

AMENDED IN SENATE JUNE 17, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 641

Introduced by Assembly Member Rendon
(Coauthors: Assembly Members Ammiano and Bradford)

February 20, 2013

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

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

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

16 (d) There is a need to improve the quality of child care and to
17 increase stability in the industry that is charged with providing
18 safe and quality care for children in California. Turnover among
19 family child care providers is estimated at more than 30 percent
20 per year, more than four times higher than among teachers in the
21 public school system. Losing a caregiver leaves working parents
22 scrambling to find other arrangements and disrupts children's
23 cognitive and social development, putting them at a disadvantage
24 when it is time for them to start school.

25 (e) Experienced family child care providers who care for
26 children under California's child care subsidy program are leaving
27 the profession because low reimbursement rates and a lack of
28 access to affordable health insurance mean they cannot afford to
29 provide for their own families. The state's fragmented, disorganized
30 system for paying family child care providers under the child care
31 subsidy program, in which more than 120 different agencies
32 contract with the state to pay family child care providers also
33 contributes to the turnover. Family child care providers' pay is
34 often late, is reduced, or never arrives, and there is a lack of clear
35 authority and redress when problems arise.

36 (f) The supply of quality child care in the market is inadequate
37 to meet the demand in California. Since 2008 the state has lost
38 nearly 11,000 licensed child care providers, representing a
39 25-percent decrease in the supply of licensed child care providers
40 and an elimination of 21 percent of, or 86,500, licensed slots for

1 children in these homes. In 2011, there was only licensed capacity
2 to care for 25 percent of children with working parents.

3 (g) Child care presents a perfect opportunity for early learning
4 and increased school readiness. However, there are few connections
5 between the state's child care system and the elementary and
6 secondary educational system. Establishing such links would
7 improve the quality of early education and care for California's
8 children and strengthen the elementary and secondary-school
9 *educational* system by ensuring that children would be better
10 prepared to start school.

11 (h) Family child care providers' role in the state's child care
12 system gives them unique insight into how quality, access, and
13 stability could be improved for children and families. In the last
14 year, family child care providers have worked with the California
15 Department of Education to make improvements to the state's
16 requirements for timeliness of payment and communications with
17 family child care providers and families. This progress shows the
18 value that family child care provider voices can add. But it also
19 highlights the need for family child care providers to have a formal
20 role in decisionmaking on issues that shape the child care system
21 and the way they carry out their profession.

22 (i) To promote higher quality and greater access and stability
23 in the child care system, it is necessary to enact legislation to grant
24 family child care providers the right to choose a representative to
25 negotiate collectively with the state over the operation of the child
26 care subsidy program. Permitting family child care providers a
27 formal voice will allow the state to get input from family child
28 care providers and to maximize its return on its investment in child
29 care, and will allow family child care providers to advocate to
30 improve the quality, access, and stability of care available to
31 California's children and families.

32 (j) Families who receive child care subsidies also lack any
33 formal voice into the way the child care system operates. Forming
34 a Family Child Care Parent Advisory Committee on matters related
35 to the child care subsidy program will permit the state to benefit
36 from the experience and recommendations of families who rely
37 on the child care subsidy program.

38 SEC. 2. Article 19.5 (commencing with Section 8430) is added
39 to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education
40 Code, to read:

1 Article 19.5. Quality Family Child Care

2
3 8430. This article shall be ~~known~~ *known*, and may be ~~cited~~
4 *cited*, as the Quality Family Child Care Act.

5 8430.5. (a) The purpose of this article is to promote quality,
6 access, and stability in the child care system by authorizing an
7 appropriate unit of family child care providers to choose a provider
8 organization to act as their exclusive representative on all matters
9 specified in this article. It is also the purpose of this article to
10 promote full communication between family child care providers
11 and the state by permitting a provider organization certified as the
12 representative of family child care providers to meet and confer
13 with the state regarding the state’s child care system.

14 (b) This article does not change family child care providers’
15 status as independent business owners or classify family child care
16 providers as public employees.

17 8431. As used in this article:

18 (a) “Certified provider organization” means a provider
19 organization that is, or provider organizations that jointly are,
20 certified by the board as the exclusive representative of family
21 child care providers in an appropriate unit after a proceeding under
22 Section 8434.

23 (b) “Child care subsidy program” means a program established
24 pursuant to this chapter and administered by the department or the
25 State Department of Social Services, or both, or any successor
26 program or similar program subsequently established or
27 administered by any departments of the state or a political
28 subdivision of the state, to subsidize families in purchasing child
29 care.

30 (c) “Family child care provider” or “provider” means a child
31 care provider that participates in a child care subsidy program and
32 is either of the following:

33 (1) A family day care home provider, as defined in Section
34 1596.78 of the Health and Safety Code, who is licensed pursuant
35 to the requirement in Section 1596.80 of the Health and Safety
36 Code.

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

38 (A) Provides child care in his or her own home or in the home
39 of the child receiving care.

1 (B) Is exempt from licensing requirements pursuant to Section
2 1596.792 of the Health and Safety Code.

3 (C) Participates in a child care subsidy program.

4 (d) “Provider organization” means an organization that has all
5 of the following characteristics:

6 (1) Includes family child care providers.

7 (2) Has as one of its main purposes the representation of family
8 child care providers in their relations with public and private
9 entities in California.

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

12 (e) “Public Employment Relations Board” or “board” means
13 the Public Employment Relations Board established pursuant to
14 Section 3541 of the Government Code. The powers and duties of
15 the board described in Sections 3514.5, 3520.5, and 3541.3 of the
16 Government Code, and the respective implementing regulations,
17 shall apply, as appropriate, to this article to the extent those
18 procedures are not inconsistent with the procedures specified in
19 this article. If a provision of this article is the same or substantially
20 the same as that contained in Chapter 10 (commencing with Section
21 3500), Chapter 10.3 (commencing with Section 3512), or Chapter
22 10.7 (commencing with Section 3540) of Division 4 of Title 1 of
23 the Government Code, it shall be interpreted and applied in
24 accordance with the judicial interpretations of the provision in
25 those statutes.

26 8431.3. (a) There is hereby established a Family Child Care
27 Parent Advisory Committee. The committee shall consist of 11
28 members, nine of whom shall be the parents or guardians of
29 children who participate or have participated in a child care subsidy
30 program. The Director of the State Department of Social Services,
31 or his or her designee, shall serve on the committee. The
32 Superintendent, or his or her designee, shall serve on the committee
33 and act as the committee chair. A majority of members of the
34 committee shall constitute a quorum for the transaction of any
35 business.

36 (b) ~~The Governor, the~~ *Governor shall appoint five parent or*
37 *guardian members to the committee.*

38 (c) *The Speaker of the Assembly, and the President pro Tempore*
39 *of the Senate Committee on Rules shall each appoint three two*
40 *parent or guardian members to the committee.*

1 ~~(e)~~

2 (d) The committee members shall serve three-year terms.

3 ~~(e)~~ *The committee shall meet not more than three times per*
4 *calendar year and the committee members shall each be entitled*
5 *to reimbursement for travel by the department not to exceed four*
6 *hundred dollars (\$400) per meeting for airfare, or fifty-six and*
7 *four-tenths cents (\$0.564) per mile for motor vehicle mileage per*
8 *meeting.*

9 ~~(f)~~

10 (f) The committee shall advise the Governor, or his or her
11 designee, and any certified provider organization regarding issues
12 related to the quality, affordability, and accessibility of child care
13 offered through child care subsidy programs of the state. In
14 particular, the committee shall make recommendations regarding
15 both of the following:

16 (1) Strategies for improving quality, affordability, and access
17 to child care for families, including, but not limited to, families
18 who cannot participate in the child care subsidy program because
19 of wait lists or other hurdles.

20 (2) The structure of the child care subsidy program of the state,
21 including, but not limited to, the application and renewal process,
22 eligibility rules and standards, and the amount of family
23 copayments.

24 8431.5. The state action antitrust exemption to the application
25 of federal and state antitrust laws is applicable to the activities of
26 family child care providers and their representatives authorized
27 under this article.

28 8432. Family child care providers have the right to form, join,
29 and participate in the activities of provider organizations of their
30 own choosing for the purpose of being represented in all matters
31 specified in this article. Family child care providers have the right
32 to refuse to join or participate in the activities of provider
33 organizations, except that a certified provider organization may
34 charge family child care providers who receive payment from a
35 child care subsidy program a fair share fee pursuant to Section
36 8436.

37 8432.5. Family child care providers are not public employees,
38 and this article does not create an employer-employee relationship
39 between family child care providers and the state or a public or
40 private nonprofit entity for any purpose, including, but not limited

1 to, eligibility for health or retirement benefits or vicarious liability
2 in tort. This article does not alter the status of a family child care
3 provider as a business owner, an employee of a family, or a
4 contractor.

5 8433. This article does not alter the rights of families to select,
6 direct, and terminate the services of family child care providers.

7 8433.5. (a) Within 10 days of receipt of a request from a
8 provider organization, the State Department of Social Services
9 shall make available to that provider organization information
10 regarding family child care providers described in paragraph (1)
11 of subdivision (c) of Section 8431, including each provider’s name,
12 home address, mailing address, telephone number, e-mail address,
13 and license number.

14 (b) Within 30 days of receipt of a request from a provider
15 organization, the department, with the assistance of the State
16 Department of Social Services and any state department or agency,
17 or its contractor or subcontractor, in possession of the relevant
18 information, shall collect information regarding family child care
19 providers, including each provider’s name, home address, mailing
20 address, telephone number, e-mail address, unique provider
21 identification number, if applicable, and shall make that
22 information available to the provider organization. The provider
23 organization shall bear the reasonable costs of collecting the
24 information described in this subdivision if that information has
25 not been previously collected.

26 (c) A provider organization under this article shall be considered
27 a day care organization for purposes of subdivisions (b) and (c) of
28 Section 1596.86 of the Health and Safety Code. All confidentiality
29 requirements applicable to recipients of information pursuant to
30 Section 1596.86 of the Health and Safety Code apply to provider
31 organizations and shall apply also to protect the personal
32 information of family child care providers as defined in paragraph
33 (2) of subdivision (c) of Section 8431. Information provided
34 pursuant to this section shall be used only for purposes of
35 organizing and representing family child care providers.

36 8434. (a) An appropriate unit of family child care providers,
37 as defined in subdivision (e), may designate, in accordance with
38 the provisions of this article, the provider organization, if any, that
39 shall be its exclusive representative. The board shall certify a
40 provider organization designated by an appropriate unit of family

1 child care providers as the exclusive representative of those
2 providers.

3 (b) Requests for elections, challenges, and competing claims,
4 requests for intervention, and requests for decertification shall be
5 filed with, received by, and acted upon by the board, provided that
6 a valid petition for a certification or decertification election is
7 resolved by a secret ballot election among family child care
8 providers. The board may designate a neutral third party to act on
9 any of the requests filed with the board pursuant to this subdivision.

10 (c) The provider organization that presents a petition requesting
11 certification shall pay the reasonable costs of verifying the number
12 of family child care providers that have designated a provider
13 organization to act as their exclusive representative. The board, or
14 a neutral third party designated by the board to act on a request
15 for certification election, shall consider a document evidencing a
16 family child care provider's support for a provider organization
17 valid if it was signed by the family child care provider within two
18 years of the date it is submitted to the board.

19 (d) All provider organizations placed on the ballot shall share
20 equally the cost of an election.

21 (e) The only appropriate unit shall consist of all family child
22 care providers in the state.

23 (f) A certified provider organization shall represent each
24 provider in the represented unit fairly, without discrimination and
25 without regard to whether the provider is a member of the provider
26 organization.

27 8434.5. The scope of representation shall include all of the
28 following:

29 (a) The administration of laws and regulations governing
30 licensing for providers.

31 (b) Joint labor-management committees.

32 (c) Contract grievance arbitration.

33 (d) Expanded access to professional development and training
34 opportunities for providers.

35 (e) Benefits for providers.

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

37 (g) Reimbursement rates and other economic matters.

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

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

4 (j) Building connections between the family child care system
5 and the elementary and secondary ~~education~~ *educational* system.

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

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

- 11 (1) Improve recruitment and retention of qualified providers.
- 12 (2) Improve the quality of the programs.
- 13 (3) Encourage qualified providers to seek additional education
14 and training.
- 15 (4) Promote the health and safety of providers and the children
16 in their care.

17 8435. (a) The Governor, through the Department of Human
18 Resources, in consultation with the Superintendent, other state
19 agencies that administer programs of publicly funded child care,
20 and their contractors, as needed, shall meet and confer in good
21 faith regarding all matters within the scope of representation with
22 representatives of a certified provider organization and, before
23 arriving at a determination of policy or course of action, shall
24 consider fully the presentations made by the certified provider
25 organization on behalf of the providers it represents.

26 (b) As used in this section, “meet and confer in good faith”
27 means that the Governor, through the Department of Human
28 Resources, and representatives of the certified provider
29 organization shall have the mutual obligation to meet and confer
30 promptly upon request by either party and continue for a reasonable
31 period of time in order to exchange freely information, opinions,
32 and proposals. The duty to meet and confer in good faith also
33 requires the parties to begin negotiations sufficiently in advance
34 of the adoption of the state’s final budget for the ensuing fiscal
35 year so that there is adequate time for agreement to be reached
36 before the adoption of the final budget and for the resolution of
37 an impasse.

38 8435.5. (a) If agreement is reached between the Governor,
39 through the Department of Human Resources, and the certified
40 provider organization, they jointly shall prepare a written

1 memorandum of understanding. Any portions of the memorandum
2 of understanding requiring appropriation by the Legislature or
3 statutory or regulatory revisions shall be subject to legislative
4 approval of those appropriations or statutory or regulatory
5 revisions.

6 (b) A memorandum of understanding between the Governor,
7 through the Department of Human Resources, and the certified
8 provider organization is binding on all state departments and
9 agencies that are involved in the administration of child care
10 subsidy programs, and the relevant contractors or subcontractors
11 of those departments and agencies.

12 (c) An agreement pursuant to this section may provide for
13 binding arbitration of grievances concerning the interpretation,
14 application, or violation of the agreement.

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

17 8436. (a) A certified provider organization shall have the same
18 right to enter into an agreement with the state regarding deduction
19 of membership dues and fair share fees from subsidy payments
20 made to providers, including payments made through state
21 agencies, departments, contractors, or subcontractors, as recognized
22 employee organizations have under Sections 3515.7 and 3515.8
23 of the Government Code.

24 (b) The amount of any fair share fee shall not exceed the amount
25 of the dues payable by the members of the certified provider
26 organization. The costs covered by the fair share fee may include
27 all of the following:

28 (1) The certified provider organization's costs for meeting and
29 conferring with the state.

30 (2) Contract administration.

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

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

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

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

3 (2) The administrative procedures for deducting dues or fees
4 are reasonable.

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

9 8436.5. (a) It is unlawful for the state, including its agencies,
10 boards, commissions, departments, public benefit corporations,
11 political subdivisions, contractors, subcontractors, or employees,
12 to do to providers or provider organizations any of the things made
13 unlawful under Section 3519 of the Government Code.

14 (b) It shall be unlawful for a provider organization to do to the
15 state or to providers any of the things made unlawful under Section
16 3519.5 of the Government Code.

17 (c) For purposes of subdivisions (a) and (b), the references in
18 subdivision (e) of Section 3519 of, and subdivision (d) of Section
19 3519.5 of, the Government Code to “the mediation procedure set
20 forth in Section 3518” shall be deemed to refer to the impasse
21 procedures set forth in Section 8437.5.

22 (d) The initial determination as to whether charges of unfair
23 practices are justified and, if so, what remedy is necessary to
24 effectuate the purposes of this article shall be a matter within the
25 exclusive jurisdiction of the board.

26 8437. A provider organization shall not direct or call a strike.

27 8437.5. If after a reasonable period of time the parties fail to
28 reach agreement, the parties may agree to submit unresolved issues
29 to the California State Mediation and Conciliation Service
30 established by the Department of Industrial Relations for mediation
31 or binding arbitration, or either party may declare that an impasse
32 has been reached and request the board to appoint a mediator or
33 an arbitrator from the California State Mediation and Conciliation
34 Service to perform mediation or binding arbitration. A
35 memorandum of understanding reached by means of mediation or
36 arbitration is subject to appropriation by the Legislature and
37 necessary statutory and regulatory revisions.

O