

HOUSE BILL NO. 46

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES FIELDS, Armstrong, Groh, Himschoot, Carrick, Josephson, Gray, Galvin, Dibert

Introduced: 1/25/23

Referred: Labor and Commerce, State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act allowing child care providers that receive state aid to organize and collectively**
2 **bargain with the Department of Health; and establishing the child care provider fund."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 23.05.360(f) is amended to read:

5 (f) For purposes of holding hearings, the members of the board sit in panels of
6 three members. The chair designates the panel that will consider a matter. Each panel
7 must include a representative of management, a representative of labor, and a
8 representative from the general public. A member of one panel may serve on the other
9 panel when the chair considers it necessary for the prompt administration of
10 AS 23.40.070 - 23.40.260 (Public Employment Relations Act), AS 23.40.300 -
11 23.40.450, or AS 42.40 (Alaska Railroad Corporation Act).

12 * **Sec. 2.** AS 23.05.370(a) is amended to read:

13 (a) The agency shall
14 (1) establish its own rules of procedure;

1 (2) exercise general supervision and direct the activities of staff
2 assigned to it by the department;

3 (3) prepare and submit to the governor an annual report on labor
4 relations problems it has encountered during the previous year, including
5 recommendations for legislative action; the agency shall notify the legislature that the
6 report is available;

7 (4) serve as the labor relations agency under AS 23.40.070 - 23.40.260
8 (Public Employment Relations Act) and carry out the functions specified in that Act;
9 [AND]

10 (5) serve as the labor relations agency under AS 23.40.300 -
11 23.40.450 and carry out the functions specified in those sections; and

12 (6) serve as the railroad labor relations agency for the Alaska Railroad
13 under AS 42.40 (Alaska Railroad Corporation Act) and carry out the functions
14 specified in that Act.

15 * **Sec. 3.** AS 23.05.380 is amended to read:

16 **Sec. 23.05.380. Regulations.** The agency shall adopt regulations under
17 AS 44.62 (Administrative Procedure Act) to carry out labor relations functions under
18 AS 23.05.360 - 23.05.390, AS 23.40.070 - 23.40.260, AS 23.40.300 - 23.40.450, and
19 AS 42.40.730 - 42.40.890.

20 * **Sec. 4.** AS 23.40 is amended by adding new sections to read:

21 **Article 3. Child Care Provider Organizations.**

22 **Sec. 23.40.300. Bargaining with child care provider organizations.** The
23 Department of Health shall negotiate with and enter into written agreements with child
24 care provider organizations on matters of wages, hours, and other terms and conditions
25 of employment in the child care sector.

26 **Sec. 23.40.310. Rights of child care providers.** Child care providers may self-
27 organize and form, join, or assist an organization to bargain collectively through
28 representatives of their own choosing, and engage in concerted activities for the
29 purpose of collective bargaining or other mutual aid or protection.

30 **Sec. 23.40.320. Collective bargaining unit.** The labor relations agency shall
31 decide in each case, in order to assure to child care providers the fullest freedom in

exercising the rights guaranteed by AS 23.40.300 - 23.40.450, the unit appropriate for the purposes of collective bargaining, based on factors that may include community of interest, wages, hours, and other working conditions of the child care providers involved, the history of collective bargaining, and the desires of the child care providers. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

Sec. 23.40.330. Representatives and elections. (a) The labor relations agency shall investigate a petition if the petition is submitted in a manner prescribed by the labor relations agency and is

(1) by a child care provider, a group of child care providers, or an organization acting on their behalf alleging that 30 percent of the child care providers in a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or child care provider organization as exclusive representative; or

(B) assert that the organization that has been certified or is currently being recognized by the Department of Health as bargaining representative is no longer the representative of the majority of child care providers in the bargaining unit; or

(2) by the Department of Health alleging that one or more organizations have presented to it a claim to be recognized as a representative of a majority of child care providers in an appropriate bargaining unit.

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, the agency shall provide for an appropriate hearing upon due notice. If the labor relations agency finds that there is a question of representation, the agency shall direct an election by secret ballot to determine whether or by which organization the child care providers want to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the labor relations agency or an election in a bargaining unit agreed on by the parties. The labor relations agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices

on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election it shall be certified by the labor relations agency as exclusive representative of all the child care providers in the bargaining unit.

(c) An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding 12 months.

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by the Department of Health by mutual consent.

(e) An election may not be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of child care providers in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

Sec. 23.40.340. Unfair labor practices. (a) The Department of Health or an agent of the Department of Health may not

(1) interfere with, restrain, or coerce a child care provider in the exercise of a right guaranteed in AS 23.40.310;

(2) dominate or interfere with the formation, existence, or administration of an organization;

(3) discriminate against a child care provider for signing or filing an affidavit, petition, or complaint or giving testimony under AS 23.40.300 - 23.40.450;

(4) refuse to bargain collectively in good faith with an organization that is the exclusive representative of child care providers in an appropriate unit, including the discussing of grievances with the exclusive representative.

(b) An organization or its agents may not

(1) restrain or coerce

(A) a child care provider in the exercise of the rights

1 guaranteed in AS 23.40.310; or

2 (B) the Department of Health in the selection of the
3 department's representative for the purposes of collective bargaining or the
4 adjustment of grievances;

5 (2) refuse to bargain collectively in good faith with the Department of
6 Health if it has been designated in accordance with the provisions of AS 23.40.300 -
7 23.40.450 as the exclusive representative of child care providers in an appropriate unit.

8 **Sec. 23.40.350. Investigation and conciliation of complaints.** If a verified
9 written complaint by or for a person claiming to be aggrieved by a practice prohibited
10 by AS 23.40.340, or a written accusation that a person subject to AS 23.40.300 -
11 23.40.450 has engaged in a prohibited practice, is filed with the labor relations agency,
12 the agency shall investigate the complaint or accusation. If the labor relations agency
13 determines after the preliminary investigation that probable cause exists in support of
14 the complaint or accusation, the agency shall try to eliminate the prohibited practice
15 by informal methods of conference, conciliation, and persuasion. Nothing said or done
16 during this endeavor may be used as evidence in a subsequent proceeding.

17 **Sec. 23.40.360. Complaint and accusation.** If the labor relations agency fails
18 to eliminate the prohibited practice by conciliation and to obtain voluntary compliance
19 with AS 23.40.300 - 23.40.450, or, before it attempts conciliation, the agency may
20 serve a copy of the complaint or accusation on the respondent. The complaint or
21 accusation and the subsequent procedures shall be handled in accordance with the
22 administrative adjudication portion of AS 44.62 (Administrative Procedure Act).

23 **Sec. 23.40.370. Orders and decisions.** If the labor relations agency finds that
24 a person named in the written complaint or accusation has engaged in a prohibited
25 practice, the labor relations agency shall issue and serve on the person an order or
26 decision requiring the person to cease and desist from the prohibited practice and to
27 take affirmative action that will carry out the provisions of AS 23.40.300 - 23.40.450.
28 If the labor relations agency finds that a person named in the complaint or accusation
29 has not engaged or is not engaging in a prohibited practice, the labor relations agency
30 shall state its findings of fact and issue an order dismissing the complaint or
31 accusation.

1 **Sec. 23.40.380. Enforcement by injunction.** The labor relations agency may
 2 apply to the superior court in the judicial district in which the prohibited practice
 3 occurred for an order enjoining the prohibited acts specified in the order or decision of
 4 the labor relations agency. Upon a showing by the labor relations agency that the
 5 person has engaged or is about to engage in the practice, an injunction, restraining
 6 order, or other order that is appropriate may be granted by the court and shall be
 7 without bond.

8 **Sec. 23.40.390. Power to investigate and compel testimony.** (a) For the
 9 purpose of the investigations, proceedings, or hearings that the labor relations agency
 10 considers necessary to carry out the provisions of AS 23.40.300 - 23.40.450, the labor
 11 relations agency may issue subpoenas requiring the attendance and testimony of
 12 witnesses and the production of relevant evidence.

13 (b) The labor relations agency may administer oaths, examine witnesses, and
 14 receive evidence.

15 (c) The attendance of witnesses and the production of evidence may be
 16 required from any place in the state at any designated place of hearing.

17 (d) If a person refuses to obey a subpoena issued under AS 23.40.300 -
 18 23.40.450, the superior court in the district in which the person resides or is found
 19 may, upon application by the labor relations agency, issue an order requiring the
 20 person to comply with the subpoena.

21 **Sec. 23.40.400. Regulations.** The labor relations agency may adopt regulations
 22 under AS 44.62 (Administrative Procedure Act) to carry out the provisions of
 23 AS 23.40.300 - 23.40.450.

24 **Sec. 23.40.410. Penalty for violation of order or decision.** A person who
 25 violates a provision of an order or decision of the labor relations agency is guilty of a
 26 misdemeanor and is punishable by a fine of not more than \$500.

27 **Sec. 23.40.420. Mediation.** If, after a reasonable period of negotiation over the
 28 terms of a collective bargaining agreement, a deadlock exists between the Department
 29 of Health and an organization, the labor relations agency may appoint a competent,
 30 impartial, disinterested person to act as mediator in any dispute either on its own
 31 initiative or upon the request of one of the parties to the dispute. The parties may also

1 select a mediator by agreement or mutual consent. It is the function of the mediator to
 2 bring the parties together voluntarily under favorable auspices as will tend to carry out
 3 settlement of the dispute, but neither the mediator nor the labor relations agency has
 4 any power of compulsion in mediation proceedings.

5 **Sec. 23.40.430. Monetary terms subject to legislative funding.** (a) The
 6 monetary terms of any agreement entered into under AS 23.40.300 - 23.40.450 are
 7 subject to funding through legislative appropriation.

8 (b) The Department of Health shall submit the monetary terms of an
 9 agreement to the legislature within 10 legislative days after the agreement of the
 10 parties, if the legislature is in session, or within 10 legislative days after the convening
 11 of the next regular session. The complete monetary and nonmonetary terms of a
 12 tentative agreement shall be submitted to the legislature not later than the 60th day of
 13 the legislative session to receive legislative consideration during that calendar year.
 14 However, if the Department of Health has submitted a tentative agreement in a timely
 15 manner and the parties to the agreement decide to renegotiate the terms, the
 16 renegotiated agreement shall be considered to have been submitted in a timely manner.
 17 In this subsection, "tentative agreement" means an agreement that has been reached by
 18 the negotiators for the Department of Health and the bargaining unit but that may not
 19 yet have been ratified by the members of the bargaining unit.

20 **Sec. 23.40.440. Child care providers and organizations.** (a) Nothing in
 21 AS 23.40.300 - 23.40.450

- 22 (1) forms or terminates an employer-employee legal relationship;
- 23 (2) changes a child care provider's legal status as a corporation, sole
 24 proprietorship, or other legal entity;
- 25 (3) is intended to interfere with compliance by a person, the state, or a
 26 political subdivision of the state with a federal law or a requirement of a federal grant
 27 or subsidy;
- 28 (4) prohibits a child care provider from communicating or attempting
 29 to communicate with another person;
- 30 (5) requires a child care provider to become a member of an
 31 organization that represents child care providers.

(b) A child care provider organization may not administer or process payments for day care.

Sec. 23.40.450. Definitions. In AS 23.40.300 - 23.40.450, unless the context otherwise requires,

(1) "child" has the meaning given in AS 47.25.095;

(2) "child care provider" means a day care center, family day care home, school for children of preschool age, or other entity licensed under AS 47.32.050 that receives state aid, directly or indirectly, for providing day care of a child not related by blood, marriage, or legal adoption to an owner, operator, or manager of the entity;

(3) "collective bargaining" means the performance of the mutual obligation of the Department of Health or the Department of Health's designated representatives and the representative of the child care providers to meet at reasonable times, including meetings in advance of the budget making process, and negotiate in good faith with respect to wages, hours, and other conditions of child care providers, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(4) "day care" has the meaning given in AS 47.25.095;

(5) "election" means a proceeding conducted by the labor relations agency in which the child care providers in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 23.40.300 - 23.40.450;

(6) "labor relations agency" means the Alaska labor relations agency established in AS 23.05.360;

(7) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that

(A) will require an appropriation for their implementation;

(B) will result in a change in state revenue or productive work hours for child care providers; or

(C) addresses child care provider compensation, leave benefits, or health insurance benefits, whether or not an appropriation is required for implementation;

(8) "organization" means a labor or employee organization of any kind in which child care providers participate and that exists for the primary purpose of dealing with the Department of Health concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment;

(9) "state aid" means money paid by the state

(A) to provide day care to the child of a person employed by the state;

(B) to an organized borough of any class, a unified municipality, or a city of any class to pay a child care provider for providing day care;

(C) as the result of a grant under AS 47.25.001 - 47.25.095;

(10) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the Department of Health's policies affecting the working conditions of child care providers, but does not mean the general policies describing the function and purposes of the Department of Health.

* **Sec. 5.** AS 37.14 is amended by adding a new section to read:

Article 11. Child Care Provider Fund.

Sec. 37.14.850. Child care provider fund established. (a) The child care provider fund is established as a separate fund in the state treasury for the purpose of implementing the monetary terms of an agreement applicable to child care providers entered into under AS 23.40.300 - 23.40.450. Money in the fund does not lapse. The fund consists of

(1) money appropriated to the fund;

(2) income earned on investment of fund assets; and

(3) donations to the fund.

(b) For a year in which an agreement applicable to child care providers has not been entered into under AS 23.40.300 - 23.40.450, the Department of Family and Community Services shall convene a child care stakeholder group to recommend

1 disbursements from the child care provider fund. The department shall appoint to the
2 stakeholder group members including child care providers, parents or guardians
3 receiving state child care assistance, parents or guardians providing in-home child
4 care, early education specialists, and parents or guardians from families that speak
5 English as a second language. The stakeholder group must include members
6 representing communities from across the state, and membership must be evenly
7 distributed between communities that are connected by road or rail to Anchorage or
8 Fairbanks and those that are not.

9 (c) The legislature may annually appropriate money from the fund to
10 implement

11 (1) the monetary terms of an agreement applicable to child care
12 providers entered into under AS 23.40.300 - 23.40.450; or

13 (2) disbursement recommendations made by a stakeholder group
14 convened under (b) of this section.

15 (d) Nothing in this section creates a dedicated fund.