

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 778

(SENATE AUTHORS: PAPPAS, Bakk, Hayden and Eaton)

DATE	D-PG	OFFICIAL STATUS
02/25/2013	393	Introduction and first reading Referred to State and Local Government
03/07/2013	718a	Comm report: To pass as amended and re-refer to Health, Human Services and Housing
03/13/2013		Comm report: Amended Comm report: No recommendation, re-referred to Judiciary Rule 21, referred to Rules and Administration Comm report: Adopt previous comm report

1.1 A bill for an act
 1.2 relating to collective bargaining; authorizing collective bargaining for
 1.3 family child care providers; authorizing collective bargaining for home and
 1.4 community-based long-term care services; establishing the Self-Directed Service
 1.5 Workforce Council; proposing coding for new law in Minnesota Statutes,
 1.6 chapters 179A; 256B.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 **ARTICLE 1**

1.9 **FAMILY CHILD CARE PROVIDERS REPRESENTATION ACT**

1.10 Section 1. **[179A.50] REPRESENTATION OF FAMILY CHILD CARE**
 1.11 **PROVIDERS.**

1.12 Sections 179A.50 to 179A.52 shall be known as the Family Child Care Providers
 1.13 Representation Act.

1.14 Sec. 2. **[179A.51] DEFINITIONS.**

1.15 Subdivision 1. **Scope.** For the purposes of sections 179A.50 to 179A.52, the terms
 1.16 in this section have the meanings given them.

1.17 Subd. 2. **Commissioner.** "Commissioner" means the commissioner of mediation
 1.18 services.

1.19 Subd. 3. **Exclusive representative.** "Exclusive representative" means an employee
 1.20 organization that has been elected and certified under section 179A.52, thereby maintaining
 1.21 the right to represent family child care providers in their relations with the state.

1.22 Subd. 4. **Family child care provider.** "Family child care provider" means an
 1.23 individual, either licensed or unlicensed, who provides legal child care services as defined

2.1 under section 245A.03, except for providers licensed under Minnesota Rules, chapter
2.2 9503, or excluded from licensure under section 245A.03, subdivision 2, paragraph (a),
2.3 clause (5), and who provides child care assistance services under chapter 119B.

2.4 Sec. 3. **[179A.52] RIGHT TO ORGANIZE.**

2.5 Subdivision 1. **Right to organize; limitations.** Family child care providers shall
2.6 have the right to form, join, and participate in the activities of employee organizations of
2.7 their own choosing for the purpose of representation and meeting and negotiating with the
2.8 state. Section 179A.22 applies to family child care providers except as otherwise provided
2.9 in this section. This section does not require the treatment of family child care providers as
2.10 public employees for any other purpose. Family child care providers shall have the same
2.11 rights to interest arbitration provided under section 179A.16, subdivision 2, to essential
2.12 employees. Family child care providers shall not have the right to strike.

2.13 Subd. 2. **Appropriate unit.** The only appropriate unit under this section shall be a
2.14 statewide unit of all family child care providers. The unit shall be treated as an appropriate
2.15 unit under section 179A.10, subdivision 2.

2.16 Subd. 3. **Certification; process.** For the purposes of determining certification
2.17 under section 179A.12, the commissioner shall utilize a list of family child care providers
2.18 compiled by the commissioner of human services over the most recent 12-month period.
2.19 The commissioner shall conduct a certification election by mail ballot pursuant to the
2.20 procedures in chapter 179A.

2.21 Subd. 4. **Compilation of list.** The commissioner shall, by July 1, 2013, and then
2.22 monthly thereafter, compile and maintain a list of the names and addresses of all family
2.23 child care providers who have been paid for providing child care assistance services to
2.24 participants within the previous six months. The list shall not include the name of any
2.25 participant, or indicate that an individual provider is a relative of a participant or has the
2.26 same address as a participant. The commissioner shall share the lists with others as needed
2.27 for the state to meet its obligations under chapter 179A as modified and made applicable
2.28 to family child care providers under this section, and to facilitate the representational
2.29 processes under this section.

2.30 Subd. 5. **List access.** Beginning July 1, 2013, upon a showing made to the
2.31 commissioner of the Bureau of Mediation Services by any employee organization wishing
2.32 to represent the appropriate unit of family child care providers that at least 500 family
2.33 child care providers support such representation, the commissioner of human services
2.34 shall provide to such organization within seven days the most recent list of family child

3.1 care providers compiled under this subdivision, and subsequent monthly lists upon request
3.2 for an additional three months.

3.3 Subd. 6. **Elections for exclusive representative.** After July 31, 2013, any employee
3.4 organization wishing to represent the appropriate unit of family child care providers
3.5 may seek exclusive representative status pursuant to section 179A.12. Representation
3.6 elections for family child care providers shall be conducted by mail ballot, and such
3.7 election shall be conducted upon an appropriate petition stating that at least 30 percent of
3.8 the unit wishes to be represented by the petitioner. The family child care providers eligible
3.9 to vote in any such election shall be those family child care providers on the monthly list
3.10 of family child care providers compiled under this section, most recently preceding the
3.11 filing of the election petition. Except as otherwise provided, elections under this clause
3.12 shall be conducted in accordance with section 179A.12.

3.13 Subd. 7. **Meet and negotiate.** If the commissioner certifies an employee
3.14 organization as the majority exclusive representative, the state, through the governor
3.15 or the governor's designee, shall meet and negotiate in good faith with the exclusive
3.16 representative of the family child care provider unit regarding grievance issues, child care
3.17 assistance reimbursement rates under chapter 119B, and terms and conditions of service,
3.18 but this obligation does not compel the state or its representatives to agree to a proposal or
3.19 require the making of a concession. The governor or the governor's designee is authorized
3.20 to enter into agreements with the exclusive representative. Negotiated agreements and
3.21 arbitration decisions must be submitted to the legislature to be accepted or rejected in
3.22 accordance with sections 3.855 and 179A.22.

3.23 Subd. 8. **Meet and confer.** The state has an obligation to meet and confer under
3.24 chapter 179A with family child care providers to discuss policies and other matters
3.25 relating to their service that are not terms and conditions of service.

3.26 Subd. 9. **Terms and conditions of service.** For purposes of this section, "terms and
3.27 conditions of service" has the same meaning as given in section 179A.03, subdivision 19.

3.28 Subd. 10. **Exemption; federal law.** In affording family child care providers
3.29 the right to engage in collective action, select a representative, and jointly engage in
3.30 discussions with the state under the terms of this section, the state intends that the "state
3.31 action" exemption from federal antitrust laws be fully available to the state, based on
3.32 the state's active supervision of family child care providers to improve the quality,
3.33 accessibility, and affordability of early childhood education services in the state.

3.34 Subd. 11. **Rights.** Nothing in this section shall be construed to interfere with:

3.35 (1) parental rights to select and deselect family child care providers or the ability of
3.36 family child care providers to establish the rates they charge to parents;

4.1 (2) the right or obligation of any state agency to communicate or meet with any
 4.2 citizen or organization concerning family child care legislation, regulation, or policy; or
 4.3 (3) the rights and responsibilities of family child care providers under federal law.

4.4 Subd. 12. **Membership status and eligibility for subsidies.** Membership status in
 4.5 an employee organization shall not affect the eligibility of a family child care provider to
 4.6 receive payments under, or serve a child who receives payments under, chapter 119B.

4.7 **Sec. 4. [179A.53] NO USE OF SCHOLARSHIPS FOR DUES OR FEES.**

4.8 Early learning scholarships shall not be applied, through state withholding or
 4.9 otherwise, toward payment of dues or fees that are paid to exclusive representatives of
 4.10 family child care providers.

4.11 **EFFECTIVE DATE.** This section is effective the day following final enactment of
 4.12 a law styled as Senate File No. 481 of the 88th legislature.

4.13 **Sec. 5. SEVERABILITY.**

4.14 Should any part of this act be declared invalid or unenforceable, or the enforcement
 4.15 or compliance with it is suspended, restrained, or barred, either by the state or by the final
 4.16 judgment of a court of competent jurisdiction, the remainder of this act shall remain
 4.17 in full force and effect.

4.18 **Sec. 6. EFFECTIVE DATE.**

4.19 This act is effective the day following final enactment.

4.20 **ARTICLE 2**

4.21 **INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES** 4.22 **REPRESENTATION**

4.23 **Section 1. [179A.54] INDIVIDUAL PROVIDERS OF DIRECT SUPPORT**
 4.24 **SERVICES.**

4.25 Subdivision 1. **Definitions.** For the purposes of this section:

4.26 (a) "Direct support services" has the meaning given to it under section 256B.0711,
 4.27 subdivision 1, paragraph (c).

4.28 (b) "Individual provider" has the meaning given to it under section 256B.0711,
 4.29 subdivision 1, paragraph (d).

4.30 (c) "Participant" has the meaning given to it under section 256B.0711, subdivision 1,
 4.31 paragraph (e).

5.1 (d) "Participant's representative" has the meaning given to it under section
5.2 256B.0711, subdivision 1, paragraph (f).

5.3 Subd. 2. **Rights of individual providers and participants.** For the purposes of
5.4 the Public Employment Labor Relations Act, under chapter 179A, individual providers
5.5 shall be considered, by virtue of this section, executive branch state employees employed
5.6 by the commissioner of management and budget or the commissioner's representative.
5.7 This section does not require the treatment of individual providers as public employees for
5.8 any other purpose. Chapter 179A shall apply to individual providers except as otherwise
5.9 provided in this section. Notwithstanding section 179A.03, subdivision 14, paragraph
5.10 (a), clause (5), chapter 179A shall apply to individual providers regardless of part-time
5.11 or full-time employment status.

5.12 Subd. 3. **Scope of meet and negotiate obligation.** If an exclusive representative
5.13 is certified pursuant to this section, the mutual rights and obligations of the state and an
5.14 exclusive representative of individual providers to meet and negotiate regarding terms and
5.15 conditions shall extend to the subjects covered under section 256B.0711, subdivision 11,
5.16 paragraph (c), but shall not include those subjects reserved to participants or participants'
5.17 representatives by subdivision 4.

5.18 Subd. 4. **Rights of covered program participants.** No provision of any agreement
5.19 reached between the state and any exclusive representative of individual providers,
5.20 nor any arbitration award, shall interfere with the rights of participants or participants'
5.21 representatives to select, hire, direct, supervise, and terminate the employment of their
5.22 individual providers; to manage an individual service budget regarding the amounts and
5.23 types of authorized goods or services received; or to receive direct support services from
5.24 individual providers not referred to them through a state registry.

5.25 Subd. 5. **Legislative action on agreements.** Any agreement reached between the
5.26 state and the exclusive representative of individual providers under chapter 179A shall
5.27 be submitted to the legislature to be accepted or rejected in accordance with sections
5.28 179A.22 and 3.855.

5.29 Subd. 6. **Strikes prohibited.** Individual providers shall be subject to the prohibition
5.30 on strikes applied to essential employees under section 179A.18.

5.31 Subd. 7. **Interest arbitration.** Individual providers shall be subject to the interest
5.32 arbitration procedures applied to essential employees under section 179A.16.

5.33 Subd. 8. **Appropriate unit.** The only appropriate unit for individual providers shall
5.34 be a statewide unit of all individual providers. The unit shall be treated as an appropriate
5.35 unit under section 179A.10, subdivision 2. Individual providers who are related to their

6.1 participant or their participant's representative shall not for such reason be excluded from
6.2 the appropriate unit.

6.3 Subd. 9. **List access.** Beginning July 1, 2013, upon a showing made to the
6.4 commissioner of the Bureau of Mediation Services by any employee organization wishing
6.5 to represent the appropriate unit of individual providers that at least 500 individual
6.6 providers support such representation, the commissioner of human services shall provide
6.7 to such organization within seven days the most recent list of individual providers
6.8 compiled under section 256B.0711, subdivision 11, paragraph (g), and subsequent
6.9 monthly lists upon request for an additional three months.

6.10 Subd. 10. **Representation and election.** Beginning August 1, 2013, any employee
6.11 organization wishing to represent the appropriate unit of individual providers may seek
6.12 exclusive representative status pursuant to section 179A.12. Representation elections
6.13 for individual providers shall be conducted by mail ballot, and such election shall be
6.14 conducted upon an appropriate petition stating that at least 30 percent of the unit wishes
6.15 to be represented by the petitioner. The individual providers eligible to vote in any such
6.16 election shall be those individual providers on the monthly list of individual providers
6.17 compiled under section 256B.0711, subdivision 11, paragraph (g), most recently preceding
6.18 the filing of the election petition. Except as otherwise provided, elections under this
6.19 section shall be conducted in accordance with section 179A.12.

6.20 Subd. 11. **Exemption; federal law.** In affording individual providers the right to
6.21 engage in collective action, select a representative, and jointly engage in discussions with
6.22 the state under the terms of this section, the state intends that the "state action" exemption
6.23 from federal antitrust laws be fully available to the state, based on the state's active
6.24 supervision of individual providers to improve the quality, accessibility, and affordability
6.25 of direct support services in the state.

6.26 Sec. 2. **[256B.0711] QUALITY SELF-DIRECTED SERVICES WORKFORCE.**

6.27 Subdivision 1. **Definitions.** For purposes of this section:

6.28 (a) "Commissioner" means the commissioner of human services unless otherwise
6.29 indicated.

6.30 (b) "Covered program" means a program to provide direct support services funded
6.31 in whole or in part by the state of Minnesota, including the Community First Services and
6.32 Supports program; Consumer Directed Community Supports services and extended state
6.33 plan personal care assistance services available under programs established pursuant to
6.34 home and community-based service waivers authorized under section 1915(c) of the
6.35 Social Security Act, including, but not limited to, sections 256B.0915 and 256B.49,

7.1 and under the alternative care program, as offered pursuant to section 256B.0913, as
 7.2 modified by subdivision 9 of this section; the personal care assistance choice program, as
 7.3 established pursuant to section 256B.0659, subdivisions 18 to 20, and as modified by this
 7.4 section; and any similar program that may provide such services.

7.5 (c) "Direct support services" means personal care assistance services covered by
 7.6 medical assistance under section 256B.0625, subdivisions 19a and 19c; assistance with
 7.7 activities of daily living as defined in section 256B.0659, subdivision 1, paragraph (b),
 7.8 and instrumental activities of daily living as defined in section 256B.0659, subdivision
 7.9 1, paragraph (i); and other similar, in-home, nonprofessional long-term services and
 7.10 supports provided to an elderly person or person with a disability to meet such person's
 7.11 daily living needs and ensure that such person may adequately function in his or her home
 7.12 and have safe access to the community.

7.13 (d) "Individual provider" means an individual selected by and working under the
 7.14 direction of a participant in a covered program, or a participant's representative, to provide
 7.15 direct support services to the participant, and does not include an individual from an
 7.16 employee workforce assembled, directed, and controlled by a provider agency.

7.17 (e) "Participant" means a person who receives direct support services through
 7.18 a covered program.

7.19 (f) "Participant's representative" means a participant's legal guardian or an individual
 7.20 having the authority and responsibility to act on behalf of a participant with respect to the
 7.21 provision of direct support services through a covered program.

7.22 Subd. 2. **Quality Self-Directed Services Workforce Council established.** There is
 7.23 established the Quality Self-Directed Services Workforce Council to ensure the quality
 7.24 and availability of individual providers to be selected by and work under the direction of
 7.25 participants to provide direct support services.

7.26 Subd. 3. **Membership.** The council shall have 11 members and shall be composed
 7.27 of the commissioner of human services, who shall serve as chair, and the following
 7.28 members, who shall be appointed by the governor:

7.29 (1) six current or former recipients of direct support services;

7.30 (2) one legal guardian or legal representative of a current or former recipient of
 7.31 direct support services; and

7.32 (3) one member of the State Council on Disability, under section 256.482, one
 7.33 member of the Governor's Council on Developmental Disabilities, and one member of the
 7.34 Minnesota Board on Aging, under section 256.975.

7.35 Subd. 4. **Appointments; membership terms; compensation; removal; vacancies.**
 7.36 All appointments to the council and filling of vacancies shall be made as provided in

8.1 section 15.0597. Membership terms, compensation, and removal of members are as
8.2 provided in section 15.059.

8.3 Subd. 5. **Quorum.** A majority of the members appointed and serving shall
8.4 constitute a quorum for the transaction of any business.

8.5 Subd. 6. **Initial appointments.** The governor shall make all initial appointments
8.6 to the council by July 1, 2013. The governor shall designate five members whose terms
8.7 will expire on the first Monday in January 2017, and five members whose terms will
8.8 expire on the first Monday in January 2019.

8.9 Subd. 7. **First meeting.** The commissioner shall convene the first meeting by
8.10 September 1, 2013.

8.11 Subd. 8. **Duties of council.** The council, in consultation with the commissioner, has
8.12 the following ongoing advisory duties and responsibilities relating to ensuring the quality,
8.13 stability, and availability of the individual provider workforce:

8.14 (1) assess the size, quality, and stability of the individual provider workforce in
8.15 Minnesota and the ability of the existing workforce to meet the growing and changing
8.16 needs of both elderly participants and participants with disabilities;

8.17 (2) assess and propose strategies to identify, recruit, and retain prospective individual
8.18 providers to be available for employment by participants or participants' representatives;

8.19 (3) advise the commissioner regarding the development of orientation programs,
8.20 training and educational opportunities, and the maintenance of one or more public
8.21 registries as described in subdivision 11;

8.22 (4) advise the commissioner and other relevant state agencies in assessing existing
8.23 mechanisms for preventing abuse and neglect of participants and recommending
8.24 improvements to those protections;

8.25 (5) advise the commissioner in determining standards for compensation, including
8.26 benefits, and other conditions of employment for individual providers sufficient to attract
8.27 and maintain a qualified workforce; and

8.28 (6) otherwise advise and advocate regarding appropriate means of expanding access
8.29 to quality, self-directed direct support services.

8.30 Subd. 9. **Operation of covered programs.** All covered programs shall operate
8.31 consistent with this section, including by providing such services through individual
8.32 providers as defined in subdivision 1, paragraph (d), notwithstanding any inconsistent
8.33 provisions of section 256B.0659 or section 256B.04, subdivision 16.

8.34 Subd. 10. **Use of employee workforce.** This requirement shall not restrict the state's
8.35 ability to offer to those participants who choose not to self-direct a direct support worker

9.1 or are unable to do so the alternative of receiving similar services from the employee
9.2 workforce assembled, directed, and controlled by a provider agency.

9.3 Subd. 11. **Duties of the Department of Human Services.** (a) The commissioner
9.4 shall afford to all participants within a covered program the option of employing an
9.5 individual provider to provide direct support services.

9.6 (b) The commissioner shall ensure that all employment of individual providers is
9.7 in conformity with this section.

9.8 (c) The commissioner shall, in consultation with the council:

9.9 (1) establish compensation rates, payment terms and practices, and any benefit
9.10 terms for all individual providers;

9.11 (2) provide for required orientation programs for all newly hired individual providers
9.12 regarding their employment within the covered programs through which they provide
9.13 services;

9.14 (3) provide for relevant training and educational opportunities for individual
9.15 providers, as well as for participants and participants' representatives who receive services
9.16 from individual providers, including opportunities for individual providers to obtain
9.17 certification documenting additional training and experience in areas of specialization;

9.18 (4) provide for the maintenance of one or more public registries to:

9.19 (i) provide routine, emergency, and respite referrals of qualified individual providers
9.20 to participants and participants' representatives;

9.21 (ii) enable participants and participants' representatives to gain improved access
9.22 to, and choice among, prospective individual providers, including by having access
9.23 to information about individual providers' training, educational background, work
9.24 experience, and availability for hire; and

9.25 (iii) provide for appropriate employment opportunities for individual providers and a
9.26 means by which they may more easily remain available to provide services to participants
9.27 within covered programs; and

9.28 (5) establish other appropriate terms and conditions of employment governing the
9.29 workforce of individual providers.

9.30 (d) The commissioner shall ensure that appropriate background checks are performed
9.31 on all individual providers included on any registry as described in paragraph (c), clause (4).

9.32 (e) The commissioner's authority over terms and conditions of individual providers'
9.33 employment, including compensation, payment, and benefit terms, employment
9.34 opportunities within covered programs, individual provider orientation, training, and
9.35 education opportunities, and the operation of public registries shall be subject to the state's
9.36 obligations to meet and negotiate under chapter 179A, as modified and made applicable

10.1 to individual providers under section 179A.54, and to agreements with any exclusive
10.2 representative of individual providers, as authorized by chapter 179A, as modified and
10.3 made applicable to individual providers under section 179A.54.

10.4 (f) The commissioner shall cooperate in the implementation of this act with the
10.5 commissioner of management and budget in the same manner as would be required of
10.6 an appointing authority under section 179A.22 with respect to any negotiations between
10.7 the executive branch of the state and the exclusive representative of individual providers,
10.8 as authorized under sections 179A.22 and 179A.54. Any entity, including financial
10.9 management entities, contracting with the state to provide support to participants or
10.10 participants' representatives with regard to the employment of individual providers,
10.11 shall assist and cooperate with the council and commissioner of human services in the
10.12 operations of this section, including with respect to the commissioner's compiling and
10.13 maintaining the list of individual providers required under paragraph (g).

10.14 (g) The commissioner shall, not later than July 1, 2013, and then monthly thereafter,
10.15 compile and maintain a list of the names and addresses of all individual providers who
10.16 have been paid for providing direct support services to participants within the previous
10.17 six months. The list shall not include the name of any participant, or indicate that an
10.18 individual provider is a relative of a participant or has the same address as a participant.
10.19 The commissioner shall share the lists with the Quality Self-Directed Services Workforce
10.20 Council and with others as needed for the state to meet its obligations under chapter 179A
10.21 as modified and made applicable to individual providers under section 179A.54, and to
10.22 facilitate the representational processes under section 179A.54, subdivisions 9 and 10.

10.23 (h) The commissioner shall immediately commence all necessary steps to ensure
10.24 that services offered under all covered programs are offered in conformity with this
10.25 section to complete any required modifications to currently operating covered programs
10.26 by September 1, 2013.

10.27 **Sec. 3. SEVERABILITY.**

10.28 Should any part of this act be declared invalid or unenforceable, or the enforcement
10.29 or compliance with it is suspended, restrained, or barred, either by the state or by the final
10.30 judgment of a court of competent jurisdiction, the remainder of this act shall remain
10.31 in full force and effect.

10.32 **Sec. 4. EFFECTIVE DATE.**

10.33 This act is effective the day following final enactment.

APPENDIX
Article locations in S0778-1

ARTICLE 1	FAMILY CHILD CARE PROVIDERS REPRESENTATION ACT	Page.Ln 1.8
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