

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 641**

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**Introduced by Assembly Member Rendon**

February 20, 2013

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An act to add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 641, as amended, Rendon. Child care: family child care providers: bargaining representative.

*Existing law authorizes employees of public schools to form, join, and participate in the activities of an employee organization for the purpose of representation on matters of employer-employee relations, including terms and conditions of employment.*

Existing law, the Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public Instruction to administer child care and development programs that offer a full range of services for eligible children from infancy to 13 years of age.

~~This bill would state that the Legislature finds and declares, among other things, that it is necessary to enact legislation that would grant family child care providers the right to choose a representative to negotiate collectively with the state over the operation of the child care system.~~

*This bill would authorize family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be designated pursuant to a specified petition*

*and election process overseen by the Public Employment Relations Board or a neutral 3rd party designated by the board. The bill would also establish a Family Child Care Parent Advisory Committee that is required to (A) advise the Governor and any certified provider organization on certain issues, and (B) make specified recommendations.*

*The bill would require the State Department of Social Services and the State Department of Education, with assistance of specified state departments and agencies, and their contractors and subcontractors, to make specified information regarding family child care providers available to provider organizations and would require the provider organization requesting the information to bear the costs of collecting the information.*

*The bill would authorize a certified provider organization to perform various functions, including meeting with state regulatory agencies and engaging in various types of negotiation on matters within a specified scope of representation with the Department of Human Resources, in consultation with the Superintendent of Public Instruction and other state agencies that administer programs of publicly funded child care. The bill would prohibit provider organizations from calling strikes and from interfering with, intimidating, restraining, coercing, or discriminating against a family child care provider because the family child care provider joins or refuses to join a provider organization. The state, as defined, also would be subject to the latter prohibition. The bill would authorize the Governor, through the Department of Human Resources, and the certified provider organization, if, after a reasonable period of time they fail to reach agreement, to agree to submit unresolved issues to the California State Mediation and Conciliation Service for mediation or binding arbitration, and would authorize either party to declare that an impasse has been reached and request the Public Employment Relations Board to appoint a mediator or arbitrator from the service to perform mediation or binding arbitration.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:

1 (a) Quality, affordable child care is essential to prepare  
2 California’s children to succeed in school and in life and to allow  
3 families to work and contribute to the state’s economy with the  
4 assurance that their children are safe and well cared for.

5 (b) *Family child care is the child care setting of choice for many  
6 families because of its warm home-like environment, convenience,  
7 and affordability. The flexibility offered by many family child care  
8 providers is particularly vital to the more than one-in-five  
9 California workers who work nontraditional schedules and need  
10 child care on evenings, overnight, and weekends.*

11 (c) *Family child care providers are small business owners who  
12 contribute significantly to the economies of their communities and  
13 the state. As businesses, family child care providers are engines  
14 for economic growth, generating 100,000 direct and indirect jobs,  
15 three billion five hundred million dollars (\$3,500,000,000) in  
16 economic output, and five hundred fifty million (\$550,000,000) in  
17 tax revenues. Family child care providers also contribute to the  
18 economy by serving as a vital job support for working families.*

19 ~~(b)~~

20 (d) ~~There is a need to improve the quality of child care and to  
21 reduce turnover increase stability in the industry that is charged  
22 with providing safe and quality care for children in California.  
23 Limited or no employment benefits and low wages can drive  
24 dedicated child care providers from the profession. The resulting  
25 turnover negatively impacts the quality of child care provided and  
26 prevents children from receiving the type of care they require in  
27 order to be prepared for, and adapt successfully to, school settings.  
28 Turnover among family child care providers is estimated at more  
29 than 30 percent per year, more than four times higher than among  
30 teachers in the public school system. Losing a caregiver leaves  
31 working parents scrambling to find other arrangements and  
32 disrupts children’s cognitive and social development, putting them  
33 at a disadvantage when it is time for them to start school.~~

34 ~~(e) Turnover among family child care providers is estimated at  
35 30 to 40 percent per year, five times higher than among teachers  
36 in the public school system. Experienced family child care  
37 providers are leaving the profession simply because they cannot  
38 afford to provide for their own families. Losing a caregiver means  
39 children’s cognitive and social development is disrupted and  
40 parents are left scrambling to find other arrangements.~~

1 (e) Experienced family child care providers who care for  
 2 children under California’s child care subsidy program are leaving  
 3 the profession because low reimbursement rates and a lack of  
 4 access to affordable health insurance mean they cannot afford to  
 5 provide for their own families. The state’s fragmented, disorganized  
 6 system for paying family child care providers under the child care  
 7 subsidy program, in which more than 120 different agencies  
 8 contract with the state to pay family child care providers also  
 9 contributes to the turnover. Family child care providers’ pay is  
 10 often late, is reduced, or never arrives, and there is a lack of clear  
 11 authority and redress when problems arise.

12 ~~(e)~~

13 (f) The supply of quality child care in the market is inadequate  
 14 to meet the demand in California. ~~In 2010,~~ Since 2008 the state  
 15 has lost nearly ~~5,700~~ 11,000 licensed child care providers,  
 16 representing a ~~13-percent~~ decline 25-percent decrease in the supply  
 17 of licensed child care providers and an elimination of ~~11~~ 21 percent  
 18 of, or ~~44,000~~, 86,500, licensed slots for children in these homes.  
 19 In ~~2009,~~ 2011, there was only licensed capacity to care for ~~27~~ 25  
 20 percent of children with working parents.

21 ~~(e) Family child care is affordable and convenient; it is~~  
 22 ~~particularly vital to parents of infants and the one-in-five California~~  
 23 ~~workers who work nontraditional schedules.~~

24 (g) Child care presents a perfect opportunity for early learning  
 25 and increased school readiness. However, there are few  
 26 connections between the state’s child care system and the  
 27 elementary and secondary educational system. Establishing such  
 28 links would improve the quality of early education and care for  
 29 California’s children and strengthen the elementary and secondary  
 30 school system by ensuring that children would be better prepared  
 31 to start school.

32 ~~(f)~~

33 (h) Family child care ~~providers are a vital part of the child care~~  
 34 ~~system.~~ Their providers’ role in the state’s child care system gives  
 35 them unique insight into how quality, access, and stability could  
 36 be improved for children and families. In the last year, family child  
 37 care providers have worked with the California Department of  
 38 Education to make improvements to the state’s requirements for  
 39 timeliness of payment and communications with family child care  
 40 providers and families. This progress shows the value that family

1 *child care provider voices can add. But family child care providers*  
 2 ~~lack any formal voice in~~ *it also highlights the need for family child*  
 3 *care providers to have a formal role in decisionmaking on issues*  
 4 *that shape the child care system and the way they carry out their*  
 5 *profession.*

6 ~~(g)~~

7 *(i) To promote higher quality and greater access and stability*  
 8 *in the child care system, it is necessary to enact legislation that*  
 9 ~~would~~ *to grant family child care providers the right to choose a*  
 10 *representative to negotiate collectively with the state over the*  
 11 *operation of the child care system subsidy program. Permitting*  
 12 *family child care providers a formal voice will allow the state to*  
 13 *get input from family child care providers and to maximize its*  
 14 *return on its investment in child care and will allow family child*  
 15 *care providers to advocate to improve the quality, access, and*  
 16 *stability of care available to California’s children and families.*

17 *(j) Families who receive child care subsidies also lack any*  
 18 *formal voice into the way the child care system operates. Forming*  
 19 *a Family Child Care Parent Advisory Committee on matters related*  
 20 *to the child care subsidy program will permit the state to benefit*  
 21 *from the experience and recommendations of families who rely on*  
 22 *the child care subsidy program.*

23 *SEC. 2. Article 19.5 (commencing with Section 8430) is added*  
 24 *to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education*  
 25 *Code, to read:*

26  
 27 *Article 19.5. Quality Family Child Care*

28  
 29 *8430. This article shall be known and may be cited as the*  
 30 *Quality Family Child Care Act.*

31 *8430.5. (a) The purpose of this article is to promote quality,*  
 32 *access, and stability in the child care system by authorizing an*  
 33 *appropriate unit of family child care providers to choose a provider*  
 34 *organization to act as their exclusive representative on all matters*  
 35 *specified in this article. It is also the purpose of this article to*  
 36 *promote full communication between family child care providers*  
 37 *and the state by permitting a provider organization certified as*  
 38 *the representative of family child care providers to meet and confer*  
 39 *with the state regarding the state’s child care system.*

1 (b) *This article does not change family child care providers’*  
2 *status as independent business owners or classify family child care*  
3 *providers as public employees.*

4 8431. *As used in this article:*

5 (a) *“Certified provider organization” means a provider*  
6 *organization that is, or provider organizations that jointly are,*  
7 *certified by the board as the exclusive representative of family*  
8 *child care providers in an appropriate unit after a proceeding*  
9 *under Section 8434.*

10 (b) *“Child care subsidy program” means a program established*  
11 *pursuant to this chapter and administered by the department or*  
12 *the State Department of Social Services, or both, or any successor*  
13 *program or similar program subsequently established or*  
14 *administered by any departments of the state or a political*  
15 *subdivision of the state, to subsidize families in purchasing child*  
16 *care.*

17 (c) *“Family child care provider” or “provider” means a child*  
18 *care provider that participates in a child care subsidy program*  
19 *and is either of the following:*

20 (1) *A family day care home provider, as defined in Section*  
21 *1596.78 of the Health and Safety Code, who is licensed pursuant*  
22 *to the requirement in Section 1596.80 of the Health and Safety*  
23 *Code.*

24 (2) *An individual who meets all of the following criteria:*

25 (A) *Provides child care in his or her own home or in the home*  
26 *of the child receiving care.*

27 (B) *Is exempt from licensing requirements pursuant to Section*  
28 *1596.792 of the Health and Safety Code.*

29 (C) *Participates in a child care subsidy program.*

30 (d) *“Provider organization” means an organization that has*  
31 *all of the following characteristics:*

32 (1) *Includes family child care providers.*

33 (2) *Has as one of its main purposes the representation of family*  
34 *child care providers in their relations with public and private*  
35 *entities in California.*

36 (3) *Is not an entity that contracts with the state or a county to*  
37 *administer or process payments for a child care subsidy program.*

38 (e) *“Public Employment Relations Board” or “board” means*  
39 *the Public Employment Relations Board established pursuant to*  
40 *Section 3541 of the Government Code. The powers and duties of*

1 *the board described in Sections 3514.5, 3520.5, and 3541.3 of the*  
2 *Government Code, and the respective implementing regulations,*  
3 *shall apply, as appropriate, to this article to the extent those*  
4 *procedures are not inconsistent with the procedures specified in*  
5 *this article. If a provision of this article is the same or substantially*  
6 *the same as that contained in Chapter 10 (commencing with Section*  
7 *3500), Chapter 10.3 (commencing with Section 3512), or Chapter*  
8 *10.7 (commencing with Section 3540) of Division 4 of Title 1 of*  
9 *the Government Code, it shall be interpreted and applied in*  
10 *accordance with the judicial interpretations of the provision in*  
11 *those statutes.*

12 8431.3. (a) *There is hereby established a Family Child Care*  
13 *Parent Advisory Committee. The committee shall consist of 11*  
14 *members, nine of whom shall be the parents or guardians of*  
15 *children who participate or have participated in a child care*  
16 *subsidy program. The Director of the State Department of Social*  
17 *Services, or his or her designee, shall serve on the committee. The*  
18 *Superintendent, or his or her designee, shall serve on the committee*  
19 *and act as the committee chair. A majority of members of the*  
20 *committee shall constitute a quorum for the transaction of any*  
21 *business.*

22 (b) *The Governor, the Speaker of the Assembly, and the*  
23 *President pro Tempore of the Senate shall each appoint three*  
24 *parent or guardian members to the committee.*

25 (c) *The committee members shall serve three-year terms.*

26 (d) *The committee shall advise the Governor, or his or her*  
27 *designee, and any certified provider organization regarding issues*  
28 *related to the quality, affordability, and accessibility of child care*  
29 *offered through child care subsidy programs of the state. In*  
30 *particular, the committee shall make recommendations regarding*  
31 *both of the following:*

32 (1) *Strategies for improving quality, affordability, and access*  
33 *to child care for families, including, but not limited to, families*  
34 *who cannot participate in the child care subsidy program because*  
35 *of wait lists or other hurdles.*

36 (2) *The structure of the child care subsidy program of the state,*  
37 *including, but not limited to, the application and renewal process,*  
38 *eligibility rules and standards, and the amount of family*  
39 *copayments.*

1     8431.5. *The state action antitrust exemption to the application*  
2 *of federal and state antitrust laws is applicable to the activities of*  
3 *family child care providers and their representatives authorized*  
4 *under this article.*

5     8432. *Family child care providers have the right to form, join,*  
6 *and participate in the activities of provider organizations of their*  
7 *own choosing for the purpose of being represented in all matters*  
8 *specified in this article. Family child care providers have the right*  
9 *to refuse to join or participate in the activities of provider*  
10 *organizations, except that a certified provider organization may*  
11 *charge family child care providers who receive payment from a*  
12 *child care subsidy program a fair share fee pursuant to Section*  
13 *8436.*

14     8432.5. *Family child care providers are not public employees,*  
15 *and this article does not create an employer-employee relationship*  
16 *between family child care providers and the state or a public or*  
17 *private nonprofit entity for any purpose, including, but not limited*  
18 *to, eligibility for health or retirement benefits or vicarious liability*  
19 *in tort. This article does not alter the status of a family child care*  
20 *provider as a business owner, an employee of a family, or a*  
21 *contractor.*

22     8433. *This article does not alter the rights of families to select,*  
23 *direct, and terminate the services of family child care providers.*

24     8433.5. (a) *Within 10 days of receipt of a request from a*  
25 *provider organization, the State Department of Social Services*  
26 *shall make available to that provider organization information*  
27 *regarding family child care providers described in paragraph (1)*  
28 *of subdivision (c) of Section 8431, including each provider's name,*  
29 *home address, mailing address, telephone number, e-mail address,*  
30 *and license number.*

31     (b) *Within 30 days of receipt of a request from a provider*  
32 *organization, the department, with the assistance of the State*  
33 *Department of Social Services and any state department or agency,*  
34 *or its contractor or subcontractor, in possession of the relevant*  
35 *information, shall collect information regarding family child care*  
36 *providers, including each provider's name, home address, mailing*  
37 *address, telephone number, e-mail address, unique provider*  
38 *identification number, if applicable, and shall make that*  
39 *information available to the provider organization. The provider*  
40 *organization shall bear the reasonable costs of collecting the*

1 *information described in this subdivision if that information has*  
2 *not been previously collected.*

3 *(c) A provider organization under this article shall be*  
4 *considered a day care organization for purposes of subdivisions*  
5 *(b) and (c) of Section 1596.86 of the Health and Safety Code. All*  
6 *confidentiality requirements applicable to recipients of information*  
7 *pursuant to Section 1596.86 of the Health and Safety Code apply*  
8 *to provider organizations and shall apply also to protect the*  
9 *personal information of family child care providers as defined in*  
10 *paragraph (2) of subdivision (c) of Section 8431. Information*  
11 *provided pursuant to this section shall be used only for purposes*  
12 *of organizing and representing family child care providers.*

13 *8434. (a) An appropriate unit of family child care providers,*  
14 *as defined in subdivision (e), may designate, in accordance with*  
15 *the provisions of this article, the provider organization, if any,*  
16 *that shall be its exclusive representative. The board shall certify*  
17 *a provider organization designated by an appropriate unit of family*  
18 *child care providers as the exclusive representative of those*  
19 *providers.*

20 *(b) Requests for elections, challenges, and competing claims,*  
21 *requests for intervention, and requests for decertification shall be*  
22 *filed with, received by, and acted upon by the board, provided that*  
23 *a valid petition for a certification or decertification election is*  
24 *resolved by a secret ballot election among family child care*  
25 *providers. The board may designate a neutral third party to act*  
26 *on any of the requests filed with the board pursuant to this*  
27 *subdivision.*

28 *(c) The provider organization that presents a petition requesting*  
29 *certification shall pay the reasonable costs of verifying the number*  
30 *of family child care providers that have designated a provider*  
31 *organization to act as their exclusive representative. The board,*  
32 *or a neutral third party designated by the board to act on a request*  
33 *for certification election, shall consider a document evidencing a*  
34 *family child care provider's support for a provider organization*  
35 *valid if it was signed by the family child care provider within two*  
36 *years of the date it is submitted to the board.*

37 *(d) All provider organizations placed on the ballot shall share*  
38 *equally the cost of an election.*

39 *(e) The only appropriate unit shall consist of all family child*  
40 *care providers in the state.*

1 (f) A certified provider organization shall represent each  
2 provider in the represented unit fairly, without discrimination and  
3 without regard to whether the provider is a member of the provider  
4 organization.

5 8434.5. The scope of representation shall include all of the  
6 following:

7 (a) The administration of laws and regulations governing  
8 licensing for providers.

9 (b) Joint labor-management committees.

10 (c) Contract grievance arbitration.

11 (d) Expanded access to professional development and training  
12 opportunities for providers.

13 (e) Benefits for providers.

14 (f) Payment procedures for child care subsidy programs.

15 (g) Reimbursement rates and other economic matters.

16 (h) Expanded access to food and nutrition programs.

17 (i) The deduction of membership dues, fair share fees, and any  
18 voluntary deductions authorized by individual family child care  
19 providers.

20 (j) Building connections between the family child care system  
21 and the elementary and secondary education system.

22 (k) Expanded access to the subsidized family child care system  
23 to families in need of subsidies.

24 (l) Any changes to current practice other than those listed in  
25 subdivisions (a) to (k), inclusive, that would do any of the  
26 following:

27 (1) Improve recruitment and retention of qualified providers.

28 (2) Improve the quality of the programs.

29 (3) Encourage qualified providers to seek additional education  
30 and training.

31 (4) Promote the health and safety of providers and the children  
32 in their care.

33 8435. (a) The Governor, through the Department of Human  
34 Resources, in consultation with the Superintendent, other state  
35 agencies that administer programs of publicly funded child care,  
36 and their contractors, as needed, shall meet and confer in good  
37 faith regarding all matters within the scope of representation with  
38 representatives of a certified provider organization and, before  
39 arriving at a determination of policy or course of action, shall

1 *consider fully the presentations made by the certified provider*  
2 *organization on behalf of the providers it represents.*

3 *(b) As used in this section, “meet and confer in good faith”*  
4 *means that the Governor, through the Department of Human*  
5 *Resources, and representatives of the certified provider*  
6 *organization shall have the mutual obligation to meet and confer*  
7 *promptly upon request by either party and continue for a*  
8 *reasonable period of time in order to exchange freely information,*  
9 *opinions, and proposals. The duty to meet and confer in good faith*  
10 *also requires the parties to begin negotiations sufficiently in*  
11 *advance of the adoption of the state’s final budget for the ensuing*  
12 *fiscal year so that there is adequate time for agreement to be*  
13 *reached before the adoption of the final budget and for the*  
14 *resolution of an impasse.*

15 *8435.5. (a) If agreement is reached between the Governor,*  
16 *through the Department of Human Resources, and the certified*  
17 *provider organization, they jointly shall prepare a written*  
18 *memorandum of understanding. Any portions of the memorandum*  
19 *of understanding requiring appropriation by the Legislature or*  
20 *statutory or regulatory revisions shall be subject to legislative*  
21 *approval of those appropriations or statutory or regulatory*  
22 *revisions.*

23 *(b) A memorandum of understanding between the Governor,*  
24 *through the Department of Human Resources, and the certified*  
25 *provider organization is binding on all state departments and*  
26 *agencies that are involved in the administration of child care*  
27 *subsidy programs, and the relevant contractors or subcontractors*  
28 *of those departments and agencies.*

29 *(c) An agreement pursuant to this section may provide for*  
30 *binding arbitration of grievances concerning the interpretation,*  
31 *application, or violation of the agreement.*

32 *(d) This article does not alter the requirements governing the*  
33 *child care reimbursement system that are set forth in Section 8222.*

34 *8436. (a) A certified provider organization shall have the same*  
35 *right to enter into an agreement with the state regarding deduction*  
36 *of membership dues and fair share fees from subsidy payments*  
37 *made to providers, including payments made through state*  
38 *agencies, departments, contractors, or subcontractors, as*  
39 *recognized employee organizations have under Sections 3515.7*  
40 *and 3515.8 of the Government Code.*

1 (b) *The amount of any fair share fee shall not exceed the amount*  
2 *of the dues payable by the members of the certified provider*  
3 *organization. The costs covered by the fair share fee may include*  
4 *all of the following:*

5 (1) *The certified provider organization's costs for meeting and*  
6 *conferring with the state.*

7 (2) *Contract administration.*

8 (3) *Securing for the represented providers improvements in*  
9 *subsidy rates, benefits, payment systems, training opportunities,*  
10 *and other matters related to the family child care system in addition*  
11 *to those secured through meeting and conferring with the state.*

12 (4) *Other activities germane to the certified provider*  
13 *organization's function as the exclusive representative of providers.*

14 (c) *If the deduction of membership dues or fair share fees for a*  
15 *provider requires action by more than one agency, department,*  
16 *contractor, or subcontractor, the certified provider organization*  
17 *shall establish procedures to ensure both of the following:*

18 (1) *The amount of the dues or fees does not exceed the total*  
19 *membership or fair share fee owed by that provider.*

20 (2) *The administrative procedures for deducting dues or fees*  
21 *are reasonable.*

22 (d) *The state, its agencies and departments, and their*  
23 *contractors and subcontractors shall not be liable in any action*  
24 *by a provider seeking recovery of, or damage for, improper*  
25 *calculation or use of fair share fees.*

26 8436.5. (a) *It is unlawful for the state, including its agencies,*  
27 *boards, commissions, departments, public benefit corporations,*  
28 *political subdivisions, contractors, subcontractors, or employees,*  
29 *to do to providers or provider organizations any of the things made*  
30 *unlawful under Section 3519 of the Government Code.*

31 (b) *It shall be unlawful for a provider organization to do to the*  
32 *state or to providers any of the things made unlawful under Section*  
33 *3519.5 of the Government Code.*

34 (c) *For purposes of subdivisions (a) and (b), the references in*  
35 *subdivision (e) of Section 3519 of, and subdivision (d) of Section*  
36 *3519.5 of, the Government Code to "the mediation procedure set*  
37 *forth in Section 3518" shall be deemed to refer to the impasse*  
38 *procedures set forth in Section 8437.5.*

39 (d) *The initial determination as to whether charges of unfair*  
40 *practices are justified and, if so, what remedy is necessary to*

1 *effectuate the purposes of this article shall be a matter within the*  
2 *exclusive jurisdiction of the board.*

3 *8437. A provider organization shall not direct or call a strike.*

4 *8437.5. If after a reasonable period of time the parties fail to*  
5 *reach agreement, the parties may agree to submit unresolved issues*  
6 *to the California State Mediation and Conciliation Service*  
7 *established by the Department of Industrial Relations for mediation*  
8 *or binding arbitration, or either party may declare that an impasse*  
9 *has been reached and request the board to appoint a mediator or*  
10 *an arbitrator from the California State Mediation and Conciliation*  
11 *Service to perform mediation or binding arbitration. A*  
12 *memorandum of understanding reached by means of mediation or*  
13 *arbitration is subject to appropriation by the Legislature and*  
14 *necessary statutory and regulatory revisions.*

O