

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/11

SPONSOR Ezzell LAST UPDATED _____ HB 449

SHORT TITLE Child Care Provider Collective Bargaining SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*	*	*		

(Parenthesis () Indicate Expenditure Decreases)

*See FISCAL IMPLICATIONS that note future budgetary costs.

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Attorney General's Office (AGO)

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 449 repeals Section 50-4-33 NMSA 1978 which deals with authorizing collective bargaining for family childcare providers.

FISCAL IMPLICATIONS

CYFD noted under the current collective bargaining agreement the Children, Youth and Families Department is required to enter into negotiations with the collective bargaining unit with respect to development of an automated approach to provider dues deductions. If CYFD is required to deduct provider dues on behalf of the American Federation of State, County and Municipal Employees (AFSCME), the service delivery system modification required is estimated to cost in the hundreds of thousands of dollars and will not be possible until May 2012. The agreement states that AFSCME "shall pay for all exploratory costs, administrative costs of implementation and any information technology integration requirements as a consequence of implementing a dues deduction system." However, CYFD reported the department anticipates the deduction of dues would also result in ongoing administrative burden and maintenance of the service delivery system. The agreement does not provide for AFSCME's payment of these ongoing costs. Also, CYFD anticipates the grievance process outlined in the agreement will require additional staff.

The repealing of Section 50-4-33 NMSA 1978 regarding the authorizing of collective bargaining for family childcare providers will negate the anticipated future budgetary costs that would be incurred by the Children, Youth and Families Department.

SIGNIFICANT ISSUES

CYFD reported a collective bargaining agreement was signed by former Governor Richardson and AFSCME representatives on December 30, 2010. The following avenues for communication with CYFD already address several of the measures that are outlined in the collective bargaining agreement:

- CYFD has a process in place that allows for frequent communication with childcare providers to address their concerns;
- There is an appeal process clearly outlined in the childcare licensing, childcare assistance and registered home regulations which providers are entitled to use when they dispute an action the department takes against their license or registration; and
- The existing rule making process allows for public comment from childcare providers and other interested parties.

CYFD noted the collective bargaining agreement applies not only to the department's licensing staff, but to the Training and Technical Assistance Program and U.S. Department of Agriculture funded food monitors from the Family Nutrition Program, both of whom serve as contractors to the department. Ensuring compliance with the collective bargaining agreement will require the creation of procedures, interpretive guidelines and forms, and the revision of policies. CYFD noted this could be an additional cost to the department and contractors.

CYFD reported as a state agency, the department does not qualify as an "employer" of childcare providers as defined by the Public Employee Bargaining Act. The relationship between providers and the state is a contractual or vendor relationship and has traditionally been addressed through the public rule-making process and the public policy advocacy process. It is also governed by federal childcare law and regulations.

There are 4,505 registered home childcare providers and 347 licensed childcare homes in New Mexico at present. The terms and conditions, under which family childcare providers supply child care in their homes, is regulated by the New Mexico Administrative Code.

CYFD reported the childcare assistance program is funded primarily through the federal Child Care and Development Fund. The federal funding to New Mexico is static and therefore costs associated with implementation of the articles of the agreement, and any future agreement, regarding increased rates for home providers is not possible unless additional funding for the childcare program is obtained. Also, CYFD reported funding used to support the collective bargaining agreement will be taken from funding that would otherwise support low income families who qualify for childcare assistance and increasing the quality of all child care.

CYFD reported that payments are made to childcare providers on behalf of the families who receive the services. It may require further research to ascertain whether it would be necessary for the childcare assistance client to approve a deduction from the payment made to a provider on his or her behalf.

CYFD is currently maintaining a waiting list for childcare assistance for families with incomes

above 100 percent of the federal poverty level. CYFD decreased provider reimbursement rates by four percent in November 2010 and increased childcare assistance clients' copayments by 10 percent to address a shortfall in the transfer of Temporary Assistance for Needy Families (TANF) funding from the Human Services Department.

SPO reported the proposed legislation would not require the Children, Youth and Families Department to negotiate an agreement that includes reimbursement rates, payment procedures, health and safety conditions, monitoring and evaluation of family child care homes, licensing and other fees, quality rating standards, training and certification requirements, areas to improve retention recruitment and retention of qualified providers. The proposed legislation would nullify any collective bargaining agreement between the Children, Youth and Families Department and family childcare providers and the terms of the contract, such as binding arbitration procedure, grievance process, a labor-management committee, and collection of dues by the Children, Youth and Families Department.

AGO reported if there is a negotiated contract in place, then the proposed legislation is vulnerable to legal challenge on grounds that the New Mexico Constitution, Article II, Section 19, states that no law, "impairing the obligation of contracts shall be enacted by the legislature."

ADMINISTRATIVE IMPLICATIONS

CYFD reported the proposed legislation would alleviate the significant administrative impact the department faces as a result of the collective bargaining agreement. CYFD anticipated the maintenance of the dues deduction system and the administrative burden necessitated by the grievance process will require additional staff.

RPG/bym