

Senate Calendar

WEDNESDAY, FEBRUARY 20, 2013

SENATE CONVENES AT: 1:30 P.M.

TABLE OF CONTENTS

Page No.

NOTICE CALENDAR

Favorable

S. 99 The standard measure of recidivism

Judiciary Report – Sen. Sears 100

Favorable with Recommendation of Amendment

S. 59 Independent direct support providers

Econ. Dev., Housing and General Affairs Report - Sen. Cummings 100

CONFIRMATION

Kevin William Griffin of Norwich – Superior Court Judge

Judiciary Report – Sen. Nitka..... 107

ORDERS OF THE DAY

NOTICE CALENDAR

Second Reading

Favorable

S. 99.

An act relating to the standard measure of recidivism.

Reported favorably by Senator Sears for the Committee on Judiciary.

(Committee vote: 5-0-0)

Favorable with Recommendation of Amendment

S. 59.

An act relating to independent direct support providers.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. chapter 20 is added to read:

CHAPTER 20. INDEPENDENT DIRECT SUPPORT PROVIDERS

§ 1631. DEFINITIONS

As used in this chapter:

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

(2) “Collective bargaining” or “bargaining collectively” means the process by which the State and the exclusive representative of the independent direct support providers negotiate terms or conditions as defined in section 1633 of this title with the intent to arrive at an agreement which, when reached, shall be legally binding on all parties.

(3) “Grievance” means an independent direct support provider’s or the exclusive representative’s formal written complaint regarding the improper application of one or more terms of the collective bargaining agreement, which has not been resolved to a satisfactory result through informal discussion with the State.

(4) “Service recipient” means a person who receives home- and community-based services under the Choice for Care Medicaid waiver, the Attendant Services Program (ASP), the Children’s Personal Care Service Program, the Developmental Disabilities Services Program, or any successor program or similar program subsequently established.

(5) “Exclusive representative” means a labor organization that has been elected and certified under this chapter and has the right to represent independent direct support providers for the purpose of collective bargaining.

(6) “Independent direct support provider” means any individual who provides home- and community-based services to a service recipient and is employed by the service recipient, shared living provider, or surrogate.

(7) “Shared living provider” means a person who operates under a contract with a developmental disabilities service agency and provides individualized home support for one or two people who live in his or her home.

(8) “Surrogate” means a service recipient’s authorized family member, legal guardian, or a person identified in a written agreement as having responsibility for the care of a service recipient.

§ 1632. RIGHTS OF INDEPENDENT DIRECT SUPPORT PROVIDERS

Independent direct support providers shall have the right to:

(1) organize, form, join, or assist a union or labor organization for the purposes of collective bargaining without interference, restraint, or coercion;

(2) bargain collectively through their chosen representatives;

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

(4) pursue grievances as provided in this chapter; and

(5) refrain from any or all such activities.

§ 1633. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING; SCOPE OF BARGAINING

(a) Independent direct support providers, through their exclusive representative, shall have the right to bargain collectively with the State, through the Governor’s designee, under this chapter.

(b) The scope of collective bargaining for independent direct support providers under this section shall include:

(1) compensation terms, including workforce benefits, and payment methods and procedures;

(2) professional development and training; however, nothing in this subdivision requires the state to create or conduct any professional development and training programs;

(3) the collection and disbursement of dues or fees to the exclusive representative;

(4) procedures for resolving grievances against the State;

(5) issues relating to the recruitment, retention, or referral of qualified independent direct support providers; and

(6) any other matters relating to the role of the State and its contractors in regulating, subsidizing, and enhancing the quality of home- and community-based services within the State.

(c) For the purpose of this chapter, the obligation to bargain collectively is the performance of the mutual obligation of the State and the exclusive representative of the independent direct support providers to meet at reasonable times and confer in good faith with respect to all matters bargainable under the provisions of this chapter; but the failure or refusal of either party to agree to a proposal, or to change or withdraw a lawful proposal, or to make a concession shall not constitute, or be evidence direct or indirect, of a breach of this obligation. Nothing in this chapter shall be construed to require either party during collective bargaining to accede to any proposal or proposals of the other party.

§ 1634. ELECTION; BARGAINING UNIT

(a) Petitions and elections shall be conducted pursuant to the procedures provided in 3 V.S.A. chapter 27 to the extent that they do not conflict with this chapter.

(b) A representation election for independent direct support providers conducted by the Board pursuant to 3 V.S.A. chapter 27 shall be by mail ballot.

(c) The bargaining unit for purposes of collective bargaining pursuant to this chapter shall be a statewide unit of independent direct support providers. Eligible independent direct support providers shall have the right to participate in a representation election but shall not have the right to vote on or otherwise determine the collective bargaining unit. Eligible independent direct support providers shall all be independent direct support providers who have been paid for providing home- and community-based services within the previous six months.

(d) The State shall, upon request, provide within seven days to any organization which has as one of its primary purposes the collective bargaining

representation of independent direct support providers in their relations with state or other public entities the most recent list of independent direct support providers in its possession.

§ 1635. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If, after a reasonable period of negotiation, the representative of the collective bargaining unit and the State reach an impasse, the Board, upon petition of either party, may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the Board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement. A mediator shall be of high standing.

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

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

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

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

(f) The fact finder shall consider factors related to the scope of bargaining contained in this chapter in making a recommendation.

(g) Upon completion of the hearings provided in subsection (d) of this section, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be paid equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and

expenses shall be certified by the fact finder and submitted to the Board for approval. The Board shall provide a copy of approved fact-finding costs to each party with its order apportioning half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt of the order. Approval by the Board of fact-finding and the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 15 days after transmittal of findings and recommendations, each party shall submit to the Board its last best offer on all disputed issues as a single package. Each party's last best offer shall be certified to the Board by the fact finder. The board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the Board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine its cost. The Board shall not issue an order under this subsection that is in conflict with any law or rule or that relates to an issue that is not subject to bargaining. The Board shall recommend its choice to the General Assembly as the agreement which shall become effective subject to the appropriations by the General Assembly pursuant to section 1637 of this title.

§ 1636. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and the independent direct support providers and their representatives shall make every reasonable effort to make and maintain agreements concerning matters allowed under this chapter and to settle all disputes, whether arising out of the application of those agreements or disputes concerning the agreements. All disputes shall, upon request of either party, be considered within 15 days of the request or at such times as may be mutually agreed to and if possible settled with all expedition in conference between representatives designated and authorized to confer by the State or the independent direct support providers. This obligation does not compel either party to make any agreements or concessions.

(b) The State shall not:

(1) Interfere with, restrain, or coerce independent direct support providers in the exercise of their rights under this chapter or by any law, rule, or regulation.

(2) Discriminate against an independent direct support provider because of the provider's affiliation with a labor organization or because a provider has filed charges or complaints or given testimony under this chapter.

(3) Take negative action against an independent direct support provider because the provider has taken actions demonstrating his or her support for a labor organization, including signing a petition, grievance, or affidavit.

(4) Refuse to bargain collectively in good faith with the exclusive representative or fail to abide by any agreement reached.

(5) Discriminate against an independent direct support provider based on race, color, creed, religion, age, disability, gender, sexual orientation, gender identity, or national origin.

(c) The employee organization shall not:

(1) Restrain or coerce independent direct support providers in the exercise of the rights guaranteed them by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership, provided such rules are not discriminatory.

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

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

§ 1637. COST ITEMS SUBMITTED TO GENERAL ASSEMBLY

(a) Any agreement reached between the parties shall be subject to approval by the General Assembly solely for the purpose of securing sufficient funding pursuant to 3 V.S.A. § 982. Nothing shall prevent the parties from agreeing to and effecting those provisions of an agreement which do not require action by the General Assembly.

(b) Cost items agreed upon in collective bargaining between the parties shall be submitted to the Governor who shall request funds from the General Assembly to implement the agreement. If the General Assembly rejects any of the cost items submitted to it, all the cost items shall be returned to the parties to the agreement for further bargaining. If the General Assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated and the new agreement shall become effective at the beginning of the next fiscal year.

§ 1638. RIGHTS UNALTERED

(a) A collective bargaining agreement or award under this chapter shall not infringe upon any rights of service recipients or their surrogates to hire, direct, supervise, or discontinue the employment of any particular independent direct support provider.

(b) Nothing in this section shall alter the rights and obligations of private sector employers and employees under the National Labor Relations Act, 29 U.S.C. § 151 et seq.

(c) A direct support provider shall not strike.

(d) Except as provided in 33 V.S.A. § 6321(f), independent direct support providers shall not be considered State employees by virtue of bargaining under this chapter.

(e) No provision of this chapter shall constitute a waiver of sovereign immunity of the state. The state shall not be liable for any claim arising out of the employment relationship between a service recipient and an independent direct service provider, even if the independent direct service provider was included on a referral directory or referred to a service recipient or the service recipient's surrogate.

§ 1639. APPEAL

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

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

§ 1640. ENFORCEMENT

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Kevin William Griffin of Norwich – Superior Court Judge – By Sen. Nitka for the Committee on Judiciary. (2/20/13)

PUBLIC HEARINGS

Tuesday, February 26, 2013 – Room 11 – 7:00 P.M.– 8:30 P.M. Re Retention of Judges by Judicial Retention Committee

Wednesday, February 27, 2013 – Room 11 – 6:00 P.M. – 8:00 P.M. Re Childcare Provider Unions by Economic Development, Housing and General Affairs Committee

REPORTS ON FILE

Reports 2013

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Legislative webpage.

1. Military Department Vermont National Guard Biennial Report. (January 2013)
2. Vermont Long Term Care Ombudsman Project. (January 2013)

NOTICE OF JOINT ASSEMBLY

JOINT ASSEMBLY

Thursday, February 21, 2013 – 10:30 A.M. – House Chamber –Election of a Sergeant at Arms, of an Adjutant and Inspector General, and of three (3) trustees for the University of Vermont, and Vermont and State Agricultural College.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2013 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 15, 2013.

(2) Senate bills referred pursuant to Senate Rule 31, must be reported out of the Committees on Appropriations and Finance on or before March 22, 2013.

(3) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.