

1 S.316

2 Introduced by Committee on Education

3 Date: January 9, 2014

4 Subject: Education; collective bargaining; early child care and education
5 providers

6 Statement of purpose of bill as introduced: This bill proposes to extend
7 collective bargaining rights to early child care providers to improve the quality
8 of early education in Vermont.

9 An act relating to child care providers

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

11 Sec. 1. FINDINGS

12 The General Assembly finds:

13 (1) The early education a child receives before school age, particularly
14 before the age of three, has a profound effect on a child's development during
15 this critical stage of life. Investments in the consistency and quality of early
16 education lay a vital foundation for the future cognitive, social, and academic
17 success of Vermont children.

18 (2) Early education providers should have the opportunity to work
19 collectively with the State to enhance professional development and
20 educational opportunities for early educators, to increase child care subsidy

1 funding to enable more children to receive critical early education
2 opportunities, and to ensure the continual improvement of early education in
3 Vermont.

4 Sec. 2. 33 V.S.A. chapter 36 is added to read:

5 CHAPTER 36. EARLY CARE AND EDUCATION PROVIDERS

6 LABOR RELATIONS ACT

7 § 3601. PURPOSE

8 (a) The General Assembly recognizes the right of all early care and
9 education providers to bargain collectively with the State over matters within
10 the State's control and identified as subjects of bargaining pursuant to
11 subsection 3603(b) of this chapter.

12 (b) The General Assembly intends to create an opportunity for early care
13 and education providers to choose to form a union and bargain with the State
14 over matters within the State's control and identified as subjects of bargaining
15 pursuant to subsection 3603(b) of this chapter.

16 (c) Specific terms and conditions of employment ~~at individual child care~~
17 ~~centers~~, which are the subject of traditional collective bargaining between
18 employers and employees, are outside the limited scope of this chapter.

19 (d) The matters subject to this chapter are those within the control of the
20 State of Vermont and relevant to all early care and education providers.

1 (e) Early care and education providers do not forfeit their rights under the
2 National Labor Relations Act, 29 U.S.C. §§ 151–169, or the Vermont State
3 Labor Relations Act, 21 V.S.A. §§ 1501–1624, by becoming members of an
4 organization that represents them in their dealings with the State. The terms
5 and conditions of employment with individual early care and education
6 providers, which are the subjects of traditional collective bargaining between
7 employers and employees and which are governed by federal law, fall outside
8 the limited scope of bargaining defined in this chapter.

9 § 3602. DEFINITIONS

10 As used in this chapter:

11 (1) “Board” means the State Labor Relations Board established under
12 3 V.S.A. § 921.

13 (2) “Collective bargaining” or “bargaining collectively” means the
14 process by which the State and the exclusive representative of early care and
15 education providers negotiate terms or conditions related to the subjects of
16 collective bargaining identified in subsection 3603(b) of this chapter that when
17 reached and funded shall be legally binding.

 (3) “Early care and education provider” means a licensed child care
home provider, a registered child care home provider, or a legally exempt child
care home provider, *which is defined by the Legally Exempt Child Care*
Provider Requirements set forth by the Vermont Department for Children and

Families, Child Development Division, who provides child care services as defined in subdivision 3511(3) of this title.

1 (4) “Exclusive representative” means the labor organization that has
2 been elected or recognized and certified by the Board under this chapter and
3 consequently has the exclusive right under section 3608 of this chapter to
4 represent early care and education providers for the purpose of collective
5 bargaining and the enforcement of any contract provisions.

6 (5) “Grievance” means the exclusive representative’s formal written
7 complaint regarding an improper application of one or more terms of the
8 collective bargaining agreement.

9 (6) “Subsidy payment” means any payment made by the State to assist
10 families in paying for child care services through the State’s child care
11 financial assistance program.

12 § 3603. ESTABLISHMENT OF COLLECTIVE BARGAINING

13 (a) Early care and education providers, through their exclusive
14 representative, shall have the right to bargain collectively with the State
15 through the Governor’s designee.

16 ~~(b) Mandatory subjects of bargaining are limited to child care subsidy~~
17 ~~reimbursement rates and payment procedures, professional development, the~~
18 ~~collection of dues or agency fees and disbursement to the exclusive~~
19 ~~representative, and procedures for resolving grievances. The parties may also~~

1 ~~negotiate on any mutually agreed matters that are not in conflict with State or~~
2 ~~federal law.~~

(b)(1) Mandatory subjects of bargaining are limited to:

(A) child care subsidy reimbursement rates and payment procedures, excluding quality standards and payment schedules associated with the STep Ahead Recognition System (STARS);

(B) professional development;

(C) the collection of dues and disbursement to the exclusive representative;

(D) agency fees and disbursement to the exclusive representative; and

(E) procedures for resolving grievances.

(2) The parties may also negotiate on any mutually agreed matters that are not in conflict with State or federal law.

3 (c) The State, acting through the Governor's designee, shall meet with the
4 exclusive representative for the purpose of entering into a written agreement.

5 ~~(d) Early care and education providers shall be considered employees, and~~
6 ~~the State shall be considered the employer, solely for the purpose of collective~~
7 ~~bargaining under this chapter. Early care and education providers shall not be~~
8 ~~considered State employees other than for purposes of collective bargaining,~~
9 ~~including for purposes of vicarious liability in tort, and for purposes of~~
10 ~~unemployment compensation or workers' compensation. Early care and~~
11 ~~education providers shall not be eligible for participation in the State~~
12 ~~Employees Retirement System or the health insurance plans available to~~
13 ~~Executive Branch employees solely by virtue of bargaining under this chapter.~~

(d) Early care and education providers shall be considered employees, and the State shall be considered the employer, solely for the purpose of collective bargaining under this chapter. Early care and education providers shall be considered State employees for purposes of collective bargaining. Early care and education providers shall not be considered State employees for any other reason, including for purposes of vicarious liability in tort, unemployment compensation, or workers' compensation. Early care and education providers shall not be eligible for participation in the State Employees Retirement System or the health insurance plans available to Executive Branch employees solely by virtue of bargaining under this chapter.

~~1 (e) Agency fees may be collected only from early care and education
2 providers who receive subsidy payments from the State. Any dispute raised by
3 a nonmember concerning the amount of an agency fee, as provided for under
4 subsection (b) of this section, may be grieved to the State Labor Relations
5 Board which shall review and determine such matter promptly, in accordance
6 with the Board's rules.~~

(e) An early care and education providers' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute; and

(3) prompt arbitration by the Vermont Labor Board to resolve any objections over the agency fee.

(f) Agency fees, if successfully bargained, shall be based on the proportionate amount of subsidies an early care and education provider receives.

7 § 3604. RIGHTS OF EARLY CARE AND EDUCATION PROVIDERS

8 Early care and education providers shall have the right to:

1 (1) organize, form, join, or assist any union or labor organization for the
2 purpose of collective bargaining without any interference, restraint, or
3 coercion;

4 (2) bargain collectively through a representative of their own choice;

5 (3) engage in concerted activities for the purpose of supporting or
6 engaging in collective bargaining;

7 (4) pursue grievances through the exclusive representative as negotiated
8 pursuant to this chapter; and

9 (5) refrain from any or all such activities.

10 § 3605. RIGHTS OF THE STATE

11 Nothing in this chapter shall be construed to interfere with the right of the
12 State to:

13 (1) carry out the statutory mandate and goals of the Agency of Human
14 Services and to use personnel, methods, and means in the most appropriate
15 manner possible;

16 (2) with the approval of the Governor, take whatever action may be
17 necessary to carry out the mission of the Agency of Human Services in an
18 emergency situation;

19 (3) comply with federal and State laws and regulations regarding child
20 care and child care subsidies;

1 (4) enforce child care regulations and regulatory processes, including
2 regulations regarding the qualifications of early care and education providers
3 and the prevention of abuse in connection with the provisions of child care
4 services;

5 (5) develop child care regulations and regulatory processes subject to
6 the rulemaking authority of the General Assembly and the Human Services
7 Board;

8 (6) establish and administer quality standards under the Step Ahead
9 Recognition system;

10 (7) solicit and accept for use any grant of money, services, or property
11 from the federal government, the State, or any political subdivision or agency
12 of the State, including federal matching funds, and to cooperate with the
13 federal government or any political subdivision or agency of the State in
14 making an application for any grant; and

15 (8) refuse to take any action that would diminish the quantity or quality
16 of child care provided under existing law.

17 § 3606. BARGAINING UNIT

18 ~~(a) The bargaining unit shall be composed of licensed home child care~~
19 ~~providers, registered home child care providers, and legally exempt child care~~
20 ~~providers as defined in this chapter.~~

(a) The bargaining unit shall be composed of licensed home child care
providers, registered home child care providers, and legally exempt child care

providers, as defined in this chapter, who have an agreement with the Department to accept a subsidy.

1 (b) Early care and education providers may select an exclusive
2 representative for the purpose of collective bargaining by using the procedures
3 in sections 3607 and 3608 of this chapter.

4 (c) The exclusive representative of the early care and education providers is
5 required to represent all of the providers in the unit without regard to
6 membership in the union.

7 § 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS;

8 HEARINGS; DETERMINATIONS

9 (a) A petition may be filed with the Board in accordance with regulations
10 prescribed by the Board:

11 (1) By an early care and education provider or group of providers or any
12 individual or labor organization acting on the providers' behalf:

13 (A) alleging that not less than 30 percent of the providers in the
14 petitioned bargaining unit wish to be represented for collective bargaining and
15 that the State declines to recognize their representative as the representative
16 defined in this chapter; or

17 (B) asserting that the labor organization that has been certified as the
18 bargaining representative no longer represents a majority of early care and
19 education providers.

1 (2) By the State alleging that one or more individuals or labor
2 organizations have presented a claim to be recognized as the exclusive
3 representative defined in this chapter.

4 (b) The Board shall investigate the petition and, if it has reasonable cause
5 to believe that a question concerning representation exists, shall conduct a
6 hearing. The hearing shall be held before the Board, a member of the Board,
7 or its agents appointed for that purpose upon due notice. Written notice of the
8 hearing shall be mailed by certified mail to the parties named in the petition
9 not less than seven days before the hearing. If the Board finds upon the record
10 of the hearing that a question of representation exists, it shall conduct an
11 election by secret ballot and certify to the parties, in writing, the results of the
12 election.

13 (c) In determining whether or not a question of representation exists, the
14 Board shall apply the same regulations and rules of decision-making regardless
15 of the identity of the persons filing the petition or the kind of relief sought.

16 (d) Nothing in this chapter prohibits the waiving of hearings by stipulation
17 for a consent election in conformity with regulations and rules of the Board.

18 (e) For the purposes of this chapter, the State may voluntarily recognize the
19 exclusive representative of a unit of early care and education providers if the
20 labor organization demonstrates that it has the support of a majority of the

1 providers in the unit it seeks to represent and no other employee organization
2 seeks to represent the providers.

3 § 3608. ELECTION; RUNOFF ELECTIONS

4 (a) If a question of representation exists, the Board shall conduct a secret
5 ballot election to determine the exclusive representative of the unit of early
6 care and education providers. The original ballot shall be prepared to permit a
7 vote against representation by anyone named on the ballot. The labor
8 organization receiving a majority of votes cast shall be certified by the Board
9 as the exclusive representative of the unit of early care and education
10 providers. In any election in which there are three or more choices, including
11 the choice of “no union,” and none of the choices on the ballot receives a
12 majority, a runoff election shall be conducted by the Board. The ballot shall
13 provide for a selection between the two choices receiving the largest and
14 second largest number of valid votes cast in the election.

15 (b) An election shall not be directed if in the preceding 12 months a valid
16 election has been held.

17 § 3609. POWERS OF REPRESENTATIVES

18 The exclusive representative shall be the exclusive representative of all the
19 early care and education providers in the unit for the purposes of collective
20 bargaining and the resolution of grievances.

1 § 3610. NEGOTIATED AGREEMENT; FUNDING

2 (a) If the State and the exclusive representative reach an agreement, the
3 Governor shall request from the General Assembly an appropriation sufficient
4 to fund the agreement in the next operating budget. If the General Assembly
5 appropriates sufficient funds, the negotiated agreement shall become effective
6 and binding at the beginning of the next fiscal year. If the General Assembly
7 appropriates a different amount of funds, the terms of the agreement affected
8 by that appropriation shall be renegotiated based on the amount of funds
9 actually appropriated by the General Assembly and shall become effective and
10 legally binding in the next fiscal year.

11 (b) Collective bargaining agreements shall be for a maximum term of two
12 years and shall not be subject to cancellation or renegotiation during the term
13 except with the mutual consent in writing of both parties, which consent shall
14 be filed with the Board. Upon the filing of such consent, an agreement may be
15 supplemented, cancelled, or renegotiated.

16 (c) The agreement shall terminate at the expiration of its specified term.
17 Negotiations for a new agreement to take effect upon the expiration of the
18 preceding agreement shall be commenced at any time within one year next
19 preceding the expiration date upon the request of either party and may be
20 commenced at any time previous thereto with the consent of both parties.

1 (d) In the event the State of Vermont and the collective bargaining unit are
2 unable to arrive at an agreement and there is not an existing agreement in
3 effect, the existing contract shall remain in force until a new contract is ratified
4 by the parties. However, nothing in this subsection shall prohibit the parties
5 from agreeing to a modification of certain provisions of the existing contract
6 that, as amended, shall remain in effect until a new contract is finalized and
7 funded by the General Assembly.

8 (e) The Board is authorized to enforce compliance with all provisions of a
9 collective bargaining agreement upon complaint of either party. In the event a
10 complaint is made by either party to an agreement, the Board shall proceed in
11 the manner prescribed in section 3612 of this chapter relating to the prevention
12 of unfair labor practices.

13 § 3611. MEDIATION; FACT-FINDING; LAST BEST OFFER

14 (a) If after a reasonable period of negotiation, the exclusive representative
15 and the State reach an impasse, the Board upon petition of either party may
16 authorize the parties to submit their differences to mediation. Within five days
17 after receipt of the petition, the Board shall appoint a mediator who shall
18 communicate with the parties and attempt to mediate an amicable settlement.
19 A mediator shall be of high standing and not affiliated with either labor or
20 management.

1 (b) If after a minimum of 15 days after the appointment of a mediator, the
2 impasse is not resolved, the mediator shall certify to the Board that the impasse
3 continues.

4 (c) Upon the request of either party, the Board shall appoint a fact finder
5 who has been mutually agreed upon by the parties. If the parties fail to agree
6 on a fact finder within five days, the Board shall appoint a fact finder who shall
7 be a person of high standing and shall not be affiliated with either labor or
8 management. A member of the Board or any individual who has actively
9 participated in mediation proceedings for which fact-finding has been called
10 shall not be eligible to serve as a fact finder under this section unless agreed
11 upon by the parties.

12 (d) The fact finder shall conduct hearings pursuant to rules of the Board.
13 Upon request of either party or of the fact finder, the Board may issue
14 subpoenas of persons and documents for the hearings and the fact finder may
15 require that testimony be given under oath and may administer oaths.

16 (e) Nothing in this section shall prohibit the fact finder from mediating the
17 dispute at any time prior to issuing recommendations.

18 (f) In making a recommendation, the fact finder shall consider whether the
19 proposal increases the amount and quality of care provided to children and
20 families in a manner that is more affordable for Vermont families and citizens
21 and whether the subsidies provided are consistent with federal guidance.

1 (g) Upon completion of the hearings, the fact finder shall file written
2 findings and recommendations with both parties.

3 (h) The costs of witnesses and other expenses incurred by either party in
4 fact-finding proceedings shall be paid directly by the parties incurring them,
5 and the costs and expenses of the fact finder shall be paid equally by the
6 parties. The fact finder shall be paid a rate mutually agreed upon by the parties
7 for each day or any part of a day while performing fact-finding duties and shall
8 be reimbursed for all reasonable and necessary expenses incurred in the
9 performance of his or her duties. A statement of fact-finding per diem and
10 expenses shall be certified by the fact finder and submitted to the Board for
11 approval. The Board shall provide a copy of approved fact-finding costs to
12 each party with its order apportioning one-half of the total to each party for
13 payment. Each party shall pay its half of the total within 15 days after receipt
14 of the order. Approval by the Board of the fact finder's costs and expenses and
15 its order for payment shall be final as to the parties.

16 (i) If the dispute remains unresolved 15 days after transmittal of findings
17 and recommendations, each party shall submit to the Board its last best offer
18 on all disputed issues as a single package. Each party's last best offer shall be
19 filed with the Board under seal and shall be unsealed and placed in the public
20 record only when both parties' last best offers are filed with the Board. The
21 Board may hold hearings and consider the recommendations of the fact finder.

1 Within 30 days of the certifications, the Board shall select between the last best
2 offers of the parties, considered in their entirety without amendment, and shall
3 determine that selection's cost. The Board shall not issue an order under this
4 subsection that is in conflict with any law or rule or that relates to an issue that
5 is not a mandatory subject of collective bargaining. The Board shall determine
6 the cost of the agreement selected and recommend to the General Assembly its
7 choice with a request for appropriation. If the General Assembly appropriates
8 sufficient funds, the agreement shall become effective and legally binding at
9 the beginning of the next fiscal year. If the General Assembly appropriates a
10 different amount of funds, the terms of the agreement affected by that
11 appropriation shall be renegotiated based on the amount of funds actually
12 appropriated by the General Assembly, and the agreement with the negotiated
13 changes shall become effective and binding at the beginning of the next
14 fiscal year.

15 § 3612. GENERAL DUTIES AND PROHIBITED CONDUCT

16 (a) The State and all early care and education providers and their
17 representatives shall exert every reasonable effort to make and maintain
18 agreements concerning matters allowable under this chapter and to settle all
19 disputes, whether arising out of the application of those agreements or growing
20 out of any disputes concerning those agreements. However, this obligation
21 does not compel either party to agree to a proposal or make a concession.

1 **(b) It shall be an unfair labor practice for the State to:**

2 **(1) interfere with, restrain, or coerce early care and education providers**
3 **in the exercise of their rights under this chapter or by any other law, rule, or**
4 **regulation;**

5 **(2) dominate or interfere with the formation or administration of any**
6 **labor organization or contribute financial or other support to it;**

7 **(3) discriminate against an early care and education provider because of**
8 **the provider's affiliation with a labor organization or because a provider has**
9 **filed charges or complaints or has given testimony under this chapter;**

(4) ~~take negative action~~ discriminate against an early care and
education provider because the provider has taken actions such as signing a
petition, grievance, or affidavit that demonstrates the provider's support for a
labor organization;

10 **(5) refuse to bargain collectively in good faith with the exclusive**
11 **representative;**

12 **(6) discriminate against an early care and education provider based on**
13 **race, color, religion, ancestry, age, sex, sexual orientation, gender identity,**
14 **national origin, place of birth, or marital status, or against a qualified disabled**
15 **individual; or**

1 (7) request or require an early care and education provider to have an
2 HIV-related blood test or discriminate against a provider on the basis of HIV
3 status of the provider.

4 (c) It shall be an unfair labor practice for the exclusive representative to:

5 (1) Restrain or coerce early care and education providers in the exercise
6 of the rights guaranteed to them under this chapter or by law, rule, or
7 regulation. However, a labor organization may prescribe its own rules with
8 respect to the acquisition or retention of membership provided such rules are
9 not discriminatory.

10 (2) Cause or attempt to cause the State to discriminate against an early
11 care and education provider or to discriminate against a provider.

12 (3) Refuse to bargain collectively in good faith with the State.

13 (4) Threaten to or cause a provider to strike or curtail the provider's
14 services in recognition of a picket line of any employee or labor organization.

(d) Early care and education providers shall not strike or curtail their
services *for which they receive State payment* in recognition of a picket line of
any employee or labor organization.

15 (e) Complaints related to this section shall be made and resolved in
16 accordance with procedures set forth in 3 V.S.A. § 965.

17 § 3613. ANTITRUST EXEMPTION

1 The activities of early care and education providers and their exclusive
2 representatives that are necessary for the exercise of their rights under this
3 chapter shall be afforded State action immunity under applicable federal and
4 State antitrust laws. The State intends that the “State action” exemption to
5 federal antitrust laws be available only to the State, to early care and education
6 providers, and to their exclusive representative in connection with these
7 necessary activities. Exempt activities shall be actively supervised by the
8 State.

9 § 3614. RIGHTS UNALTERED

10 (a) This chapter does not alter or infringe upon the rights of:

11 (1) a parent or legal guardian to select and discontinue child care
12 services of any early care and education provider;

13 (2) an early care and education provider to choose, direct, and terminate
14 the services of any employee that provides care in that home; or

15 (3) the Judiciary and General Assembly to make programmatic
16 modifications to the delivery of State services through child care subsidy
17 programs, including standards of eligibility for families, legal guardians, and
18 providers participating in child care subsidy programs, and to the nature of
19 services provided.

20 (b) Nothing in this chapter shall affect the rights and obligations of private
21 sector employers and employees under the National Labor Relations Act,

1 29 U.S.C. §§ 151–169, or the Vermont State Labor Relations Act, 21 V.S.A.
2 §§ 1501–1624. The terms and conditions of employment with individual early
3 care and education providers, which are the subjects of traditional collective
4 bargaining between employers and their employees and which are governed by
5 federal laws, fall outside the limited scope of bargaining defined in this
6 chapter.

7 § 3615. RULES AND REGULATIONS

8 The Board shall make and may amend and rescind and adopt such rules and
9 regulations consistent with this chapter as may be necessary to carry out the
10 provisions of this chapter.

11 § 3616. APPEAL

12 (a) Any person aggrieved by an order or decision of the Board issued under
13 the authority of this chapter may appeal on questions of law to the Supreme
14 Court.

15 (b) An order of the Board shall not automatically be stayed pending appeal.
16 A stay must first be requested from the Board. The Board may stay the order
17 or any part of it. If the Board denies a stay, then a stay may be requested from
18 the Supreme Court. The Supreme Court or a single justice may stay the order
19 or any part of it and may order additional interim relief.

1 § 3617. ENFORCEMENT

2 (a) Orders of the Board issued under this chapter may be enforced by any
3 party or by the Board by filing a petition with the Civil Division of the
4 Superior Court of Washington County or in the Civil Division of the Superior
5 Court in the county in which the action before the Board originated. The
6 petition shall be served on the adverse party as provided for service of process
7 under the Vermont Rules of Civil Procedure. If, after hearing, the Court
8 determines that the Board had jurisdiction over the matter and that a timely
9 appeal was not filed or that an appeal was timely filed and a stay of the Board
10 order or any part of it was not granted or that a Board order was affirmed on
11 appeal in pertinent part by the Supreme Court, the Court shall incorporate the
12 order of the Board as a judgment of the Court. There is no appeal from that
13 judgment except that a judgment reversing a Board decision on jurisdiction
14 may be appealed to the Supreme Court.

15 (b) Upon filing of a petition by a party or the Board, the Court may grant
16 such temporary relief, including a restraining order, as it deems proper pending
17 formal hearing.

18 (c) Orders and decisions of the Board shall apply only to the particular case
19 under appeal, but any number of appeals presenting similar issues may be
20 consolidated for hearing with the consent of the Board. The Board shall not

1 modify, add to, or detract from a collective bargaining agreement by any order
2 or decision.

3 ~~Sec. 3. NEGOTIATIONS, EARLY CARE AND EDUCATION PROVIDERS~~

4 The State's costs of negotiating an agreement pursuant to 33 V.S.A.
5 chapter 36 shall be borne by the State out of existing appropriations made to it
6 by the General Assembly.

Sec. 3. NEGOTIATIONS; EARLY CARE AND EDUCATION PROVIDERS

The State's cost of negotiating an agreement pursuant to 33 V.S.A.
chapter 36 shall be borne by the State out of existing appropriations made to it
for administrative expenditures by the General Assembly. These costs shall
not be funded by appropriations made for benefit payments.

7 ~~Sec. 4. EFFECTIVE DATE~~

8 This act shall take effect on passage

Sec. 4. SEVERABILITY OF PROVISIONS

If any provision of this chapter or the application of such provision to any
person or circumstances shall be held invalid, the remainder of the chapter
and the application of such provisions to persons or circumstances other than
those as to which it is held invalid shall not be affected thereby.

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage, except for ~~Sec. 2(b)(1)(D)~~ Sec. 2, 33
V.S.A. § 3603(b)(1)(D) (bargaining for agency fees) which shall take effect on
February 15, 2015.