's right to make programmatic
35 modifications to the delivery of state services through child care
36 subsidy programs, including standards of eligibility of parents, legal
37 guardians, ~~((and))~~ family child care providers and child care centers
38 participating in child care subsidy programs, ~~((and))~~ the nature of

1 services provided, and the legislature's right to determine standards
2 for professional development and training, quality criteria, ratings
3 through programs such as a quality rating system, and incentives for
4 improving quality. The governor shall not enter into, extend, or renew
5 any agreement under this section that does not expressly reserve the
6 legislative rights described in this subsection (4)~~((d))~~ (f).

7 (5) Upon meeting the requirements of subsection (6) of this
8 section, the governor must submit, as a part of the proposed biennial
9 or supplemental operating budget submitted to the legislature under RCW
10 43.88.030, ~~((a))~~ requests for funds necessary to implement the
11 compensation and benefit provisions of a collective bargaining
12 agreement for family child care providers and a collective bargaining
13 agreement for child care center directors and workers entered into
14 under this section or for legislation necessary to implement such
15 agreements.

16 (6) ~~((A))~~ Requests for funds necessary to implement the
17 compensation and benefit provisions of a collective bargaining
18 agreement for family child care providers and a collective bargaining
19 agreement for child care center directors and workers entered into
20 under this section shall not be submitted by the governor to the
21 legislature unless such ~~((request has))~~ requests have been:

22 (a) Submitted to the director of financial management by October
23 1st before the legislative session at which the request is to be
24 considered, except that, for initial negotiations under this section
25 for family child care providers, the request must be submitted by
26 November 15, 2006, and for child care center directors and workers, the
27 request may not be submitted before July 1, 2011; ~~((and))~~

28 (b) For family child care providers, certified by the director of
29 financial management as being feasible financially for the state or
30 reflects the binding decision of an arbitration panel reached under
31 this section; and

32 (c) For child care center directors and workers, certified by the
33 director of financial management as being financially feasible for the
34 state. If the director of financial management does not certify those
35 provisions of the decision as feasible financially for the state, those
36 provisions of the decision are not binding on the governor. To the
37 extent that the decision is not binding on the governor, RCW 41.56.480
38 does not apply.

1 (7) The legislature must approve or reject the submission of the
2 requests for funds as a whole. If the legislature rejects or fails to
3 act on the submissions, any such agreements will be reopened solely for
4 the purpose of renegotiating the funds necessary to implement the
5 agreements.

6 (8) The governor shall periodically consult with the joint
7 committee on employment relations established by RCW 41.80.010
8 regarding appropriations necessary to implement the compensation and
9 benefit provisions of ~~((any))~~ a collective bargaining agreement for
10 family child care providers and a collective bargaining agreement for
11 child care center directors and workers and, upon completion of
12 negotiations, advise the committee on the elements of the agreements
13 and on any legislation necessary to implement such agreements.

14 (9) After the expiration date of any collective bargaining
15 agreement entered into under this section, all of the terms and
16 conditions specified in any such agreement remain in effect until the
17 effective date of a subsequent agreement, not to exceed one year from
18 the expiration date stated in the agreement, except as provided in
19 subsection (4)~~((d))~~ (f) of this section.

20 (10) If, after the compensation and benefit provisions of ~~((an))~~ a
21 collective bargaining agreement for family child care providers or for
22 a collective bargaining agreement for child care center directors and
23 workers are approved by the legislature, a significant revenue
24 shortfall occurs resulting in reduced appropriations, as declared by
25 proclamation of the governor or by resolution of the legislature, both
26 parties shall immediately enter into collective bargaining for a
27 mutually agreed upon modification of the agreement.

28 (11) In enacting this section, the legislature intends to provide
29 state action immunity under federal and state antitrust laws for the
30 joint activities of family child care providers and their exclusive
31 bargaining representative and of child care center directors and
32 workers and their exclusive bargaining representatives to the extent
33 such activities are authorized by this chapter.

34 **Sec. 3.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read
35 as follows:

36 As used in this chapter:

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

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

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

32 (4) "Collective bargaining" means the performance of the mutual
33 obligations of the public employer and the exclusive bargaining
34 representative to meet at reasonable times, to confer and negotiate in
35 good faith, and to execute a written agreement with respect to
36 grievance procedures and collective negotiations on personnel matters,
37 including wages, hours and working conditions, which may be peculiar to
38 an appropriate bargaining unit of such public employer, except that by

1 such obligation neither party shall be compelled to agree to a proposal
2 or be required to make a concession unless otherwise provided in this
3 chapter.

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

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

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

28 (8) "Institution of higher education" means the University of
29 Washington, Washington State University, Central Washington University,
30 Eastern Washington University, Western Washington University, The
31 Evergreen State College, and the various state community colleges.

32 (9) "Home care quality authority" means the authority under chapter
33 74.39A RCW.

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

37 (11) "Child care subsidy" means a payment from the state through a

1 child care subsidy program established pursuant to RCW 74.12.340 or
2 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
3 program.

4 (12) "Family child care provider" means a person who: (a) Provides
5 regularly scheduled care for a child or children in the home of the
6 provider or in the home of the child or children for periods of less
7 than twenty-four hours or, if necessary due to the nature of the
8 parent's work, for periods equal to or greater than twenty-four hours;
9 (b) receives child care subsidies; and (c) is either licensed by the
10 state under (~~RCW 74.15.030~~) chapter 43.215 RCW or is exempt from
11 licensing under chapter (~~74.15~~) 43.215 RCW.

12 (13) "Adult family home provider" means a provider as defined in
13 RCW 70.128.010 who receives payments from the medicaid and state-funded
14 long-term care programs.

15 (14) "Child care center directors and workers" includes all
16 employees of child care centers who work on-site at the centers.
17 "Child care center directors and workers" also includes owners of child
18 care centers.

19 (15) "Child care center" means a child care center licensed by the
20 state under chapter 43.215 RCW that has at least four child care slots
21 filled by children for whom it receives a child care subsidy and which
22 chooses to participate in collective bargaining under this act by
23 filing a notice of intent under section 4 of this act.

24 NEW SECTION. Sec. 4. A new section is added to chapter 41.56 RCW
25 to read as follows:

26 A child care center licensed by the state under chapter 43.215 RCW
27 may participate in collective bargaining under this act if the child
28 care center files a notice of intent to opt in with the commission. A
29 child care center that does not file a notice of intent with the
30 commission under this section may not be included in a bargaining unit
31 under this act.

32 **Sec. 5.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read
33 as follows:

34 (1) Upon the written authorization of an individual provider, a
35 family child care provider, or an adult family home provider within the
36 bargaining unit and after the certification or recognition of the

1 bargaining unit's exclusive bargaining representative, the state as
2 payor, but not as the employer, shall, subject to subsection (~~(3)~~)
3 (4) of this section, deduct from the payments to an individual
4 provider, a family child care provider, or an adult family home
5 provider the monthly amount of dues as certified by the secretary of
6 the exclusive bargaining representative and shall transmit the same to
7 the treasurer of the exclusive bargaining representative.

8 (2) If the governor and the exclusive bargaining representative of
9 a bargaining unit of individual providers, family child care providers,
10 or adult family home providers enter into a collective bargaining
11 agreement that:

12 (a) Includes a union security provision authorized in RCW
13 41.56.122, the state as payor, but not as the employer, shall, subject
14 to subsection (~~(3)~~) (4) of this section, enforce the agreement by
15 deducting from the payments to bargaining unit members the dues
16 required for membership in the exclusive bargaining representative, or,
17 for nonmembers thereof, a fee equivalent to the dues; or

18 (b) Includes requirements for deductions of payments other than the
19 deduction under (a) of this subsection, the state, as payor, but not as
20 the employer, shall, subject to subsection (~~(3)~~) (4) of this section,
21 make such deductions upon written authorization of the individual
22 provider, family child care provider, or adult family home provider.

23 (3) In lieu of the deductions authorized under subsections (1) and
24 (2) of this section, and the union security provisions authorized under
25 RCW 41.56.122, the governor and the exclusive representative of a
26 bargaining unit of child care center directors and workers shall agree
27 to a mechanism for collecting a representation fee to be paid to the
28 exclusive representative for the costs of representation of child care
29 center directors and workers as provided in this chapter. The state
30 shall deduct the representation fee from the monthly amount of the
31 child care subsidy due to a child care center and transmit the
32 representation fee to the secretary of the exclusive bargaining
33 representative. However:

34 (a) Any agreement to pay a representation fee must safeguard the
35 child care center owner's and operator's rights of nonassociation based
36 on bona fide religious tenets or teachings of a church or other
37 religious body of which the owner or operator is a member. The child

1 care center owner or operator shall pay an amount equivalent to the
2 representation fee to a nonreligious charity or to another charitable
3 organization; and

4 (b) The child care center shall furnish written proof that such
5 payment has been made.

6 (4)(a) The initial additional costs to the state in making
7 deductions ((from the payments to individual providers, family child
8 care providers, and adult family home providers)) under this section
9 shall be negotiated, agreed upon in advance, and reimbursed to the
10 state by the exclusive bargaining representative.

11 (b) The allocation of ongoing additional costs to the state in
12 making deductions ((from the payments to individual providers, family
13 child care providers, or adult family home providers)) under this
14 section shall be an appropriate subject of collective bargaining
15 between the exclusive bargaining representative and the governor unless
16 prohibited by another statute. If no collective bargaining agreement
17 containing a provision allocating the ongoing additional cost is
18 entered into between the exclusive bargaining representative and the
19 governor, or if the legislature does not approve funding for the
20 collective bargaining agreement as provided in RCW 74.39A.300,
21 41.56.028, or 41.56.029, as applicable, the ongoing additional costs to
22 the state in making deductions ((from the payments to individual
23 providers, family child care providers, or adult family home
24 providers)) under this section shall be negotiated, agreed upon in
25 advance, and reimbursed to the state by the exclusive bargaining
26 representative.

27 ((+4)) (5) The governor and the exclusive bargaining
28 representative of a bargaining unit of family child care providers may
29 not enter into a collective bargaining agreement that contains a union
30 security provision unless the agreement contains a process, to be
31 administered by the exclusive bargaining representative of a bargaining
32 unit of family child care providers, for hardship dispensation for
33 license- exempt family child care providers who are also temporary
34 assistance for needy families recipients or WorkFirst participants.

35 **Sec. 6.** RCW 41.56.465 and 2007 c 278 s 1 are each amended to read
36 as follows:

37 (1) In making its determination, the panel shall be mindful of the

1 legislative purpose enumerated in RCW 41.56.430 and, as additional
2 standards or guidelines to aid it in reaching a decision, the panel
3 shall consider:

4 (a) The constitutional and statutory authority of the employer;

5 (b) Stipulations of the parties;

6 (c) The average consumer prices for goods and services, commonly
7 known as the cost of living;

8 (d) Changes in any of the circumstances under (a) through (c) of
9 this subsection during the pendency of the proceedings; and

10 (e) Such other factors, not confined to the factors under (a)
11 through (d) of this subsection, that are normally or traditionally
12 taken into consideration in the determination of wages, hours, and
13 conditions of employment. For those employees listed in RCW
14 41.56.030(7)(a) who are employed by the governing body of a city or
15 town with a population of less than fifteen thousand, or a county with
16 a population of less than seventy thousand, consideration must also be
17 given to regional differences in the cost of living.

18 (2) For employees listed in RCW 41.56.030(7) (a) through (d), the
19 panel shall also consider a comparison of the wages, hours, and
20 conditions of employment of personnel involved in the proceedings with
21 the wages, hours, and conditions of employment of like personnel of
22 like employers of similar size on the west coast of the United States.

23 (3) For employees listed in RCW 41.56.030(7) (e) through (h), the
24 panel shall also consider a comparison of the wages, hours, and
25 conditions of employment of personnel involved in the proceedings with
26 the wages, hours, and conditions of employment of like personnel of
27 public fire departments of similar size on the west coast of the United
28 States. However, when an adequate number of comparable employers
29 exists within the state of Washington, other west coast employers may
30 not be considered.

31 (4) For (~~employees~~) family child care providers listed in RCW
32 41.56.028:

33 (a) The panel shall also consider:

34 (i) A comparison of child care provider subsidy rates and
35 reimbursement programs by public entities, including counties and
36 municipalities, along the west coast of the United States; and

37 (ii) The financial ability of the state to pay for the compensation
38 and benefit provisions of a collective bargaining agreement; and

1 (b) The panel may consider:

2 (i) The public's interest in reducing turnover and increasing
3 retention of child care providers;

4 (ii) The state's interest in promoting, through education and
5 training, a stable child care workforce to provide quality and reliable
6 child care from all providers throughout the state; and

7 (iii) In addition, for employees exempt from licensing under
8 chapter ((74.15)) 43.215 RCW, the state's fiscal interest in reducing
9 reliance upon public benefit programs including but not limited to
10 medical coupons, food stamps, subsidized housing, and emergency medical
11 services.

12 (5) For child care center directors and workers listed in RCW
13 41.56.028, the panel shall also consider:

14 (a) A comparison of child care provider subsidy rates and
15 reimbursement programs by public entities, including counties and
16 municipalities, along the west coast of the United States; and

17 (b) The financial ability of the state to pay for a collective
18 bargaining agreement.

19 (6) For employees listed in RCW 74.39A.270:

20 (a) The panel shall consider:

21 (i) A comparison of wages, hours, and conditions of employment of
22 publicly reimbursed personnel providing similar services to similar
23 clients, including clients who are elderly, frail, or have
24 developmental disabilities, both in the state and across the United
25 States; and

26 (ii) The financial ability of the state to pay for the compensation
27 and fringe benefit provisions of a collective bargaining agreement; and

28 (b) The panel may consider:

29 (i) A comparison of wages, hours, and conditions of employment of
30 publicly employed personnel providing similar services to similar
31 clients, including clients who are elderly, frail, or have
32 developmental disabilities, both in the state and across the United
33 States;

34 (ii) The state's interest in promoting a stable long-term care
35 workforce to provide quality and reliable care to vulnerable elderly
36 and disabled recipients;

37 (iii) The state's interest in ensuring access to affordable,
38 quality health care for all state citizens; and

1 (iv) The state's fiscal interest in reducing reliance upon public
2 benefit programs including but not limited to medical coupons, food
3 stamps, subsidized housing, and emergency medical services.

4 ((+6+)) (7) Subsections (2) and (3) of this section may not be
5 construed to authorize the panel to require the employer to pay,
6 directly or indirectly, the increased employee contributions resulting
7 from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required
8 under chapter 41.26 RCW.

9 **Sec. 7.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
10 as follows:

11 Individual providers, as defined in RCW 74.39A.240, family child
12 care providers, as defined in RCW 41.56.030, child care center
13 directors and workers, as defined in RCW 41.56.030, and adult family
14 home providers, as defined in RCW 41.56.030, are not employees of the
15 state or any of its political subdivisions and are specifically and
16 entirely excluded from all provisions of this title, except as provided
17 in RCW 74.39A.270, 41.56.028, and 41.56.029.

18 **Sec. 8.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read
19 as follows:

20 RCW 43.01.040 through 43.01.044 do not apply to individual
21 providers under RCW 74.39A.220 through 74.39A.300, family child care
22 providers under RCW 41.56.028, child care center directors and workers
23 under RCW 41.56.028, or adult family home providers under RCW
24 41.56.029.

25 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.215 RCW
26 to read as follows:

27 (1) Every child care center shall provide to the department a list
28 of the names and addresses of all current child care center directors
29 and workers, as defined in RCW 41.56.030, annually by January 30th,
30 except that initially the lists shall be provided within thirty days of
31 the effective date of this section.

32 (2) The department shall, upon request, provide to a labor
33 organization seeking to organize child care center directors and
34 workers, a list of all directors and workers in the unit that the

1 organization seeks to organize. The list shall contain the information
2 collected with regard to the directors and workers pursuant to
3 subsection (1) of this section.

4 (3) A labor organization receiving information under subsection (2)
5 of this section may not release that information to any other party and
6 may only use that information for collective bargaining and for the
7 purposes specified in subsection (2) of this section.

8 **Sec. 10.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are
9 each reenacted and amended to read as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

12 (1) "Agency" means any person, firm, partnership, association,
13 corporation, or facility that provides child care and early learning
14 services outside a child's own home and includes the following
15 irrespective of whether there is compensation to the agency:

16 (a) "Child day care center" means an agency that regularly provides
17 child day care and early learning services for a group of children for
18 periods of less than twenty-four hours;

19 (b) "Early learning" includes but is not limited to programs and
20 services for child care; state, federal, private, and nonprofit
21 preschool; child care subsidies; child care resource and referral;
22 parental education and support; and training and professional
23 development for early learning professionals;

24 (c) "Family day care provider" means a child day care provider who
25 regularly provides child day care and early learning services for not
26 more than twelve children in the provider's home in the family living
27 quarters;

28 (d) "Nongovernmental private-public partnership" means an entity
29 registered as a nonprofit corporation in Washington state with a
30 primary focus on early learning, school readiness, and parental
31 support, and an ability to raise a minimum of five million dollars in
32 contributions;

33 (e) "Service provider" means the entity that operates a community
34 facility.

35 (2) "Agency" does not include the following:

36 (a) Persons related to the child in the following ways:

1 (i) Any blood relative, including those of half-blood, and
2 including first cousins, nephews or nieces, and persons of preceding
3 generations as denoted by prefixes of grand, great, or great-great;
4 (ii) Stepfather, stepmother, stepbrother, and stepsister;
5 (iii) A person who legally adopts a child or the child's parent as
6 well as the natural and other legally adopted children of such persons,
7 and other relatives of the adoptive parents in accordance with state
8 law; or
9 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
10 subsection (2)(a), even after the marriage is terminated;
11 (b) Persons who are legal guardians of the child;
12 (c) Persons who care for a neighbor's or friend's child or
13 children, with or without compensation, where the person providing care
14 for periods of less than twenty-four hours does not conduct such
15 activity on an ongoing, regularly scheduled basis for the purpose of
16 engaging in business, which includes, but is not limited to,
17 advertising such care;
18 (d) Parents on a mutually cooperative basis exchange care of one
19 another's children;
20 (e) Nursery schools or kindergartens that are engaged primarily in
21 educational work with preschool children and in which no child is
22 enrolled on a regular basis for more than four hours per day;
23 (f) Schools, including boarding schools, that are engaged primarily
24 in education, operate on a definite school year schedule, follow a
25 stated academic curriculum, accept only school-age children, and do not
26 accept custody of children;
27 (g) Seasonal camps of three months' or less duration engaged
28 primarily in recreational or educational activities;
29 (h) Facilities providing care to children for periods of less than
30 twenty-four hours whose parents remain on the premises to participate
31 in activities other than employment;
32 (i) Any agency having been in operation in this state ten years
33 before June 8, 1967, and not seeking or accepting moneys or assistance
34 from any state or federal agency, and is supported in part by an
35 endowment or trust fund;
36 (j) An agency operated by any unit of local, state, or federal
37 government or an agency, located within the boundaries of a federally
38 recognized Indian reservation, licensed by the Indian tribe;

1 (k) An agency located on a federal military reservation, except
2 where the military authorities request that such agency be subject to
3 the licensing requirements of this chapter;

4 (l) An agency that offers early learning and support services, such
5 as parent education, and does not provide child care services on a
6 regular basis.

7 (3) "Applicant" means a person who requests or seeks employment in
8 an agency.

9 (4) "Child care center directors and workers" means the same as in
10 RCW 41.56.030.

11 (5) "Department" means the department of early learning.

12 ~~((+5))~~ (6) "Director" means the director of the department.

13 ~~((+6))~~ (7) "Employer" means a person or business that engages the
14 services of one or more people, especially for wages or salary to work
15 in an agency.

16 ~~((+7))~~ (8) "Enforcement action" means denial, suspension,
17 revocation, modification, or nonrenewal of a license pursuant to RCW
18 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW
19 43.215.300(3).

20 ~~((+8))~~ (9) "Family child care licensee" means a person who: (a)
21 Provides regularly scheduled care for a child or children in the home
22 of the provider for periods of less than twenty-four hours or, if
23 necessary due to the nature of the parent's work, for periods equal to
24 or greater than twenty-four hours; (b) does not receive child care
25 subsidies; and (c) is licensed by the state under RCW 43.215.200.

26 (10) "Probationary license" means a license issued as a
27 disciplinary measure to an agency that has previously been issued a
28 full license but is out of compliance with licensing standards.

29 ~~((+9))~~ (11) "Requirement" means any rule, regulation, or standard
30 of care to be maintained by an agency.

31 **Sec. 11.** RCW 43.215.350 and 2007 c 17 s 15 are each amended to
32 read as follows:

33 The director shall have the power and it shall be the director's
34 duty to engage in negotiated rule making pursuant to RCW
35 34.05.310(2)(a) with:

36 (1) The exclusive representative of the unit of family child care

1 licensees selected in accordance with RCW 43.215.355 and with other
2 affected interests before adopting requirements that affect family
3 child care licensees; and

4 (2) The exclusive representative or representatives of the unit or
5 units of child care center directors and workers selected in accordance
6 with RCW 41.56.028 and with other affected interests before adopting
7 requirements that affect child care center directors and workers.

8 **Sec. 12.** RCW 74.15.020 and 2007 c 412 s 1 are each amended to read
9 as follows:

10 For the purpose of this chapter and RCW 74.13.031, and unless
11 otherwise clearly indicated by the context thereof, the following terms
12 shall mean:

13 (1) "Agency" means any person, firm, partnership, association,
14 corporation, or facility which receives children, expectant mothers, or
15 persons with developmental disabilities for control, care, or
16 maintenance outside their own homes, or which places, arranges the
17 placement of, or assists in the placement of children, expectant
18 mothers, or persons with developmental disabilities for foster care or
19 placement of children for adoption, and shall include the following
20 irrespective of whether there is compensation to the agency or to the
21 children, expectant mothers or persons with developmental disabilities
22 for services rendered:

23 (a) "Child-placing agency" means an agency which places a child or
24 children for temporary care, continued care, or for adoption;

25 (b) "Community facility" means a group care facility operated for
26 the care of juveniles committed to the department under RCW 13.40.185.
27 A county detention facility that houses juveniles committed to the
28 department under RCW 13.40.185 pursuant to a contract with the
29 department is not a community facility;

30 (c) "Crisis residential center" means an agency which is a
31 temporary protective residential facility operated to perform the
32 duties specified in chapter 13.32A RCW, in the manner provided in RCW
33 74.13.032 through 74.13.036;

34 (d) "Emergency respite center" is an agency that may be commonly
35 known as a crisis nursery, that provides emergency and crisis care for
36 up to seventy-two hours to children who have been admitted by their
37 parents or guardians to prevent abuse or neglect. Emergency respite

1 centers may operate for up to twenty-four hours a day, and for up to
2 seven days a week. Emergency respite centers may provide care for
3 children ages birth through seventeen, and for persons eighteen through
4 twenty with developmental disabilities who are admitted with a sibling
5 or siblings through age seventeen. Emergency respite centers may not
6 substitute for crisis residential centers or HOPE centers, or any other
7 services defined under this section, and may not substitute for
8 services which are required under chapter 13.32A or 13.34 RCW;

9 (e) "Foster-family home" means an agency which regularly provides
10 care on a twenty-four hour basis to one or more children, expectant
11 mothers, or persons with developmental disabilities in the family abode
12 of the person or persons under whose direct care and supervision the
13 child, expectant mother, or person with a developmental disability is
14 placed;

15 (f) "Group-care facility" means an agency, other than a foster-
16 family home, which is maintained and operated for the care of a group
17 of children on a twenty-four hour basis;

18 (g) "HOPE center" means an agency licensed by the secretary to
19 provide temporary residential placement and other services to street
20 youth. A street youth may remain in a HOPE center for thirty days
21 while services are arranged and permanent placement is coordinated. No
22 street youth may stay longer than thirty days unless approved by the
23 department and any additional days approved by the department must be
24 based on the unavailability of a long-term placement option. A street
25 youth whose parent wants him or her returned to home may remain in a
26 HOPE center until his or her parent arranges return of the youth, not
27 longer. All other street youth must have court approval under chapter
28 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

29 (h) "Maternity service" means an agency which provides or arranges
30 for care or services to expectant mothers, before or during
31 confinement, or which provides care as needed to mothers and their
32 infants after confinement;

33 (i) "Responsible living skills program" means an agency licensed by
34 the secretary that provides residential and transitional living
35 services to persons ages sixteen to eighteen who are dependent under
36 chapter 13.34 RCW and who have been unable to live in his or her
37 legally authorized residence and, as a result, the minor lived outdoors
38 or in another unsafe location not intended for occupancy by the minor.

1 Dependent minors ages fourteen and fifteen may be eligible if no other
2 placement alternative is available and the department approves the
3 placement;

4 (j) "Service provider" means the entity that operates a community
5 facility.

6 (2) "Agency" shall not include the following:

7 (a) Persons related to the child, expectant mother, or person with
8 developmental disability in the following ways:

9 (i) Any blood relative, including those of half-blood, and
10 including first cousins, second cousins, nephews or nieces, and persons
11 of preceding generations as denoted by prefixes of grand, great, or
12 great-great;

13 (ii) Stepfather, stepmother, stepbrother, and stepsister;

14 (iii) A person who legally adopts a child or the child's parent as
15 well as the natural and other legally adopted children of such persons,
16 and other relatives of the adoptive parents in accordance with state
17 law;

18 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
19 subsection (2)(a), even after the marriage is terminated;

20 (v) Relatives, as named in (i), (ii), (iii), or (iv) of this
21 subsection (2)(a), of any half sibling of the child; or

22 (vi) Extended family members, as defined by the law or custom of
23 the Indian child's tribe or, in the absence of such law or custom, a
24 person who has reached the age of eighteen and who is the Indian
25 child's grandparent, aunt or uncle, brother or sister, brother-in-law
26 or sister-in-law, niece or nephew, first or second cousin, or
27 stepparent who provides care in the family abode on a twenty-four-hour
28 basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

29 (b) Persons who are legal guardians of the child, expectant mother,
30 or persons with developmental disabilities;

31 (c) Persons who care for a neighbor's or friend's child or
32 children, with or without compensation, where the parent and person
33 providing care on a twenty-four-hour basis have agreed to the placement
34 in writing and the state is not providing any payment for the care;

35 (d) A person, partnership, corporation, or other entity that
36 provides placement or similar services to exchange students or
37 international student exchange visitors or persons who have the care of
38 an exchange student in their home;

1 (e) A person, partnership, corporation, or other entity that
2 provides placement or similar services to international children who
3 have entered the country by obtaining visas that meet the criteria for
4 medical care as established by the United States immigration and
5 naturalization service, or persons who have the care of such an
6 international child in their home;

7 (f) Schools, including boarding schools, which are engaged
8 primarily in education, operate on a definite school year schedule,
9 follow a stated academic curriculum, accept only school-age children
10 and do not accept custody of children;

11 (g) Hospitals licensed pursuant to chapter 70.41 RCW when
12 performing functions defined in chapter 70.41 RCW, nursing homes
13 licensed under chapter 18.51 RCW and boarding homes licensed under
14 chapter 18.20 RCW;

15 (h) Licensed physicians or lawyers;

16 (i) Facilities approved and certified under chapter 71A.22 RCW;

17 (j) Any agency having been in operation in this state ten years
18 prior to June 8, 1967, and not seeking or accepting moneys or
19 assistance from any state or federal agency, and is supported in part
20 by an endowment or trust fund;

21 (k) Persons who have a child in their home for purposes of
22 adoption, if the child was placed in such home by a licensed child-
23 placing agency, an authorized public or tribal agency or court or if a
24 replacement report has been filed under chapter 26.33 RCW and the
25 placement has been approved by the court;

26 (l) An agency operated by any unit of local, state, or federal
27 government or an agency licensed by an Indian tribe pursuant to RCW
28 74.15.190;

29 (m) A maximum or medium security program for juvenile offenders
30 operated by or under contract with the department;

31 (n) An agency located on a federal military reservation, except
32 where the military authorities request that such agency be subject to
33 the licensing requirements of this chapter.

34 (3) "Department" means the state department of social and health
35 services.

36 (4) (~~"Family child care licensee" means a person who: (a)~~
37 ~~Provides regularly scheduled care for a child or children in the home~~
38 ~~of the provider for periods of less than twenty four hours or, if~~

1 ~~necessary due to the nature of the parent's work, for periods equal to~~
2 ~~or greater than twenty four hours; (b) does not receive child care~~
3 ~~subsidies; and (c) is licensed by the state under RCW 74.15.030.~~

4 ~~(5))~~ "Juvenile" means a person under the age of twenty-one who has
5 been sentenced to a term of confinement under the supervision of the
6 department under RCW 13.40.185.

7 ~~((6))~~ (5) "Probationary license" means a license issued as a
8 disciplinary measure to an agency that has previously been issued a
9 full license but is out of compliance with licensing standards.

10 ~~((7))~~ (6) "Requirement" means any rule, regulation, or standard
11 of care to be maintained by an agency.

12 ~~((8))~~ (7) "Secretary" means the secretary of social and health
13 services.

14 ~~((9))~~ (8) "Street youth" means a person under the age of eighteen
15 who lives outdoors or in another unsafe location not intended for
16 occupancy by the minor and who is not residing with his or her parent
17 or at his or her legally authorized residence.

18 ~~((10))~~ (9) "Transitional living services" means at a minimum, to
19 the extent funds are available, the following:

20 (a) Educational services, including basic literacy and
21 computational skills training, either in local alternative or public
22 high schools or in a high school equivalency program that leads to
23 obtaining a high school equivalency degree;

24 (b) Assistance and counseling related to obtaining vocational
25 training or higher education, job readiness, job search assistance, and
26 placement programs;

27 (c) Counseling and instruction in life skills such as money
28 management, home management, consumer skills, parenting, health care,
29 access to community resources, and transportation and housing options;

30 (d) Individual and group counseling; and

31 (e) Establishing networks with federal agencies and state and local
32 organizations such as the United States department of labor, employment
33 and training administration programs including the job training
34 partnership act which administers private industry councils and the job
35 corps; vocational rehabilitation; and volunteer programs.

36 NEW SECTION. **Sec. 13.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

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

SHB 1329 - S COMM AMD
By Committee on Ways & Means

ADOPTED AS AMENDED 04/13/2009

13 On page 1, line 3 of the title, after "workers;" strike the
14 remainder of the title and insert "amending RCW 41.56.028, 41.56.030,
15 41.56.113, 41.56.465, 41.04.810, 43.01.047, 43.215.350, and 74.15.020;
16 reenacting and amending RCW 43.215.010; adding a new section to chapter
17 41.56 RCW; adding a new section to chapter 43.215 RCW; and creating new
18 sections."

--- END ---