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Public Law
123rd Legislature
Second Regular Session

Chapter 672
H.P. 1481 - L.D. 2095

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

Be it enacted by the People of the State of Maine as follows:

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;

(4) Contract grievance arbitration;

(5) Member dues deduction;

(6) Representation or service fees for nonmembers; and

(7) Any changes to current practice other than those listed in subparagraphs (1) to (6) that would improve recruitment and retention of qualified providers, would improve the quality of the programs they provide, would encourage qualified providers to seek additional education and training and would promote the health and safety of providers and the children in their care.

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

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

A. The parties shall:

(1) Meet at reasonable times;

(2) Meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, if the parties have not otherwise agreed in a prior written contract;

(3) Execute any written agreements arrived at;

(4) At the request of either party, submit unresolved issues of mutual concern to a mutually acceptable neutral 3rd party for mediation and nonbinding arbitration as the method of concluding the collective bargaining process;

(5) At the request of either party, submit disputes concerning collective bargaining as set forth in subparagraphs (1) to (3) to a mutually acceptable neutral 3rd party for mediation, binding arbitration and appropriate remedies; and

(6) In the event the State and the collective bargaining agent of providers cannot agree to a mutually acceptable neutral 3rd party as specified in subparagraphs (4) and (5), each shall designate one individual to choose the neutral 3rd party, and the State and the collective bargaining agent shall accept the neutral 3rd party chosen jointly by the 2 designated individuals.

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

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

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

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

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

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

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

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

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

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

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

5. State action exemption. 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 family child care providers and their representatives are authorized under this chapter.

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

7. Exception for certain providers. Any family child care provider who is a member, as of May 1, 2008, of an active regional or local family child care provider association incorporated as a nonprofit corporation with the Secretary of State may elect, but is not required, to become a member of the collective bargaining agent, or pay service fees pursuant to the collective bargaining agreement.

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

Sec. 3. Review of statewide vacancies. The Commissioner of Administrative and Financial Services shall review vacant positions throughout State Government, regardless of funding source, and shall identify positions to be eliminated. The Commissioner of Administrative and Financial Services is authorized to identify savings to the General Fund from this review. Notwithstanding any other provision of law, the State Budget Officer shall eliminate one additional position and available balances by financial order upon approval of the Governor in order that an additional \$106,952 in General Fund savings is realized in fiscal year 2008-09.

Sec. 4. Calculation and transfer; General Fund savings through eliminating vacant positions. Notwithstanding any other provision of law, the State Budget Officer shall calculate the amount of savings from position eliminations that result from section 3 that applies against each General Fund account and shall transfer the amounts by financial order upon approval of the Governor. These transfers are considered adjustments to appropriations and position counts in fiscal year 2008-09. The State Budget Officer shall provide the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over state and local government matters a report of the transferred amounts not later than January 15, 2009.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
Executive Branch Departments and Independent Agencies - Statewide 0017**

Initiative: Deappropriates funds from position vacancies.

GENERAL FUND	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	0.000	(1.000)
Personal Services	\$0	(\$106,952)
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GENERAL FUND TOTAL	\$0	(\$106,952)