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SENATE BILL 380

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE ACCESS TO QUALITY CHILD CARE WORKFORCE ACT; PROVIDING A PROCESS FOR REPRESENTATION FOR EMPLOYEES OF NONRESIDENTIAL CHILD CARE CENTERS.

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

Section 1. SHORT TITLE.--This act may be cited as the "Access to Quality Child Care Workforce Act".

Section 2. FINDINGS--PURPOSE.--

A. The legislature finds that child care centers perform an essential service in this state, but lack an organized voice on issues that affect the manner in which they carry out their profession. Child care centers should be given the option to organize themselves and select representatives for the purpose of discussing with the state the conditions of their employment, including the stability, funding and

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1 operation of child care programs and the expansion of quality
2 child care.

3 B. The purpose of the Access to Quality Child Care
4 Workforce Act is to allow child care centers to organize and
5 bargain collectively and to provide state action immunity under
6 federal and state antitrust laws for the joint activities of
7 those caregivers and their exclusive bargaining representatives
8 to the extent such activities are authorized. The purpose of
9 the Access to Quality Child Care Workforce Act is not to modify
10 the rights of employers and employees under the National Labor
11 Relations Act, but to retain the state action exemption to the
12 application of federal and state antitrust laws to the extent
13 that the activities of the caregivers and their representatives
14 are authorized under the Access to Quality Child Care Workforce
15 Act.

16 Section 3. DEFINITIONS.--As used in the Access to Quality
17 Child Care Workforce Act:

18 A. "board" means the public employee labor
19 relations board;

20 B. "caregiver" means an individual over the age of
21 eighteen who directly cares for, serves and supervises children
22 in a child care center and includes the directors of a child
23 care center;

24 C. "child care center" means a facility that:

25 (1) employs caregivers in a nonresidential

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1 setting;

2 (2) provides care, services, education and
3 supervision to children for less than twenty-four hours per
4 day;

5 (3) receives state subsidies; and

6 (4) is licensed by the department;

7 D. "department" means the children, youth and
8 families department;

9 E. "designated unit representative" means a labor
10 organization that is certified by the board to represent all
11 caregivers in a child care center for the purpose of bargaining
12 collectively;

13 F. "labor organization" means an employee
14 organization whose purpose is the representation of a unit in
15 meetings and consulting and conferring with the state on
16 matters pertaining to the Access to Quality Child Care
17 Workforce Act; and

18 G. "unit" means all caregivers employed in a child
19 care center.

20 Section 4. DEMONSTRATION OF MAJORITY DESIGNATION.--

21 A. A labor organization seeking to be certified as
22 the designated unit representative of a unit shall submit
23 authorization cards approving the labor organization's
24 representation, signed within twelve months of their submission
25 by the majority of caregivers constituting the unit, to the

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1 board.

2 B. The board or its designee shall review the
3 authorization cards and, upon a determination that a majority
4 of the caregivers in a child care center have designated a
5 labor organization to be the designated unit representative,
6 shall certify that labor organization as the designated unit
7 representative.

8 C. If the board determines that at least thirty
9 percent, but no more than fifty percent, of the caregivers in a
10 child care center have designated a labor organization to be
11 the designated unit representative, the unit shall conduct an
12 election in a manner directed by the board and consistent with
13 mail-in ballot election procedures. If the majority of
14 caregivers in the child care center elects a labor organization
15 as the designated unit representative, the board shall certify
16 that labor organization as the designated unit representative.

17 D. State agencies, including the department, shall
18 provide the board with any information reasonably necessary to
19 determine the size of a unit and the identities of the unit's
20 members within ten business days of a written request for the
21 information. The board shall take all necessary steps to
22 protect the confidentiality of unit member information,
23 including requiring limitations on dissemination of
24 information.

25 E. A person seeking to challenge the certification

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1 of a designated unit representative may submit information to
2 the board indicating that a majority of the unit members wish
3 to be represented by a different representative, or do not wish
4 to be represented under the terms of the Access to Quality
5 Child Care Workforce Act. The board shall determine whether
6 the information provides a reasonable basis for such a
7 conclusion. The board may adopt a process to verify that all
8 procedures leading to the certification of a designated unit
9 representative are properly followed, including a review of the
10 submission of authorization cards and of the election. The
11 board may review a challenged certification unless a review had
12 been made within the previous two years.

13 Section 5. NEGOTIATIONS.--

14 A. The department shall meet with a certified
15 designated unit representative for the purpose of entering into
16 a written agreement. The agreement may address the following
17 issues:

- 18 (1) the stability, funding and operation of
19 child care programs;
20 (2) expansion of quality child care;
21 (3) improvement of working conditions;
22 (4) state subsidies;
23 (5) health and retirement benefits or
24 payments;
25 (6) professional development and training;

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1 (7) committees; and

2 (8) grievance procedures.

3 B. If the issues discussed pursuant to Subsection A
4 of this section require the participation or approval of other
5 state agencies, those agencies shall participate in the
6 discussions.

7 C. Any agreement reached by the parties to a
8 negotiation shall be reduced to a written agreement. If an
9 agreement is reached, the department shall submit as a part of
10 its proposed yearly operating budget a request for funds
11 necessary to implement the agreement or for legislation
12 necessary to implement the agreement. If adequate funds are
13 not available to implement an agreement, the agreement shall be
14 reopened solely for the purpose of renegotiating the funding
15 necessary to implement the agreement.

16 D. If any provision of the agreement requires
17 legislative action, including the appropriation of funds, in
18 order to be effective, the parties to the agreement shall
19 jointly seek legislation or appropriation.

20 E. In the event any dispute arises under the terms
21 of the Access to Quality Child Care Workforce Act, on the
22 application of any designated unit representative, the
23 department or any other involved state agency, the board may
24 direct the parties to engage in binding arbitration for non-
25 economic issues under such terms and conditions as the board

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1 deems appropriate.

2 F. After the expiration date of an agreement
3 entered into under this section, all of the terms and
4 conditions specified in the agreement shall remain in effect
5 until the effective date of a subsequent agreement between the
6 parties to the original agreement.

7 G. If a significant revenue shortfall occurs
8 resulting in reduced appropriations after the compensation and
9 benefit provisions of an agreement are approved, the parties to
10 the agreement shall immediately enter into negotiations for a
11 mutually agreed modification of the agreement.

12 Section 6. LIMITATIONS.--Nothing in the Access to Quality
13 Child Care Workforce Act shall:

14 A. permit caregivers collectively to engage in any
15 strike or work action to secure any right or privilege from the
16 state or any of its agencies or political subdivisions and to
17 preclude workers from their right to strike pursuant to the
18 National Labor Relations Act;

19 B. interfere with any right a child care center or
20 any organization that represents the child care center may
21 otherwise have to meet, correspond with or otherwise appear
22 before a state agency; or

23 C. allow the department to discriminate against a
24 child care center because the caregivers are represented by a
25 designated unit representative.

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1 Section 7. RIGHTS OF REPRESENTATIVE.--

2 A. The department shall enter into an agreement
3 with a designated unit representative to provide for an
4 administrative fee to be paid to the representative for the
5 costs of representation of caregivers and for the
6 administration of any agreement reached pursuant to the Access
7 to Quality Child Care Workforce Act. The department shall
8 deduct the administrative fee from the monthly amount of any
9 additional child care subsidy due to a child care center and
10 transmit the administrative fee to the designated unit
11 representative, not to exceed two percent of the subsidy.

12 B. A child care center that is operated by a church
13 or other religious entity for which payment of an
14 administrative fee is contrary to bona fide religious tenets
15 shall pay an amount equivalent to the administrative fee to a
16 nonreligious charity or to another charitable organization
17 mutually agreed upon by the child care center and the
18 designated unit representative to which the center would
19 otherwise pay the administrative fee. The child care center
20 shall furnish written proof that such payment has been made.
21 If the child care center and the designated unit representative
22 do not reach agreement on the identity of an appropriate
23 charitable organization, the board shall designate the
24 charitable organization.

25 Section 8. SEVERABILITY.--If any part or application of

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1 the Access to Quality Child Care Workforce Act is held invalid,
2 the remainder of its application to other situations or persons
3 shall not be affected.

4 Section 9. PREEMPTION.--If any part of the Access to
5 Quality Child Care Workforce Act is found to be in conflict
6 with federal requirements that are a condition to the
7 allocation of federal funds to the state, the conflicting part
8 of the Access to Quality Child Care Workforce Act is
9 inoperative solely to the extent of the conflict and with
10 respect to the agencies directly affected, and this finding
11 does not affect the operation of the remainder of the Access to
12 Quality Child Care Workforce Act in its application to the
13 agencies concerned. Rules adopted under that act shall meet
14 federal requirements that are a necessary condition to the
15 receipt of federal funds by the state.