

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 465

(The Speaker, *et al.*) (By Request - Administration)

Economic Matters

Finance

Collective Negotiations by Family Child Care Providers

This Administration bill establishes collective bargaining rights for “family child care providers” who participate in the State’s child care subsidy program.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The bill generally codifies the provisions of an executive order and a resulting memorandum of understanding. Minimal increase in general fund expenditures for the Maryland State Department of Education (MSDE) in FY 2011 only to make computer modifications.

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has a minimal impact on small business (attached). Legislative Services disagrees with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A “family child care provider” is defined as an individual who participates in the Maryland Child Care Subsidy Program and is a registered provider as defined by statute or exempt from registration requirements. A provider organization is an organization that includes family child care providers and has as one of its purposes the representation of family child care providers in their relations with the State.

The bill requires that only one appropriate bargaining unit of family child care providers be established in the State. Providers may designate which provider organization, if any, will be the exclusive representative of all providers in the State. The election and certification of the exclusive representative must be conducted by the State Labor Relations Board (LRB) and governed by statutory provisions. LRB may not conduct an election for an exclusive representative if an election or certification has taken place within the preceding two years. A provider organization designated as the exclusive representative must represent all providers in the State fairly and without discrimination, whether or not the providers are members of the organization.

MSDE must designate appropriate representatives to participate in collective bargaining with the provider organization certified as the exclusive representative. Unless otherwise specified, the parties must adhere to the bargaining process set forth in statute. MSDE must negotiate in consultation with the Department of Budget and Management regarding all matters that require appropriation of State funds.

Collective bargaining must include all matters related to the terms and conditions of participation by family child care providers in the child care subsidy program, including: (1) reimbursement rates; (2) benefits; (3) payment procedures; (4) contract grievance procedures; (5) training; and (6) member dues deductions. The representatives of the State may not be required to negotiate any matter that is inconsistent with applicable law and may negotiate and reach agreement with regard to any such matter only if it is understood that the agreement with respect to such matter cannot become effective unless the applicable law is amended by the General Assembly.

Collective bargaining may include negotiations relating to the right of a provider organization to receive service fees from nonmembers. However, the representatives of the State may not reach an agreement containing a service fee provision unless the representatives conclude that the agreement as a whole will not adversely impact nonmember providers. Family child care providers whose religious beliefs are opposed to joining or financially supporting any collective bargaining organizations are not required to pay a service fee. However, they are required to pay an amount of money as determined in collective bargaining negotiations, not to exceed any service fee, to any charitable organization exempt from taxation. Written proof of the payment must be furnished to MSDE and the exclusive representative.

Collective bargaining must include negotiations that result in the establishment of a fund for the purpose of protecting family child care providers against extreme hardship or loss of livelihood resulting from late State payments. The exclusive representative must pay for a portion of the fund. The fund may not be a State fund, but must be established and administered in consultation with the State. All revenues, money, and assets of the fund belong solely to the fund and are held by the fund in trust for family child care providers. The State may not borrow, appropriate, or direct payments from the revenues, money, or

assets of the fund for any purpose. The fund must include sufficient funds to meet the reasonably foreseeable needs of the family child care providers.

The parties must reduce their agreement to a memorandum of understanding that complies with applicable provisions of State law.

The certification of an exclusive representative of family child care providers does not prevent the certified provider organization or any other organization or individual from communicating with any State official on matters of interest, including appearing before or making proposals to MSDE at a public meeting, hearing, or other forum.

The bill prohibits any provider from calling or directing a strike or other collective cessation of the delivery of services. However, the bill specifies that this provision may not be construed to grant any right, or imply that family child care providers have any right to engage in a strike or other collective cessation of the delivery of services.

The provisions within the bill may not be construed to make family child care providers employees of the State, nor do they alter in any way the role of parents in selecting, directing, and terminating the services of family child care providers.

The bill specifies that the provider organization certified as the majority representative of family child care providers in the election held pursuant to a particular executive order prior to the effective date of this Act shall continue as the exclusive representative without the requirement of an additional election and certification.

MSDE must submit a report, on or before December 31 of each year through 2013, on the status of the child care subsidy program as it relates to family child care providers. The report must include (1) the number of providers and children participating in the program; (2) the number of providers who join the collective bargaining unit and the number of children served by each of the providers; (3) the number of providers who have used the fund required to be established by this bill, and the terms of eligibility for payments from the fund; (4) recommendations on how to safeguard the fund in the event that management of the fund is transferred or the fund is terminated; and (5) an analysis of any positive or negative trends resulting from the implementation of this bill.

Current Law/Background: A family day care provider is an individual who cares for no more than eight children in a registered family day care home. A family day care home is not required to be registered if the provider (1) is related to each child by blood or marriage; (2) is a friend of each child's parents or legal guardians and provides care on an occasional basis; or (3) has received the care of the child from a child placement agency licensed by the Social Security Administration or a local department. Both registered and registration-exempt providers are eligible to participate in the child care subsidy program.

The child care subsidy program provides financial assistance with child care costs to eligible families through each local department of social services. Eligible families receive vouchers they can take to a participating provider. Providers electing to participate must abide by rules and regulations of the program, which is administered by MSDE. The rules and regulations include reimbursement rates, which are set according to the family's income, size, and geographic area of the State, and the amount of a copay.

In 2007, Governor Martin O'Malley signed an executive order authorizing collective bargaining for registration and registration-exempt family child care providers participating in the child care subsidy program. After the Department of Labor, Licensing, and Regulation certified one union (Service Employees International Union or SEIU) as the nonexclusive representative of providers, a competing union petitioned for a temporary restraining order against implementation of the executive order. The circuit court for Cecil County granted the order, finding that the executive order was not enacted in compliance with the Administrative Procedure Act. However, the Court of Special Appeals reversed, finding that the executive order was issued pursuant to the Governor's constitutional and statutory authority.

A memorandum of understanding between the Governor, MSDE, and SEIU was finalized October 15, 2009. Included in the memorandum was recognition that SEIU is the exclusive collective bargaining representative for all registered and registration-exempt family child care providers participating in the child care subsidy program. The memorandum of understanding specifies that if legislation expanding the rights of providers to engage in collective bargaining is signed by the Governor, SEIU may reopen negotiations related to these expanded rights.

State Fiscal Effect: MSDE advises that computer modifications in fiscal 2011 only will be necessary in order to track compliance with the provision that requires nonunion members to make a payment to a nonprofit organization of their choice if a service fee is negotiated. A reliable estimate of expenditures necessary to make this modification is not available at this time, but is expected to be minimal.

Small Business Effect: Although the majority of the bill's provisions simply codify the provisions within the executive order and the resulting memorandum of understanding between the Governor's Office, MSDE, and SEIU, this bill establishes a service fee as a permissible topic of negotiations. *If* a service fee applying to nonunion members is negotiated and ratified, they will have to pay the service fee or, if they raise a religious exemption to the payment of a service fee, make an equivalent payment to a nonprofit organization of their choice. Accordingly, those participating in the child care subsidy program that are not currently members of SEIU may be subject to this payment requirement. MSDE advises that there are currently 2,674 providers statewide that accept child care subsidy payments. The numbers of these providers who are members of SEIU is not available. However, the bill specifies that the representatives of the State may not

reach an agreement containing a service fee provision unless the representatives conclude that the agreement as a whole will not adversely impact nonmember providers.

Furthermore, this bill requires negotiations that result in the establishment of a private fund to protect providers against extreme hardship or loss of livelihood resulting from late State payments. Providers that face hardship due to late State payments will benefit from the fund. However, the bill also specifies that the exclusive representative must pay for *a portion* of the fund. The Department of Legislative Services notes that *if* a requirement for providers to make a contribution to the fund is negotiated and ratified, some providers may be impacted, depending on the amount of any contribution that is negotiated.

Additional Information

Prior Introductions: None.

Cross File: SB 284 (The President, *et al.*) (By Request - Administration) - Finance.

Information Source(s): Department of Budget and Management, Department of Human Resources, Maryland State Department of Education, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2010
mpc/hlb Revised - Correction - February 18, 2010
 Revised - House Third Reader - April 1, 2010
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Collective Negotiations by Family Child Care Providers

BILL NUMBER: HB 465

PREPARED BY:

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.