SENATE BILL REPORT
SHB 1329

As of February 22, 2010

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: House Committee on Ways & Means (originally sponsored by Representatives Pettigrew, Conway, Kagi, Hunt, Seaquist, Sells, Priest, Kenney, Ormsby, Wood, Haigh, White, Chase, Herrera, Morrell, Liias, Green, Cody, Appleton, Hasegawa, Carlyle, Simpson, McCoy, Sullivan, Orwall, Goodman, Campbell, Hudgins, Moeller, Nelson and Santos).

Brief History: Passed House: 3/09/09, 65-31; 1/27/10, 62-35.
Committee Activity: Labor, Commerce & Consumer Protection: 3/26/09, 3/30/09 [DPA-WM, DNP]; 2/18/10.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin and Kline.

Minority Report: Do not pass.
Signed by Senators Holmquist, Ranking Minority Member; Honeyford and King.

Staff: Kathleen Buchli (786-7488)

Background: 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 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. 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 Bill: The bill as referred to committee not considered.

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.

Summary of Bill (Proposed Amendment): The 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 exclusive bargaining representatives of the directors and workers.

Public Employees and Employer. Solely for purposes of collective bargaining, child care center directors and workers are public employees. The term child care center directors and workers includes all employees of child care centers who work on-site at the centers and also includes the owners of child care centers. A child care center is licensed by the state and has at least one child care slot filled by a child for whom it receives a child care subsidy.

Bargaining Units and Representatives. Child care center directors and workers must organize as a statewide unit. A child care center may participate in collective bargaining if the child care center owner or director files a notice of intent to participate with PERC. The notice must be filed after June 30, 2012, and before November 2, 2012. Child care centers that do not file a notice with PERC may not be included in a bargaining unit. PERC must, upon request, provide to a labor organization seeking to organize child care center directors and workers a list including names and addresses of child care center owners, directors, and workers who have filed notices of intent. The exclusive representatives are determined in the manner specified in the PECBA, except that (1) if none of the choices receives a majority of the votes cast in the initial election, there is a run-off election; (2) the written proof of representation is valid only if collected not more than two years prior to filing the request to show at least 30 percent representation within a unit to accompany a request for an initial election; and (3) initial elections may not be conducted before the opt in period has concluded on November 1, 2012.

Collective Bargaining. The exclusive representative and the Governor have a mutual obligation to negotiate in good faith over the subjects of bargaining. Matters subject to bargaining must be within the purview of the state and within the community of interest of directors and workers. The Governor must bargain over the manner and rate of subsidy and reimbursement, so long as any agreement is consistent with the provisions of any quality rating and improvement system. The Governor is permitted to bargain over funding for professional development and training, mechanisms and funding to improve access of child care centers to health care insurance and other benefit programs, and grievance procedures to resolve disputes arising out of the interpretation or application of the collective bargaining agreement. The Governor is prohibited from bargaining over retirement benefits.

Negotiations between the Governor and the exclusive bargaining representative may not begin before July 1, 2013, and thereafter must commence by February 1 of any even-numbered year.

Requests for Funds and Legislative Changes. The Governor must submit a request to the Legislature for any funds and legislative changes necessary to implement a collective bargaining agreement for child care center directors and workers. A request must not be submitted by the Governor to the Legislature unless it has been certified by the Director of the Office of Financial Management as being feasible financially. A request may not be submitted before October 1, 2013.

The Legislature must approve or reject the submission of the request for funds 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. If the Legislature approves the submission and a significant revenue shortfall occurs, as declared by a proclamation of the Governor or a resolution of the Legislature, the parties must immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

Mediation and Arbitration. 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 a collective bargaining agreement. 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.

Representation Fees. The state must deduct representation fees from the monthly amounts of child care subsidies due to child care centers and transmit the fees to the exclusive bargaining representatives. Any agreement to pay a representation fee must safeguard the child care center owner's and director's rights of nonassociation based on bona fide religious tenets or teachings. The child care center owner or director must pay an amount equivalent to the representation fee to a nonreligious charity or to another charitable organization.

Negotiated Rulemaking. Before adopting requirements that affect child care center directors and workers, the Director of the Department of Early Learning must engage in negotiated rulemaking under the Administrative Procedures Act with exclusive representatives of directors and workers and with other affected interests.

Sunset Review. The Joint Legislative Audit and Review Committee must conduct a program and fiscal review of child care center collective bargaining established by the Act, with the Act to be terminated June 30, 2014, and the underlying provisions to expire June 30, 2015.

Other Provisions. The following are not modified:
- the rights of parents and legal guardians to choose and terminate the services of child care centers;
- the rights of child care centers to choose, direct, and terminate the services of child care workers; and, unless otherwise provided, to manage and operate facilities and programs;
- the rights of employers and employees under the National Labor Relations Act;
- 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; and
- the right of the Legislature to determine standards for professional development and training, quality criteria, ratings, and incentives for improving quality.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This amendment is derived from an amendment that was passed by the Senate last year. It would allow child care centers to opt-in and participate in collective bargaining if they choose to do so. This will help to increase the subsidy received by child care centers and will help to address issues such as teacher turnover; there are people who wish to continue working with children in child care centers but are faced with the choice of leaving those jobs in order to find better paying jobs. The dates have been pushed back but we need to consider moving them forward in order to start the process. The committee should review the permissive items of bargaining and consider making them mandatory items. We want to be able to talk about the permissive items such as improving training and we want to be able to bring those items to the table. This is about increasing resources to child care centers, not just the subsidy rates. The current system is not working and we need to examine other ways to increase the subsidy rate. People have had many opportunities to discuss this bill. This will help child care centers and help to professionalize that workforce. We support adding parity to the bill.

CON: The Legislature can raise the subsidies now and we cannot support this mechanism to raise subsidies. More time is needed to examine the unintended consequences of entering into this type of arrangement. We need to be part of the process. Parents and workers are against the bill, and parents need to have a voice in the process. There are concerns that this will cause some centers to stop taking subsidized children. If we do not choose to be in the union, we will be denied subsidy increases. This is a complicated bill and the opt-in provisions are a last ditch effort and will not help child care centers. Please step back and give the stakeholders an opportunity to come to the table and participate in the development of this bill. There is no parity in the bill. Taking money from the subsidies to pay the representation fee is not the answer. There has not be improvement in the family child care centers which does have a similar system. Protections need to be given to individuals based on their religions; if religious-based organizations opt out, they will not get subsidy increases.

Persons Testifying: PRO: Hannah Lidman, Economic Opportunity Institute; Teresa Mosqueda, Children's Alliance; Dorothy Gibson, American Federation of Teachers; Amanda Hals, Noah's Ark; Marci McLaughlin, Primary Beginnings; Kim Cook, Service Employees International Union, 925; Sandra Schroeder, American Federation of Teachers.

CON: Vicki Christopherson, Boys and Girls Clubs; Margo Logan, Child Care Consulting; Judy Jennings, Washington Federation of Independent Schools; Steve Olson, Olympia Early Learning Center; Candi Doran, Little Orca Learning Center; Greg W. Hamilton, Northwest Religious Liberty Association; Susan Tallungan, Kids Korner; Sean-Patrick Madigan, parent; Sharon Prendergast, Greenacres Learning Center; Ginger Still, Kids World Child Care Centers; Tom Emery, Love and Laughter Learning Centers; Perry Langston, Kids Country.