



House of Representatives

File No. 586

General Assembly

February Session, 2012 **(Reprint of File No. 218)**

Substitute House Bill No. 5312
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
April 23, 2012

**AN ACT CREATING A PROCESS FOR FAMILY CHILD CARE
PROVIDERS AND PERSONAL CARE ATTENDANTS TO
COLLECTIVELY BARGAIN WITH THE STATE.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2012*) For purposes of this section
2 and sections 2 and 3 of this act:

3 (1) "Parent" means parent or legal guardian; and

4 (2) "Family child care providers" means persons who provide child
5 care services under the child care subsidy program established
6 pursuant to section 17b-749 of the general statutes (A) in a family day
7 care home, as defined in section 19a-77 of the general statutes; or (B) in
8 a home not requiring a license pursuant to subdivision (4) of
9 subsection (b) of section 19a-77 of the general statutes.

10 Sec. 2. (NEW) (*Effective July 1, 2012*) (a) A family child care provider
11 shall not be considered a state employee and shall be exempt from any
12 and all provisions of the general statutes creating rights, obligations,
13 privileges or immunities to state employees as a result of or incident to

14 their state service.

15 (b) Family child care providers shall have the right to bargain
16 collectively and shall have such other rights and obligations incident
17 thereto as are created by sections 5-270 to 5-279, inclusive, of the
18 general statutes except as set forth in subsections (d) to (g), inclusive,
19 of this section, except:

20 (1) The following shall be prohibited subjects of bargaining: (A) The
21 application of state employee benefits to family child care providers,
22 including, but not limited to, health benefits and pensions; (B) a
23 parent's right to (i) recruit, (ii) select, (iii) direct the activities of, and
24 (iv) terminate the services of any family child care provider; and (C) a
25 procedure for grievance arbitration against any parent;

26 (2) No provision of any agreement or award shall provide for a
27 reduction in the services provided by family child care providers to
28 children under section 17b-749 of the general statutes;

29 (3) Any provision in any agreement or award which would require
30 an additional appropriation in order to maintain the levels of services
31 provided by existing appropriations shall be presented to the General
32 Assembly for approval in accordance with the budgetary process set
33 forth in subdivision (8) of subsection (e) of this section;

34 (4) The provisions of section 5-280 of the general statutes shall not
35 apply to family child care providers. An agreement or award reached
36 pursuant to this section may include provisions calling for the state or
37 its fiscal intermediary to deduct from reimbursement payments
38 regular dues and initiation fees, and nonmember service fees limited to
39 the lesser of regular dues, fees and assessments that a member is
40 charged or the proportionate share of expenses incident to collective
41 bargaining. Dues or fees may be charged only with respect to earnings
42 from participation in the child care subsidy program established
43 pursuant to section 17b-749 of the general statutes. No dues or fees
44 may be charged for the first sixty days of a family child care provider's
45 participation in a child care subsidy program established pursuant to

46 said section 17b-749;

47 (5) The provisions of sections 5-276a and 5-276b of the general
48 statutes and subsections (b) to (g), inclusive, of section 5-278 of the
49 general statutes shall not apply to collective bargaining involving
50 family child care providers. Any impasse between the parties shall be
51 resolved in accordance with subsection (e) of this section;

52 (6) In any proceeding which may be filed under section 5-272 of the
53 general statutes, the State Board of Labor Relations shall be without
54 jurisdiction to consider any complaint against, or issue any remedy
55 against, any parent; and

56 (7) Any election required in order to resolve any question
57 concerning representation involving family child care providers shall
58 be conducted by mail ballot. No provision of this section shall grant
59 family child care providers a right to strike and such strikes are
60 prohibited.

61 (c) On or after July 1, 2012, and monthly thereafter, the
62 Commissioner of Social Services shall compile a list of the names of
63 family child care providers who have participated in the child care
64 subsidy program established pursuant to section 17b-749 of the general
65 statutes within the previous six calendar months. Such list shall be
66 considered a public record, as defined in section 1-200 of the general
67 statutes.

68 (d) For purposes of sections 4-65a and 5-270 of the general statutes
69 and subsection (a) of section 5-278 of the general statutes, the
70 Department of Social Services shall be considered an executive branch
71 employer and an organization representing family child care providers
72 that has been designated by the State Board of Labor Relations,
73 pursuant to section 5-275 of the general statutes or subsection (g) of
74 this section, as the exclusive bargaining agent of such providers, shall
75 have the right to bargain with the state concerning the terms and
76 conditions of participation of family child care providers in the
77 program covered by this section, including, but not limited to, (1) state

78 reimbursement rates, (2) benefits, (3) payment procedures, (4) contract
79 grievance arbitration, and (5) training, professional development and
80 other requirements and opportunities appropriate for family child care
81 providers.

82 (e) (1) If the organization representing family child care providers
83 and the Department of Social Services do not reach an agreement not
84 later than one hundred fifty days after negotiations have begun, the
85 parties shall jointly select an arbitrator. The arbitrator selected shall
86 have experience as an impartial arbitrator of labor-management
87 disputes, and shall not be an individual employed as an advocate or
88 consultant for labor or management in labor-management disputes. If
89 the parties fail to agree on an arbitrator not later than one hundred
90 sixty days after negotiations have begun, the selection of the arbitrator
91 shall be made using the procedures under the voluntary labor
92 arbitration rules of the American Arbitration Association.

93 (2) Each party shall submit to the arbitrator, and to each other, a
94 proposal setting forth such party's position on how each of the
95 unresolved issues shall be resolved.

96 (3) The arbitrator shall convene a hearing to allow the parties to
97 provide evidence and argument to the arbitrator. The parties shall
98 have the right to submit written briefs to the arbitrator. The arbitration
99 record shall be officially closed at the close of the hearing, or the
100 arbitrator's receipt of briefs, whichever is later.

101 (4) The arbitrator's authority is limited to selecting the complete
102 proposal of one party or the other on any unresolved issue. The
103 arbitrator shall issue an award not later than forty-five days after the
104 close of the record.

105 (5) The factors to be considered by the arbitrator in arriving at a
106 decision are: (A) The nature and needs of the family child care
107 program and the needs and welfare of parents and children served by
108 that program, including interests in better recruitment, retention and
109 quality with respect to the covered family child care provider; (B) the

110 history of negotiations between the parties including those leading to
111 the instant proceeding; (C) the existing conditions of employment of
112 similar groups of workers; (D) changes in the cost of living; and (E) the
113 interests and welfare of the covered family child care providers.

114 (6) The costs of the arbitrator and any fees associated with the
115 arbitration proceeding shall be shared equally by the parties.

116 (7) Any agreement or award reached pursuant to this section shall
117 be submitted to the General Assembly for approval by filing the
118 agreement or award with the clerks of the House and Senate. No
119 provision of any agreement or award resulting from the collective
120 bargaining process which would require supercedence of any law or
121 regulation shall take effect without affirmative legislative approval.

122 (8) Notwithstanding any other provision of this section, any
123 provision in any agreement or award which would require an
124 additional appropriation in order to maintain the levels of services
125 provided by existing appropriations shall be presented to the General
126 Assembly for approval in accordance with the budgetary process
127 applicable to appropriations, including, but not limited to, affirmative
128 legislative approval. Other provisions of the agreement or award shall
129 be deemed approved unless affirmatively rejected by a majority of
130 either house not later than thirty days after the filing with the clerk of
131 that chamber, provided the thirty-day period shall not begin or expire
132 unless the General Assembly is in regular session. Once approved by
133 the General Assembly, any provision of an agreement or award need
134 not be resubmitted by the parties to such agreement or award as part
135 of a future agreement approval process unless changes in the language
136 of such provision are negotiated by the parties.

137 (f) The only bargaining unit of family child care providers
138 appropriate for the purpose of collective bargaining shall be a state-
139 wide unit of all family child care providers.

140 (g) Any provider organization certified as the majority
141 representative of family child care providers in any election held prior

142 to the effective date of this section pursuant to Executive Order
143 Number 9 of Governor Dannel P. Malloy may provide proof of such
144 certification to the State Board of Labor Relations and the State Board
145 of Labor Relations shall certify such majority representative as the
146 exclusive bargaining agent for such providers without the requirement
147 of an additional election unless and until such time as a question
148 concerning representation is appropriately raised under this section
149 and section 1 of this act.

150 Sec. 3. (NEW) (*Effective July 1, 2012*) The state shall not be liable for
151 any action, including, but not limited to, any civil action, any grievance
152 arbitration or any prohibited practice proceeding, brought by the
153 exclusive bargaining agent of such child care workers based upon any
154 alleged wrongdoing by a parent or child arising pursuant to section 2
155 of this act.

156 Sec. 4. (NEW) (*Effective July 1, 2012*) For purposes of this section and
157 sections 5 to 7, inclusive, of this act:

158 (1) "Consumer" means a person who receives services from a
159 personal care attendant under a state-funded program, including, but
160 not limited to, (A) the program for individuals with acquired brain
161 injuries, established pursuant to section 17b-260a of the general
162 statutes, (B) the personal care assistance program, established pursuant
163 to section 17b-605a of the general statutes, (C) the Connecticut home
164 care program for the elderly, established pursuant to section 17b-342 of
165 the general statutes, (D) the pilot program to provide home care
166 services to disabled persons, established pursuant to section 17b-617 of
167 the general statutes, (E) the individual and family support waiver
168 program administered by the Department of Developmental Services,
169 (F) the comprehensive waiver program administered by the
170 Department of Developmental Services, and (G) any state-funded
171 program that provides services from a personal care attendant;

172 (2) "Surrogate" means a consumer's legal guardian or a person
173 identified in a written agreement as having responsibility for the care

174 of a consumer;

175 (3) "Personal care attendants" means persons employed by a
176 consumer or surrogate to provide personal care assistance to a
177 consumer; and

178 (4) "Personal care assistance" means supportive home care, direct
179 support services, personal care or another nonprofessional service
180 provided to a person with a disability or an elderly person who
181 requires assistance to (A) meet such person's daily living needs, (B)
182 ensure such person may adequately function in such person's home, or
183 (C) provide such person with safe access to the community.

184 Sec. 5. (NEW) (*Effective July 1, 2012*) (a) There is established the
185 Personal Care Attendant Workforce Council to ensure the quality of
186 long-term personal home care. Said council shall be composed of the
187 following members:

188 (1) The Commissioner of Social Services, or the commissioner's
189 designee;

190 (2) The Commissioner of Developmental Services, or the
191 commissioner's designee;

192 (3) The Healthcare Advocate, or the Healthcare Advocate's
193 designee;

194 (4) The Secretary of the Office of Policy and Management, or the
195 secretary's designee;

196 (5) Three appointed by the Governor one of whom shall be a
197 member of an organization representing the interests of consumers
198 with developmental disabilities, one of whom shall be a member of an
199 organization representing the interests of consumers with physical
200 disabilities, and one of whom shall be a member of an organization
201 representing the interests of elderly consumers;

202 (6) One appointed by the speaker of the House of Representatives

203 who shall be a member of an organization representing the interests of
204 consumers with developmental disabilities;

205 (7) One appointed by the president pro tempore of the Senate who
206 shall be a member of an organization representing the interests of
207 consumers with physical disabilities;

208 (8) One appointed by the majority leader of the House of
209 Representatives who shall be a member of an organization
210 representing the interests of elderly consumers;

211 (9) One appointed by the majority leader of the Senate who shall be
212 a member of an organization representing the interests of consumers
213 with developmental disabilities;

214 (10) One appointed by the minority leader of the House of
215 Representatives who shall be a member of an organization
216 representing the interests of consumers with physical disabilities; and

217 (11) One appointed by the minority leader of the Senate who shall
218 be a member of an organization representing the interests of elderly
219 consumers.

220 (b) All initial appointments to the council shall be made not later
221 than August 1, 2012. The chairperson of the council shall be appointed
222 by the Governor from among its members. The chairperson shall
223 convene the first meeting of the council not later than September 1,
224 2012. Members of the council shall serve coterminously and at the
225 pleasure of the appointing authority in accordance with section 4-1a of
226 the general statutes. A majority of the members of the Personal Care
227 Attendant Workforce Council shall constitute a quorum for the
228 transaction of any business. Members of the Personal Care Attendant
229 Workforce Council shall receive no compensation for their service but
230 shall be reimbursed for actual expenses necessarily incurred in
231 performance of their duties. The council shall be within the
232 Department of Social Services for administrative purposes only.

233 (c) The Personal Care Attendant Workforce Council shall have the
234 following duties and responsibilities relating to personal care
235 attendants: (1) Study issues relating to the recruitment, retention and
236 adequacy of personal care attendants; and (2) develop a plan to
237 improve the quality, stability and availability of personal care
238 attendants by (A) developing a means to identify and recruit personal
239 care attendants, (B) developing training and educational opportunities
240 for personal care attendants and consumers, (C) developing one or
241 more registries to (i) provide routine, emergency and respite referrals
242 of qualified personal care attendants to consumers and surrogates who
243 are authorized to receive long-term, in-home personal care services by
244 a personal care attendant, (ii) enable consumers and surrogates to
245 access information about prospective personal care attendants such as
246 their training, educational background and work experience, and (iii)
247 provide appropriate employment opportunities for personal care
248 attendants, and (D) establishing standards for wages, benefits and
249 conditions of employment for personal care attendants.

250 (d) On or after July 1, 2013, the commissioners of the departments
251 having cognizance of the covered waiver programs shall review the
252 plans recommended by the Personal Care Attendant Workforce
253 Council pursuant to subsection (c) of this section. The commissioners
254 shall include in budgetary requests submitted to the Office of Policy
255 and Management requests for funding necessary to implement aspects
256 of such plans that meet said commissioners' approval.

257 (e) (1) For purposes of sections 4-65a and 5-270 of the general
258 statutes and subsection (a) of section 5-278 of the general statutes, the
259 Personal Care Attendant Workforce Council shall be within the
260 executive branch of state government. An organization representing
261 personal care attendants that has been designated by the State Board of
262 Labor Relations, pursuant to section 5-275 of the general statutes or
263 subsection (f) of section 6 of this act, as the exclusive bargaining agent
264 of such personal care attendants, shall have the right to bargain with
265 the state concerning the terms and conditions of participation of
266 personal care attendants in the programs covered by this section and

267 section 4 of this act, including, but not limited to, (A) state
268 reimbursement rates, (B) benefits, (C) payment procedures, (D)
269 contract grievance arbitration, and (E) training, professional
270 development and other requirements and opportunities appropriate
271 for such personal care attendants.

272 (2) (A) No provision of any agreement or award which may be
273 reached pursuant to collective bargaining between the state and any
274 organization representing personal care attendants shall interfere with
275 the right of a consumer or surrogate to hire, refuse to hire, supervise,
276 direct the activities of, or terminate the employment of any personal
277 care attendant.

278 (B) In those covered programs where budgets provided to
279 consumers receiving direct support services are allocated using the
280 individual budget methodology, budgets shall be increased to account
281 for additional expenses caused by a contract or award negotiated in
282 accordance with this section which includes increases in wages or
283 benefits.

284 (f) (1) Not later than October 1, 2012, and monthly thereafter, the
285 Personal Care Attendant Workforce Council shall compile and
286 maintain a registry list of the names and addresses of all personal care
287 attendants who have been paid through the state-funded programs
288 identified in subdivision (1) of section 4 of this act within the previous
289 six calendar months. The list shall not include the name of any
290 consumer, or indicate that a personal care attendant is a relative of a
291 consumer or has the same address as a consumer. Any fiscal
292 intermediary that provides administrative services to the state
293 concerning state-funded programs shall assist and cooperate with said
294 council in compiling and maintaining such list. The Personal Care
295 Attendant Workforce Council shall utilize such list for the purposes of
296 this section and sections 6 and 7 of this act. Such list shall be a public
297 record, as defined in section 1-200 of the general statutes.

298 (2) Not later than seven days after receiving a request from an

299 employee organization, as defined in subsection (d) of section 5-270 of
300 the general statutes, that is interested in representing an appropriate
301 unit of personal care attendants, the Personal Care Attendant
302 Workforce Council shall provide to the employee organization the
303 most recent list of personal care attendants compiled pursuant to
304 subdivision (1) of this subsection.

305 Sec. 6. (NEW) (*Effective July 1, 2012*) (a) Personal care attendants
306 shall not be considered state employees and shall be exempt from any
307 and all provisions of the general statutes creating rights, obligations,
308 privileges or immunities to state employees as a result of or incident to
309 their state service.

310 (b) Personal care attendants shall have the right to bargain
311 collectively and shall have such other rights and obligations incident
312 thereto as are created by sections 5-270 to 5-279, inclusive, of the
313 general statutes except as set forth in subsections (c), (d) and (f) of this
314 section, except:

315 (1) The following shall be prohibited subjects of bargaining: (A) A
316 consumer or surrogate's right to (i) hire or refuse to hire, (ii) supervise,
317 (iii) direct the activities of, or (iv) terminate the employment of any
318 personal care attendant, (B) any proposal that would prevent
319 surrogates from hiring personal care attendants not on the registry list
320 described in section 5 of this act, (C) any proposal that would prevent
321 consumers or surrogates from requiring any additional training, (D) a
322 procedure for grievance arbitration against any consumer or surrogate,
323 and (E) application of state employee benefits to personal care
324 attendants, including, but not limited to, health benefits and pensions;

325 (2) No provision of any agreement or award shall provide for a
326 reduction in Medicaid funds provided to the state, nor shall any
327 provision of any agreement or award provide for a reduction in the
328 services of personal care attendants to consumers. Any provision in
329 any agreement or award which would require an additional
330 appropriation in order to maintain the levels of services provided by

331 existing appropriations shall be submitted to the General Assembly for
332 approval in accordance with subdivision (8) of subsection (c) of this
333 section;

334 (3) The provisions of section 5-280 of the general statutes shall not
335 apply to personal care attendants. An agreement or award reached
336 pursuant to this section may include provisions calling for the state or
337 its fiscal intermediary to deduct from reimbursement payments the
338 regular dues, fees and assessments that a member is charged and
339 nonmember service fees limited to the lesser of dues and initiation fees
340 required of members or the proportionate share of expenses incident to
341 collective bargaining. Dues or fees may be charged only with respect to
342 earnings from participation in the waiver programs covered by this
343 section. No dues or fees may be charged for the first sixty days of a
344 personal care attendant's participation in a program covered by this
345 section;

346 (4) The provisions of sections 5-276a and 5-276b of the general
347 statutes and subsections (b) to (g), inclusive, of section 5-278 of the
348 general statutes shall not apply to collective bargaining involving
349 personal care attendants. Any impasse between the parties shall be
350 resolved in accordance with subsection (c) of this section;

351 (5) In any proceeding which may be filed under section 5-272 of the
352 general statutes, the State Board of Labor Relations shall be without
353 jurisdiction over, or authority to issue any remedy against, any
354 consumer or surrogate; and

355 (6) Any election required in order to resolve any question
356 concerning representation involving personal care attendants shall be
357 conducted by mail ballot. No provision of this section shall grant
358 personal care attendants a right to strike and such strikes are
359 prohibited.

360 (c) (1) If the organization representing personal care attendants and
361 the state do not reach an agreement not later than one hundred fifty
362 days after negotiations have begun, the parties shall jointly select an

363 arbitrator. The arbitrator selected shall have experience as an impartial
364 arbitrator of labor-management disputes and shall not be an individual
365 employed as an advocate or consultant for labor or management in
366 labor-management disputes. If the parties fail to agree on an arbitrator
367 not later than one hundred sixty days after the negotiations have
368 begun, the selection shall be made using the procedures under the
369 voluntary labor arbitration rules of the American Arbitration
370 Association.

371 (2) Each party shall submit to the arbitrator, and to the other party, a
372 proposal setting forth such party's position on how each of the
373 unresolved issues shall be resolved.

374 (3) The arbitrator shall convene a hearing to allow each party to
375 provide evidence and argument to the arbitrator. Each party shall have
376 the right to submit written briefs to the arbitrator. The arbitration
377 record shall be officially closed at the close of the hearing or the
378 arbitrator's receipt of briefs, whichever is later.

379 (4) The arbitrator's authority is limited to selecting the complete
380 proposal of one party or the other's on any unresolved issue. The
381 arbitrator shall issue an award not later than forty-five days after the
382 close of the record.

383 (5) The factors to be considered by the arbitrator in arriving at a
384 decision are: (A) The nature and needs of the personal care assistance
385 program and the needs and welfare of consumers, including interests
386 in better recruitment, retention and quality with respect to the covered
387 personal care attendants; (B) the history of negotiations between each
388 party including those leading to the proceeding; (C) the existing
389 conditions of employment of similar groups of workers; (D) changes in
390 the cost of living; and (E) the interests and welfare of the covered
391 personal care attendants.

392 (6) The costs of the arbitrator and any fees associated with the
393 arbitration proceeding shall be shared equally by each party.

394 (7) Any agreement or award reached pursuant to this section shall
395 be reduced to writing and submitted to the General Assembly for
396 approval by filing the agreement or award with the clerks of the House
397 of Representatives and Senate. No provision of any agreement or
398 award resulting from the collective bargaining process which would
399 require supercedence of any law or regulation shall take effect without
400 affirmative legislative approval.

401 (8) Notwithstanding any other provision of sections 5 to 7, inclusive,
402 of this act, any provision of any agreement or award requiring the
403 appropriation of additional funds shall be subject to the state's regular
404 budgetary approval process, subject to funds being made available and
405 affirmative legislative approval. Other provisions of the agreement or
406 award shall be deemed approved unless affirmatively rejected by a
407 majority of either house not later than thirty days after the filing with
408 the clerk of that chamber, provided the thirty-day period shall not
409 begin or expire unless the General Assembly is in regular session. Once
410 approved by the General Assembly, any provision of an agreement or
411 award need not be resubmitted by the parties to such agreement or
412 award as part of a future agreement approval process unless changes
413 in the language of such provision are negotiated by the parties.

414 (d) The provisions of this section shall not alter the obligations of
415 the state or the consumer to provide the state's or the consumer's share
416 of Social Security, federal and state unemployment contributions,
417 Medicare or workers' compensation insurance.

418 (e) The bargaining units of personal care attendants appropriate for
419 the purpose of collective bargaining shall be (1) a state-wide unit of all
420 personal care attendants, (2) a state-wide unit of personal care
421 attendants who provide services under programs administered by the
422 Department of Social Services, or (3) a state-wide unit of personal care
423 attendants who provide services under programs administered by the
424 Department of Developmental Services. Personal care attendants who
425 are members of the consumer's or surrogate's family shall not be
426 excluded from the bargaining unit because of such personal care

427 attendant's familial relationship to a consumer or surrogate.

428 (f) Any organization certified as the majority representative of
 429 personal care attendants in any election held prior to the effective date
 430 of this section, pursuant to Executive Order Number 10 of Governor
 431 Dannel P. Malloy, may provide proof of such certification to the State
 432 Board of Labor Relations and the State Board of Labor Relations shall
 433 certify such majority representative as the exclusive bargaining
 434 representative for such personal care attendants without the
 435 requirement of an additional election unless and until such time as a
 436 question concerning representation is appropriately raised under this
 437 section and section 2 of this act.

438 Sec. 7. (NEW) (*Effective July 1, 2012*) The Commissioners of Social
 439 Services and Developmental Services shall submit any application for a
 440 waiver of federal law necessary to effectuate the provisions of sections
 441 4 to 6, inclusive, of this act, in accordance with the provisions of section
 442 17b-8 of the general statutes. The Commissioners of Social Services and
 443 Developmental Services and any other department or agency of the
 444 state shall take all actions reasonably necessary to obtain approval for
 445 any such waiver and to ensure the continuation of necessary federal
 446 funding.

447 Sec. 8. (NEW) (*Effective July 1, 2012*) The state shall not be liable for
 448 any action, including, but not limited to, any civil action, any grievance
 449 arbitration or any prohibited practice proceeding, brought by the
 450 exclusive bargaining agent of such personal care attendants based
 451 upon any alleged wrongdoing by a consumer or surrogate arising
 452 pursuant to sections 5 to 7, inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	New section
Sec. 2	<i>July 1, 2012</i>	New section
Sec. 3	<i>July 1, 2012</i>	New section
Sec. 4	<i>July 1, 2012</i>	New section

Sec. 5	<i>July 1, 2012</i>	New section
Sec. 6	<i>July 1, 2012</i>	New section
Sec. 7	<i>July 1, 2012</i>	New section
Sec. 8	<i>July 1, 2012</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Department of Developmental Services; Social Services, Dept.	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill enables family child care providers and Personal Care Attendants (PCAs) working in state-funded programs to collectively bargain, which is anticipated to result in a cost to the state.¹

To the extent that a collective bargaining agreement for child care providers and/or PCAs is approved by the legislature, the state will realize a cost. The bill prohibits any agreement from reducing current state funding and level of service provided, therefore it is assumed that any agreement approved would require additional appropriations.² This cost is dependent upon the agreement reached.

The Department of Social Services (DSS) may incur additional costs associated with being designated an executive branch employer with whom the representative party negotiates. In addition, the bill requires that the cost of arbitration and related expenses be shared equally between the state and such representative.

Background

¹ The bill specifies that such family child care providers and PCAs shall not be considered state employees.

² Any agreement requiring additional appropriations is required to be submitted to the General Assembly for approval via the regular budgetary process.

State program expenditures associated with family child care providers and PCAs are described below:

Family Child Care Providers

sHB 5014, the revised FY 13 budget bill as favorably reported by the Appropriations Committee, provides approximately \$104.4 million in FY 13 to the Child Care Services account, which supports the child care subsidy program.

Personal Care Attendants

Although the total number of eligible PCAs is unknown, over 20,000 were active in the directory under the Department of Social Services in the Acquired Brain Injury (ABI), PCA waiver, and Connecticut Home Care Program for the Elderly (CHCPE) populations. The average pay rate for this population is unknown;³ however, for purposes of illustration the average rate under the CHCPE in FY 11 was approximately \$80 per day.

The Department of Developmental Services consumers who self-direct under the Home and Community Based Services waivers employ approximately 2,635 PCAs. For FY 12 the estimated cost of PCA services is \$30.7 million. The following are the April 2011 allowed hourly pay ranges for each type of service: Adult Companion \$8.25 - \$12.31, Personal Support \$10.00 - \$17.00, Individualized Home Supports \$17.00 - \$22.35, and Respite \$8.25 - \$19.00.

House "A" strikes the language in the underlying bill, resulting in the impact described above.

House "B" establishes when certain family child care providers and personal care attendants can be charged dues or fees, which has no state fiscal impact.

³ The bill requires DSS and DDS to review plans recommended by the Personal Care Attendant Workforce Council, established by the amendment, and include funding in budget requests necessary to implement aspects of the plans that they approve.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Development Services, Department of Social Services Cost and Caseload Data

OLR Bill Analysis**sHB 5312 (as amended by House “A” and “B”)******AN ACT ESTABLISHING A TASK FORCE TO STUDY THE EFFECT OF COLLECTIVE BARGAINING FOR CERTAIN STATE EMPLOYEES.*****SUMMARY:**

This bill allows certain family child care providers and personal care attendants (PCAs) to collectively bargain with the state through an employee organization (i.e., a union) over reimbursement rates, benefits, payment procedures, contract grievance arbitration, training, professional development, and other requirements and opportunities. It explicitly states that the child care providers and PCAs are not state employees; thus they are not covered by the rights, obligations, privileges, and immunities statutorily provided to state employees.

It establishes a collective bargaining and arbitration process for the child care providers and PCAs and grants them many of the same collective bargaining rights and obligations given to state employees. It also specifically prohibits certain subjects from being collectively bargained and sets conditions under which the General Assembly must affirmatively approve any contract or arbitration award.

The bill creates a PCA Workforce Council to study and plan for improving PCA quality, stability, and availability. It also (1) requires the Department of Social Services (DSS) and the council to compile and maintain lists of covered child care providers and PCAs lists, respectively; and (2) provides liability protection for the state under certain circumstances.

*House Amendment “A” replaces the original bill (File 218), which created a task force to study the potential effect of collective bargaining

on the pensions, health care, and working conditions of nonunionized state employees.

*House Amendment "B" prohibits the unions from charging dues or nonmember service fees to child care providers and PCAs during the first 60 days that they participate in their respective programs.

EFFECTIVE DATE: July 1, 2012

§ 1 — FAMILY CHILD CARE PROVIDERS

The bill applies to child care providers paid by the state's Care-4-Kids program to provide day care in (1) family day care homes (i.e., private family homes with up to six children) or (2) their own homes to the children of neighbors or relatives. The Care-4-Kids program subsidizes child care costs for low- and moderate-income families while a parent is working or attending a temporary family cash assistance approved education or training program (i.e., a Jobs First participant).

§ 4 — PERSONAL CARE ATTENDANTS

PCAs provide home- and community-based personal care services to the elderly and disabled through Medicaid waivers that allow services to be provided to the people in their own homes (rather than the standard Medicaid assistance that is only available through institutions such as nursing homes).

The bill specifically applies to the following PCA waiver programs:

1. individuals with brain injuries (CGS § 17b-260a),
2. personal care assistance program for adults with disabilities (CGS § 17b-605a),
3. home care program for the elderly (CGS § 17b-342),
4. home care pilot for disabled persons (CGS § 17b-617),
5. individual and family support administered by Department of

Developmental Services (DDS),

6. comprehensive waiver program administered by DDS, and
7. any state-funded programs that provide services from a PCA.

Under the bill, a PCA must be someone who is employed by a consumer or surrogate to provide personal care assistance to a consumer.

It defines consumer as a person who receives services from a PCA under a state-funded program, including any of those listed above. A surrogate means a consumer's legal guardian or a person named in an agreement as being responsible for the consumer's care. Personal care assistance means supportive home care, direct support services, personal care, or another nonprofessional services provided to a person with a disability or an elderly person who needs assistance to (1) meet daily living needs, (2) ensure he or she can adequately function at home, or (3) provide him or her with safe access to the community.

§§ 2 & 6 — COLLECTIVE BARGAINING

Union and Employer Determination

Under the bill, the exclusive bargaining agents (unions) for the family child care providers or PCAs must be certified by the State Board of Labor Relations (SBLR) under either the (1) statutory procedure used to certify state employees' unions or (2) procedure for certifying a family child care providers' union or PCA union established under Governor Malloy's Executive Orders Nine and Ten, respectively. The bill requires the SBLR to certify a union without an additional election if it can prove that it had been certified under one of the executive orders before July 1, 2012. Any elections to resolve representation issues must be conducted by mail ballot.

The bill limits the child care providers to one statewide bargaining unit. It allows the PCAs to be in (1) one statewide bargaining unit, (2) a state-wide unit of PCAs who provide service under a DSS program, or

(3) a statewide unit of PCAs who provide services under a DDS program. PCAs who are members of the consumer's or surrogate's family cannot be excluded from a bargaining unit due to their familial relationship.

Under the bill, as under the law for state employees, the SBLR determines PCA bargaining units.

For child care providers, the bill, like current law, specifies that DSS is an executive branch employer represented by the Office of Policy and Management (OPM) in collective bargaining negotiations. The bill places the newly created PCA council within the executive branch but does not say the council is the employer.

Collective Bargaining Subjects

Although not considered state employees, the bill provides child care providers and PCAs with many of the same bargaining rights, obligations, and protections given to state employees, including the right to organize, an obligation to provide fair representation, protection from being discharged or discriminated against for organizing, and a prohibition against strikes. However, the bill prohibits them from bargaining over (1) state employee pension or health care benefits; (2) a parent, consumer, or surrogate's right to hire, fire, and direct a child care provider or PCA's activities; and (3) grievance arbitration against parents, consumers, or surrogates.

Under the bill, no provision in a contract or arbitration award can reduce child care provider or PCA services. Any provision that would require an additional appropriation to maintain existing service levels must be affirmatively approved by the General Assembly. The bill also prohibits the SBLR from deciding any complaints that a parent (for child care providers), consumer, or surrogate (for PCAs) committed an act prohibited by an employer.

Current collective bargaining laws for state employees require nonmember service fees, instead of union dues, to be deducted from

the wages of an employee who does not wish to join the union representing his or her bargaining unit. The bill does not require that these fees be deducted from the PCA's or child care provider's payments but instead allows a contract or arbitration award to require the state or its fiscal intermediary to deduct dues or fees from the state's payments. Nonmember service fees must be the lesser of either the dues and initiation fees paid by union members or a proportionate share of the union's costs for collective bargaining. Under the bill, the dues and fees can only be deducted from payments from the Care-4-kids program (for child care providers) or the waiver program in which a PCA's consumer is participating. No dues or fees can be deducted from a child care provider or PCA's payments during the first 60 days that they are participating in their respective programs.

The bill excludes unionized child care providers and PCAs from other provisions of the collective bargaining laws for state employees, including:

1. the timetable for negotiations and arbitration (the bill replaces it with a new timetable);
2. the requirement for a party to pay interest on overdue arbitration awards;
3. the General Assembly's approval process (the bill replaces it with a new approval process);
4. the requirement for the legislature to appropriate funds needed for an approved contract or award;
5. allowances for negotiations to continue past the legislature's budget deadline and contracts to be retroactive;
6. a requirement that the provisions in an approved contract supersede any conflicting laws or regulations;
7. the mandate for coalition bargaining for pension and health benefits (i.e., SEBAC); and

8. an exemption from binding arbitration for non-mandated collective bargaining subjects.

Collective Bargaining and Arbitration Process

The bill establishes a contract negotiation and arbitration process separate from the process used by state employees' unions. The process is the same for family child care providers and PCAs. The bill gives the parties 150 days to negotiate a contract (it does not specify when negotiations must begin). If they have not reached an agreement within that time, they must jointly select an arbitrator who (1) has experience as an impartial arbitrator in labor-management disputes and (2) is not employed as an advocate or consultant for labor or management in labor-management disputes. If the parties cannot agree on an arbitrator within 10 days, the bill requires an arbitrator to be selected using the procedure under the American Arbitration Association's voluntary labor arbitration rules.

Once the parties have an arbitrator, the bill requires them to submit their last best offer on each unresolved issue. The arbitrator must then hold a hearing to allow them to provide evidence and arguments. The parties can also submit written briefs. Under the bill, the arbitration record is closed at the end of the hearing or once the arbitrator receives the briefs, whichever is later. The bill does not specify a timeline for the hearing process to occur.

In coming to a decision, the bill requires the arbitrator to select one party's proposal on each unresolved issue (issue-by-issue last best offer decisions). The arbitrator must consider:

1. the nature and needs of the particular program and the needs and welfare of the parents, children, or consumers served by the program, including better recruitment, retention, and quality of family child care providers or PCAs, as the case may be;
2. the history of negotiations between the parties;
3. the existing employment conditions of similar groups of

workers;

4. cost of living changes; and
5. the interests and welfare of the covered family child care providers or PCAs.

Unlike state employee collective bargaining, the arbitrator is not required to consider the ability of the employer to pay.

The bill requires the parties to split the costs and fees incurred in the arbitration process.

General Assembly Approval

The bill requires any contract or arbitration award to be submitted to the General Assembly for approval. Any provisions in the contract or award that requires supersedence of any law or regulation must be affirmatively approved by the General Assembly. In addition, any provision that requires additional appropriations to maintain existing levels of service must be approved by the budgetary process applicable to appropriations, including affirmative legislative approval. Presumably, the Office of Labor Relations will determine what provisions of a contract or award require supersedence of a law or regulation or require an appropriation, as it does for the state's other collectively bargained contracts.

Under the bill, contract or award provisions that neither supersede existing laws nor regulations nor involve additional appropriations are automatically approved unless the General Assembly affirmatively rejects them by a majority vote of either chamber within 30 days after they were filed. The General Assembly must be in regular session when the 30 day deadline begins and ends.

Once a contract or award provision has been approved, that provision does not need to be resubmitted to the General Assembly if it is identically repeated in future contracts or awards.

§ 5 & 6 — PROVISIONS SPECIFIC TO PCAS***Collective Bargaining***

The bill prohibits the following subjects specifically from PCA bargaining:

1. any proposal that prevents surrogates from hiring PCAs not on the registry list described in the bill,
2. any proposal that prevents consumers or surrogates from requiring any additional training, and
3. a procedure for grievance arbitration against any consumer or surrogate.

Furthermore, no agreement or arbitration award can provide for a reduction in (1) Medicaid funds provided to the state or (2) PCA services to consumers.

Any provision in any agreement or award which would require an additional appropriation in order to maintain the levels of services provided by existing appropriations must be submitted to the General Assembly for approval in accordance with the bill's provisions.

Also, programs where consumers' budgets for direct support services are allocated through an individual budget methodology must be increased to accommodate additional expenses when a contract negotiated under the bill or an award includes increases in wages or benefits.

The bill specifically prohibits SLRB from having any authority or jurisdiction to rule on a complaint of a prohibited act filed against a consumer or a surrogate under state employee collective bargaining law.

Other

The bill states that it does not alter the obligations of the state or a consumer to pay their respective shares of Social Security, federal and

state unemployment contributions, Medicare, or workers' compensation insurance.

§ 5 — PCA WORKFORCE COUNCIL

The bill establishes a 13-member PCA Workforce Council made up of state officials and representatives of the populations served by PCAs and lists their duties and responsibilities.

The council consists of the following members:

1. social services and developmental services commissioners, Healthcare Advocate, OPM secretary, or any of their respective designees;
2. one representative of (a) an organization for consumers with developmental disabilities, (b) an organization for consumers with physical disabilities, and (c) an organization for elderly consumers appointed by the governor;
3. two members of an organization representing consumers with developmental disabilities, one each appointed by the House speaker and Senate majority leader;
4. two members of an organization representing consumers with physical disabilities, one each appointed by the Senate president pro tempore and the House minority leader; and
5. two members of an organization representing elderly consumers, one each appointed by the House majority leader and Senate minority leader.

Initial appointments to the council must be made by August 1, 2012. The governor appoints a chairperson from among the members who must call the first meeting by September 1, 2012.

Council members serve coterminously and at the pleasure of the appointing authority. A majority of the members constitutes a quorum in order to transact any business. Members receive no compensation,

but will be reimbursed for necessary expenses. The council is in DSS for administrative purposes only.

Council Duties

The bill requires the council to (1) study PCA recruitment, retention, and adequacy and (2) develop a plan to improve PCA quality, stability and availability. The plan must do this by:

1. developing a means to identify and recruit PCAs;
2. developing PCA and consumer training and educational opportunities;
3. developing one or more registries to (a) provide routine, emergency, and respite referrals of qualified PCAs to consumers and surrogates who are authorized to receive long-term, in-home PCA personal care services, (b) enable consumers and surrogates to access information about prospective PCAs including their training, educational background, and work experience, and (c) provide appropriate employment opportunities for PCAs; and
4. establishing standards for wages, benefits and conditions of employment for personal care attendants.

On or after July 1, 2013, the DSS and DDS commissioners must review the council's plan and if the commissioners approve the plan, they must include requests for funding to implement the plan or any aspects of it in any budgetary requests they submit to OPM.

§ 7 — STATE FEDERAL WAIVER APPLICATION REQUIRED

The bill requires the DSS and DDS commissioners to submit any federal Medicaid waiver application necessary to carry out the bill's provisions according to the waiver application process provided in state law. The commissioners, and any other state agency, must take all necessary and reasonable actions to obtain the waiver's approval to ensure continued federal funding.

§ 2 — CHILD CARE PROVIDER LIST

Starting July 1, 2012, the bill requires the DSS commissioner to compile monthly lists of the child care providers who have participated in the Care-4-Kids program over the previous six months. The lists are a public record subject to the state's Freedom of Information Act (FOIA).

§ 5 — PCA REGISTRY LIST

By October 1, 2012 and in each following month, the council must compile and maintain a registry list of the names and addresses of all PCAs who have been paid through the state-funded programs identified in the bill within the previous six calendar months.

The bill forbids the list from (1) including the name of any consumer or (2) indicating that a PCA is a relative of, or has the same address as, a consumer.

Any fiscal intermediary that provides administrative services to the state concerning state-funded programs must assist the council in compiling and maintaining the registry list. The council must use the list in carrying out its duties and purposes assisting those seeking to form a PCA union. The list will be accessible to the public under FOIA.

The council must respond within seven days to a request for the list from any employee organization interested in forming a PCA union. The council must provide the employee organization with the most recent list of PCAs it has compiled.

§§ 3 & 8 — LIABILITY

The bill protects the state from liability in any legal action, grievance arbitration, or prohibited practice proceeding brought by a union against a parent (for child care providers), consumer, or surrogate (for PCAs) for a violation of the bill's provisions regarding collective bargaining, the PCA Workforce Council, or federal Medicaid waivers and compliance.

BACKGROUND

Executive Orders Nine and Ten

In September 2011, Governor Malloy issued Executive Orders Nine (for Care-4-Kids family child care providers) and Ten (for Medicaid waiver PCAs), which, among other things, establish a process for family child care providers and PCAs to form organizations (referred to as the “majority representatives”) to represent them in discussions with the state. Both orders authorize the majority representatives to (1) meet and confer with executive branch representatives on ways to improve the quality and accessibility of family child care and PCA service and (2) collect dues from its members.

Using the procedures set out in the orders, the family day care providers elected CSEA/SEIU Local 2001 to represent them in December 2011. The PCAs elected New England Health Care Employees Union, District 1199, SEIU, to represent them in March 2012.

Executive Order Ten also creates a Personal Care Attendant Quality Home Care Workforce Council charged with ensuring the quality of long-term personal home care in the state. The council must represent the executive branch in carrying out various responsibilities contained in the order.

Both executive orders also require the monthly compilation of their respective provider lists.

The Effect of Public Acts on Existing Executive Orders

The bill contains several provisions that duplicate or make minor changes to the executive orders’ provisions, such as creating a PCA Workforce Council and requiring the monthly compilation of provider lists. According to an opinion issued by Attorney General Joseph Lieberman on February 1, 1986, an executive order can be (1) altered by an act of the legislature that either cites an executive order specifically or deals with the same subject matter or (2) amended or revoked by a governor (1986 Conn. Op. Atty. Gen. 13).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/20/2012)

Human Services Committee

Joint Favorable

Yea 12 Nay 6 (04/11/2012)