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HOUSE BILL 632

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CHILD CARE; ENACTING A NEW SECTION OF CHAPTER 50
NMSA 1978 TO PROVIDE FOR COLLECTIVE BARGAINING AND
REPRESENTATION OF CHILD CARE PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50 NMSA 1978 is
enacted to read:

"~~[NEW MATERIAL]~~ FAMILY CHILD CARE PROVIDER COLLECTIVE
BARGAINING--REPRESENTATION.--

A. The purpose of this section is to authorize
family child care providers to organize and collectively
bargain on all matters specified in this section. It is the
intent of the legislature that the state action exemption to
the application of federal and state antitrust laws be fully
available to the extent that the activities of the family child

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1 care providers and their representatives are authorized under
2 this section.

3 B. Family child care providers shall have the right
4 to form, join or assist a labor organization for the purpose of
5 collective bargaining through representatives chosen by family
6 child care providers without interference, restraint or
7 coercion and shall have the right to refuse any such
8 activities.

9 C. The exclusive representative may be selected by
10 mail ballot election conducted by a reputable organization with
11 experience in conducting representation elections. In order
12 for an election to occur, a representative or representative
13 organization shall have collected signed cards from at least
14 thirty percent of affected family child care providers
15 indicating their desire for representation. The organization
16 conducting the election shall establish procedures to ensure
17 the secrecy of any ballot cast in any election held pursuant to
18 this section. Costs of the election shall be borne by the
19 labor organization seeking exclusive representative status.
20 The providers in the unit shall be offered the opportunity to
21 choose between the following:

22 (1) representation by the provider
23 organization; or

24 (2) no representation.

25 D. A labor organization that has been certified

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1 through the process as representing the family child care
2 providers shall be the exclusive representative for all family
3 child care providers for the purposes of negotiating a
4 collective bargaining agreement with the children, youth and
5 families department.

6 E. The children, youth and families department
7 shall meet with the family child care providers and their
8 exclusive representative with the purpose of entering into a
9 written agreement that shall be binding upon both the state and
10 the exclusive representative. The written agreement shall
11 include a binding arbitration procedure, grievance process, the
12 creation of a labor-management committee that will meet
13 regularly to discuss concerns and issues as they arise and
14 mechanisms for dues and representation fees collection.

15 F. Topics of negotiations will include terms and
16 conditions under which family child care providers provide
17 child care in their homes and in the homes of parents,
18 including reimbursement rates and payment procedures for
19 publicly funded care, benefits, health and safety conditions,
20 the monitoring and evaluating of family child care homes,
21 licensing and other fees, quality rating standards, training
22 and certification requirements and any other matters that would
23 improve recruitment and retention of qualified family child
24 care providers and the quality of the programs they provide.

25 G. An agreement provision by the state and the

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1 exclusive representative that requires the expenditure of funds
2 shall be contingent upon the specific appropriation of funds by
3 the legislature and the availability of funds.

4 H. Should the parties be unable to reach an
5 agreement, the parties shall follow the impasse resolution
6 procedure as outlined in the Public Employee Bargaining Act.

7 I. The children, youth and families department
8 shall not:

9 (1) discriminate or knowingly allow any other
10 organizations with which the children, youth and families
11 department contracts to administer services related to child
12 care to discriminate against a family child care provider with
13 regard to the terms and conditions of its relationship with the
14 provider because of the provider's membership in a labor
15 organization;

16 (2) take negative action against a family
17 child care provider or knowingly allow any other organizations
18 with which the children, youth and families department
19 contracts to administer services related to child care to take
20 negative action because the provider has signed or filed an
21 affidavit, petition, grievance or complaint or given
22 information or testimony or because the provider is forming,
23 joining or choosing to be represented by a labor organization;

24 (3) refuse to bargain collectively in good
25 faith with the labor organization; or

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1 (4) refuse to comply with a collective
2 bargaining agreement reached with the labor organization
3 pursuant to this section.

4 J. The labor organization shall not:

5 (1) discriminate against a family child care
6 provider with regard to labor organization membership because
7 of race, color, religion, creed, age, sex or national origin;

8 (2) refuse to bargain collectively in good
9 faith with the children, youth and families department; or

10 (3) refuse to comply with a collective
11 bargaining agreement reached with the children, youth and
12 families department pursuant to this section.

13 K. By entering into an agreement, the children,
14 youth and families department does not intend to interfere with
15 parental rights to select or deselect family child care
16 providers and will not interfere with rates of payment paid
17 through parents' private money to family child care providers.

18 L. In enacting bargaining rights for family child
19 care providers, the state intends to provide state action
20 immunity under federal and state antitrust laws for the
21 activities of family child care providers and their exclusive
22 bargaining representative to the extent such activities are
23 authorized by this section.

24 M. As used in this section:

25 (1) "exclusive representative" means a labor

1 organization that, as a result of certification, has the right
2 to represent family child care providers in an appropriate
3 bargaining unit for the purposes of collective bargaining;

4 (2) "family child care provider" means a
5 person who:

6 (a) provides regularly scheduled care
7 for a child or children in the home of the provider for periods
8 of less than twenty-four hours or, if necessary due to the
9 nature of the parent's work, for periods equal to or greater
10 than twenty-four hours;

11 (b) receives child care subsidies;

12 (c) is licensed by the state to care for
13 no more than twelve children; or

14 (d) is registered with the state to
15 participate in the child and adult care food program and is a
16 vendor in the state and federal child care assistance program
17 to care for no more than six children; and

18 (3) "labor organization" means an employee
19 organization whose purposes include the representation of
20 family child care providers in collective bargaining and in
21 otherwise meeting, consulting and conferring with the children,
22 youth and families department on matters pertaining to
23 employment relations.

24 N. If any part or application of this section is
25 held invalid, the remainder or its application to other

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situations or persons shall not be affected."

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