

MAINE STATE LEGISLATURE

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Date: 4/2/18

L.D. 2095
(Filing No. H-901)

Majority
LABOR

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1481, L.D. 2095, Bill, "An Act To Ensure the Freedom of Family Child Care Providers To Jointly Negotiate with the State"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 22 MRSA §8308 is enacted to read:

§8308. Family child care provider representation

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Collective bargaining" means a mutual obligation to confer and negotiate regarding issues of mutual concern to the extent not prescribed or controlled by law or otherwise outside of the State's control.

B. "Family child care provider" or "provider" means:

(1) A family child care provider as defined in section 8301-A, subsection 1-A, paragraph C and subject to certification pursuant to section 8301-A, subsection 3; or

(2) A family child care provider who is legally exempt from certification as defined in section 8301-A, subsection 1-A, paragraph C and subject to the requirements of section 8302-B.

C. "Issues of mutual concern" means and is limited to:

- (1) Training and other requirements and opportunities that are appropriate for providers;
- (2) Reimbursement rates;
- (3) Payment procedures;

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- 1 (4) Contract grievance arbitration;
2 (5) Member dues deduction;
3 (6) Representation or service fees for nonmembers; and
4 (7) Any changes to current practice other than those listed in subparagraphs (1)
5 to (6) that would improve recruitment and retention of qualified providers, would
6 improve the quality of the programs they provide, would encourage qualified
7 providers to seek additional education and training and would promote the health
8 and safety of providers and the children in their care.

9 "Issues of mutual concern" does not include retirement benefits for family child care
10 providers, and such benefits are not subject to collective bargaining. "Issues of
11 mutual concern" also does not include coverage by the state employee health
12 insurance program established in Title 5, chapter 13, subchapter 2. Family child care
13 providers are not eligible for coverage under that program.

14 **2. Collective bargaining procedure.** Beginning July 1, 2009, the State, acting
15 through the Governor or the Governor's designees, shall engage in collective bargaining
16 with the collective bargaining agent of family child care providers in accordance with this
17 subsection.

18 A. The parties shall:

- 19 (1) Meet at reasonable times;
20 (2) Meet within 10 days after receipt of written notice from the other party
21 requesting a meeting for collective bargaining purposes, if the parties have not
22 otherwise agreed in a prior written contract;
23 (3) Execute any written agreements arrived at;
24 (4) At the request of either party, submit unresolved issues of mutual concern to
25 a mutually acceptable neutral 3rd party for mediation and nonbinding arbitration
26 as the method of concluding the collective bargaining process;
27 (5) At the request of either party, submit disputes concerning collective
28 bargaining as set forth in subparagraphs (1) to (3) to a mutually acceptable
29 neutral 3rd party for mediation, binding arbitration and appropriate remedies; and
30 (6) In the event the State and the collective bargaining agent of providers cannot
31 agree to a mutually acceptable neutral 3rd party as specified in subparagraphs (4)
32 and (5), each shall designate one individual to choose the neutral 3rd party, and
33 the State and the collective bargaining agent shall accept the neutral 3rd party
34 chosen jointly by the 2 designated individuals.

35 B. Pursuant to this subsection, neither party is compelled to agree to a proposal or to
36 make a concession. This subsection does not preclude the parties from jointly
37 establishing rules and procedures to govern the relationship in lieu of the procedures
38 set forth in this subsection.



1 C. Cost items agreed upon in collective bargaining between the parties must be
2 submitted for inclusion in the Governor's next operating budget within 10 days after
3 the date on which an agreement is executed by the parties. If the Legislature rejects
4 any of the cost items submitted to it, all cost items submitted must be returned to the
5 parties for further bargaining.

6 D. The terms of any collective bargaining agreement reached under this section that
7 require modification of existing rules are contingent on the successful completion of
8 the rule-making process under the Maine Administrative Procedure Act. The results
9 of the rule-making process may require reconsideration of, or modification to, any
10 contingent agreement.

11 E. The terms of any collective bargaining agreement reached under this section may
12 not be construed to affect the conduct of any administrative or judicial action pending
13 against a family child care provider for child abuse or neglect.

14 **3. Representation of family child care providers.** The collective bargaining unit
15 for the purpose of family child care provider representation is described in this
16 subsection.

17 A. For the purposes of this section, the collective bargaining unit consists of all
18 family child care providers in the State.

19 B. The State shall recognize as the initial collective bargaining agent of family child
20 care providers the collective bargaining agent certified in October 2007 as the
21 majority representative in an election held among family child care providers in the
22 State, and that collective bargaining agent must be recognized as the sole and
23 exclusive collective bargaining agent for the collective bargaining unit of family child
24 care providers.

25 C. Family child care providers or the State may seek subsequent elections by using
26 the election procedures set forth in Title 26, section 967, and any such elections are
27 subject to the requirements and limitations set forth in that section.

28 D. The collective bargaining agent of family child care providers is required to
29 represent all of the providers in the unit without regard to membership in the
30 organization.

31 E. Unless prescribed or controlled by federal law or regulation, the State and the
32 collective bargaining agent of family child care providers may agree through
33 negotiations to deduct membership dues and service fee obligations from child care
34 subsidy payments. Service fees may be remitted to the collective bargaining agent of
35 family child care providers from subsidy payments without authorization from the
36 provider as long as the fee obligation arises from a lawfully executed collective
37 bargaining agreement.

38 **4. Status of providers.** Family child care providers are deemed to be self-employed
39 and may not be deemed to be public employees or employees of the State for any purpose
40 nor is this section intended to alter the existing relationship between family child care
41 providers and the State or in any way create an employer-employee or principal-agent
42 relationship for any purpose, including, but not limited to, vicarious liability in tort or
43 statutory health or retirement benefits.



1 5. State action exemption. It is the intent of the Legislature that the state action
2 exemption to the application of federal and state antitrust laws be fully available to the
3 extent that the activities of family child care providers and their representatives are
4 authorized under this chapter.

5 6. Right of families to select family child care provider. The provisions of this
6 section do not limit the right of families receiving services described in this chapter to
7 select family child care providers or supervise them within the limits of this chapter.

8 **Sec. 2. Designing constructive relationship; report.** The Department of
9 Health and Human Services shall work with the family child care providers' collective
10 bargaining agent recognized under the Maine Revised Statutes, Title 22, section 8308,
11 subsection 3 to design and structure a collaborative and constructive relationship and
12 shall do so in a way that is respectful of resources and time constraints facing the
13 Department of Health and Human Services and the State. The Department of Health and
14 Human Services and the collective bargaining agent shall submit a report to the joint
15 standing committee of the Legislature having jurisdiction over labor matters and the joint
16 standing committee of the Legislature having jurisdiction over health and human services
17 matters on their progress by April 1, 2009.'

18 **SUMMARY**

19 The bill provided for collective bargaining between the State and family child care
20 providers in order to improve the quality of child care services in the State. This
21 amendment further delineates the process and specifies the issues of mutual concern that
22 are subject to collective bargaining between the parties. It also ensures that the
23 Department of Health and Human Services and the family child care providers' collective
24 bargaining agent work collaboratively in the establishment of this relationship.

25 **FISCAL NOTE REQUIRED**
26 **(See attached)**



123rd MAINE LEGISLATURE

LD 2095

LR 2843(02)

An Act To Ensure the Freedom of Family Child Care Providers To Jointly Negotiate with the State

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Labor
Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$0	\$0	\$109,561	\$112,248
Appropriations/Allocations				
General Fund	\$0	\$0	\$109,561	\$112,248

Fiscal Detail and Notes

A General Fund appropriation of \$109,561 will be required for the Department of Administrative and Financial Services in fiscal year 2009-10 to provide funds for a Labor Relations Specialist position and general operating expenses to negotiate and administer the collective bargaining agreements. The bill would have an undetermined potential fiscal impact due to the uncertainty of arbitrators' binding decisions relating to negotiated cost items between family child care providers and the State. Additional costs to the Maine Labor Relations Board can be absorbed within existing budgeted resources.