

1 H.239

2 Introduced by Representatives McFaun of Barre Town, Haas of Rochester,  
3 Macaig of Williston, Poirier of Barre City, Ram of Burlington,  
4 South of St. Johnsbury and Taylor of Barre City

5 Referred to Committee on

6 Date:

7 Subject: Labor; fair share representation fees

8 Statement of purpose: This bill proposes to require that employees in  
9 bargaining units organized under state law who do not join the labor  
10 organization representing the unit pay a fair share agency fee.

11 An act relating to public sector fair share agency fees

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. POLICY

14 It is the policy of the state of Vermont that employees in bargaining units  
15 organized under state law who exercise their rights not to join a labor  
16 organization required to provide them certain services shall pay to that labor  
17 organization a fair share agency fee, representing that portion of the labor  
18 organization's membership fees which are attributable to those services.

1       Sec. 2. FINDINGS

2           The general assembly finds:

3           (1) The right of employees to organize and form a labor organization to  
4           engage in collective bargaining is fundamental to both a free society and the  
5           generation and maintenance of a strong middle class.

6           (2) The state has long favored the right of employees to organize for the  
7           purpose of bargaining collectively with their employer.

8           (3) Vermont law recognizes that a labor organization democratically  
9           selected by bargaining unit employees is the exclusive representative of all the  
10          employees within the bargaining unit.

11          (4) A labor organization engages in both “chargeable” and  
12          “nonchargeable” activities on behalf of bargaining unit members.  
13          “Chargeable” activities are generally those related to negotiating and ensuring  
14          the enforcement of collective bargaining agreements on behalf of the  
15          bargaining unit as a whole and for every employee within it. “Nonchargeable”  
16          activities are generally those related to political activities and lobbying.

17          (5) With respect to “chargeable activities,” a labor organization must  
18          represent all the employees within its bargaining unit. It may not discriminate  
19          between members of the labor organization who pay membership fees and  
20          those who exercise their rights not to become members. This is called “the

1 duty of fair representation.” This duty does not extend to “nonchargeable”  
2 activities.

3 (6) The “chargeable” activities undertaken by labor organizations on  
4 behalf of all bargaining unit employees are in the interest of the public good.

5 (7) Over the past century, the term “free riding” has come to describe  
6 the employees of bargaining units organized under state law who do not  
7 become members of the labor organization representing the bargaining unit.

8 (8) It is the policy of the state to require employees in bargaining units  
9 organized under state law who do not become members of the labor  
10 organization representing the unit to pay a “fair share agency fee” for the  
11 chargeable activities undertaken on their behalf.

12 (9) Current labor law in Vermont leaves the question of a fair share  
13 agency fee to the collective bargaining process itself.

14 (10) It is inconsistent with state policy to continue to permit employers,  
15 merely by not agreeing to fair share fee provisions in collective bargaining  
16 agreements, to enable their bargaining unit employees who are not members of  
17 the labor organization to avoid paying their fair share of the organization’s  
18 representation.

19 (11) The result of allowing employers to withhold consent to fair share  
20 fees has resulted in a patchwork of collective bargaining agreements, some of

1 which include fair share provisions and some of which do not. It is inequitable  
2 to allow “free riding” to override public policy to the contrary.

3 (12) By enacting a fair share agency fee law, the state will allow  
4 employees not to join the labor organizations representing them, but will  
5 ensure equitable treatment across bargaining units organized under state law.

6 (13) The duty of fair share representation should be balanced by the  
7 duty to pay a fair share agency fee.

8 Sec. 3. 3 V.S.A. § 1012 is amended to read:

9 § 1012. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

10 (a) Employees shall have the right to self-organization; to form, join, or  
11 assist employee organizations; to bargain collectively through their chosen  
12 representatives; to engage in concerted activities of collective bargaining or  
13 other mutual aid or protection; to refrain from any or all those activities, except  
14 as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to  
15 appeal grievances as provided in this chapter.

16 (b) No employee may strike or recognize a picket line of an employee  
17 organization while performing the employee’s official duties.

18 (c) An employee who exercises the right not to join the employee  
19 organization representing the employee’s certified unit pursuant to section  
20 1021 of this title shall pay a collective bargaining fee to the representative of

1 the bargaining unit in the same manner as employees who pay membership  
2 fees to the representative.

3 ~~(e)~~(d) The employer and employees and the employee's representative shall  
4 exert every reasonable effort to make and maintain agreements concerning  
5 matters allowable under section 1013 of this title and to settle all disputes,  
6 whether arising out of the application of those agreements or growing out of  
7 any dispute between the employer and the employees.

8 Sec. 4. 3 V.S.A. § 1027 is amended to read:

9 § 1027. EMPLOYEES

10 It shall be an unfair labor practice for an employee organization or its  
11 agents:

12 \* \* \*

13 (10) To charge a ~~negotiated~~ collective bargaining fee unless the  
14 employee organization has established and maintained a procedure to provide  
15 nonmembers with all the following:

16 (A) An audited financial statement that identifies the major  
17 categories of expenses and divides them into chargeable and nonchargeable  
18 expenses.

19 (B) An opportunity to object to the amount of the fee requested and  
20 to place in escrow any amount reasonably in dispute.

1 (C) Prompt arbitration by the board to resolve any objection over the  
2 amount of the collective bargaining fee.

3 Sec. 5. 16 V.S.A. § 1982 is amended to read:

4 § 1982. RIGHTS

5 (a) Teachers shall have the right to or not to join, assist, or participate in  
6 any teachers' organization of their choosing. However, teachers ~~may be~~  
7 ~~required to pay an agency fee~~ who choose not to join the teachers' organization  
8 recognized pursuant to an agreement negotiated under section 1992 of this  
9 chapter as exclusive representative, shall pay an agency fee in the same manner  
10 as teachers who choose to join the teachers' organization pay membership fees.

11 (b) Principals, assistant principals, and administrators other than  
12 superintendent and assistant superintendent shall have the right to or not to  
13 join, assist, or participate in any administrators' organization or as a separate  
14 unit of any teachers' organization of their choosing. However, administrators  
15 other than the superintendent and assistant superintendent ~~may be required to~~  
16 ~~pay an agency fee~~ who choose not to join the administrators' organization  
17 recognized pursuant to an agreement negotiated under section 1992 of this  
18 chapter as exclusive representative, shall pay an agency fee in the same manner  
19 as administrators who choose to join the administrators' organization pay  
20 membership fees.

1 (c) Neither the school board nor any employee of the school board serving  
2 in any capacity, nor any other person or organization shall interfere with,  
3 restrain, coerce, or discriminate in any way against or for any teacher or  
4 administrator engaged in activities protected by this legislation.

5 Sec. 6. 21 V.S.A. § 1502 is amended to read:

6 § 1502. DEFINITIONS

7 In this chapter, the following words shall have the following meaning:

8 \* \* \*

9 (14) “Agency service fee” means a fee for representation in collective  
10 bargaining not exceeding labor organization dues, payable to a labor  
11 organization which is the exclusive representative for employees in a  
12 bargaining unit from individuals who are not members of the labor  
13 organization.

14 Sec. 7. 21 V.S.A. § 1621 is amended to read:

15 § 1621. UNFAIR LABOR PRACTICES

16 (a) It shall be an unfair labor practice for an employer:

17 \* \* \*

18 (6) Nothing in this chapter or any other statute of this state shall  
19 preclude an employer from making an agreement with a labor organization  
20 (not established, maintained or assisted by any action defined in this subsection  
21 (a) as an unfair labor practice) to require as a condition of employment

1 membership in such labor organization on or after the 30th day following the  
2 beginning of such employment or the effective date of such agreement,  
3 whichever is the later (i) if such labor organization is the representative of the  
4 employees as provided in section 1583 of this chapter, in the appropriate  
5 collective bargaining unit covered by such agreement when made and (ii)  
6 unless following an election held as provided in section 1584 of this chapter  
7 within one year preceding the effective date of such agreement, the board shall  
8 have certified that at least a majority of the employees eligible to vote in such  
9 election have voted to rescind the authority of such labor organization to make  
10 such an agreement. Absent such an agreement, an employee who does not  
11 become a member of the labor organization shall, in the same manner as  
12 employees who choose to join the labor organization pay membership fees,  
13 pay an agency service fee to that organization. No employer shall justify any  
14 discrimination against an employee for nonmembership in a labor  
15 organization:

16 (A) If the employer has reasonable grounds for believing that  
17 membership was not available to the employee on the same terms and  
18 conditions generally applicable to other members; or

19 (B) If the employer has reasonable grounds for believing that  
20 membership was denied or terminated for reasons other than the failure of the



1 employee to tender the periodic dues and the initiation fees uniformly required  
2 as a condition of acquiring or retaining membership.

3 \* \* \*

4 Sec. 8. 21 V.S.A. § 1726 is amended to read:

5 § 1726. UNFAIR LABOR PRACTICES

6 (a) It shall be an unfair labor practice for an employer:

7 \* \* \*

8 (8) Nothing in this chapter or any other statute of this state shall  
9 preclude a municipal employer from making an agreement with the exclusive  
10 bargaining agent ~~to require an agency service fee to be paid as a condition of~~  
11 ~~employment, or to require as a condition of employment membership in such~~  
12 employee organization on or after the 30th day following the beginning of such  
13 employment or the effective date of such agreement, whichever is the later.  
14 Absent such an agreement, an employee who does not become a member of  
15 the employee organization shall, in the same manner as employees who choose  
16 to join the employee organization pay membership fees, pay an agency service  
17 fee to that organization. No municipal employer shall discharge or  
18 discriminate against any employee for nonpayment of an agency service fee or  
19 for nonmembership in an employee organization:

