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S.102

An act relating to expanding employment protections and collective bargaining rights

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 495o is added to read:

§ 495o. EMPLOYER COMMUNICATIONS RELATING TO RELIGIOUS OR POLITICAL MATTERS; EMPLOYEE RIGHTS

(a) An employer, or an employer’s agent, shall not discharge, discipline, penalize, or otherwise discriminate against, or threaten to discharge, discipline, penalize, or otherwise discriminate against, an employee:

(1) because the employee declines:

(A) to attend or participate in an employer-sponsored meeting that has the primary purpose of communicating the employer’s opinion about religious or political matters; or

(B) to view or participate in communications with or from the employer or the employer’s agent that have the primary purpose of communicating the employer’s opinion about religious or political matters; or

(2) as a means of requiring an employee to:

(A) attend an employer-sponsored meeting that has the primary purpose of communicating the employer’s opinion about religious or political

1 matters; or

2 (B) view or participate in communications with or from the employer
3 or the employer's agent that have the primary purpose of communicating the
4 employer's opinion about religious or political matters.

5 (b) Nothing in this section shall be construed to:

6 (1) limit an employee's right to bring a civil action for wrongful
7 termination; or

8 (2) diminish or limit any rights provided to an employee pursuant to a
9 collective bargaining agreement or employment contract.

10 (c) Nothing in this section shall be construed to prohibit an employer that is
11 a religious or denominational institution or organization, or any organization
12 operated for charitable or educational purposes, that is operated, supervised, or
13 controlled by or in connection with a religious organization, from:

14 (1) communicating with its employees regarding the employer's opinion
15 on religious matters;

16 (2) requiring its employees to attend a meeting regarding the employer's
17 opinion on religious matters; or

18 (3) requiring its employees to view or participate in communications
19 from the employer or the employer's agent regarding the employer's opinion
20 on religious matters.

21 (d) Nothing in this section shall be construed to prohibit an employer that is

1 a political organization, a political party, or an organization that engages, in
2 substantial part, in political matters from:

3 (1) communicating with its employees regarding the employer's opinion
4 on political matters;

5 (2) requiring its employees to attend a meeting regarding the employer's
6 opinion on political matters; or

7 (3) requiring its employees to view or participate in communications
8 from the employer or the employer's agent regarding the employer's opinion
9 on political matters.

10 (e) Nothing in this section shall be construed to prohibit an employer or the
11 employer's agent from:

12 (1) communicating information to an employee:

13 (A) that the employer is required to communicate pursuant to State or
14 federal law; or

15 (B) that is necessary for the employee to perform the employee's job
16 functions or duties;

17 (2) requiring an employee to attend a meeting to discuss issues related to
18 the employer's business or operation when the discussion is necessary for the
19 employee to perform the employee's job functions or duties; or

20 (3) offering meetings, forums, or other communications about religious
21 or political matters for which attendance or participation is entirely voluntary.

1 (f)(1) The penalty and enforcement provisions of section 495b of this
2 subchapter shall apply to this section.

3 (2) The provisions against retaliation in subdivision 495(a)(8) of this
4 subchapter shall apply to this section.

5 (g) As used in this section:

6 (1) “Political matters” means matters relating to:

7 (A) political affiliation;

8 (B) elections for political office;

9 (C) political parties;

10 (D) legislative proposals;

11 (E) the decision to join or support any political party or political,
12 civic, community, fraternal, or labor organization; or

13 (F) any combination of subdivisions (A) through (E) of this
14 subdivision (g)(1).

15 (2) “Religious matters” means matters relating to:

16 (A) religious affiliation;

17 (B) religious practice;

18 (C) the decision to join or support any religious or denominational
19 organization or institution; or

20 (D) any combination of subdivisions (A) through (C) of this
21 subdivision (g)(2).

1 Sec. 2. 21 V.S.A. § 1502 is amended to read:

2 § 1502. DEFINITIONS

3 As used in this chapter:

4 * * *

5 (6) “Employee” includes any employee, and is not limited to the
6 employees of a particular employer unless this chapter explicitly states
7 otherwise, and includes any individual whose work has ceased as a
8 consequence of, or in connection with, any current labor dispute or because of
9 any unfair labor practice and who has not obtained any other regular and
10 substantially equivalent employment, but does not include an individual;

11 (A) employed as an agricultural laborer;

12 (B) employed by ~~his or her~~ the individual’s parent or spouse;

13 (C) ~~employed in the domestic service of any family or person at his~~
14 ~~or her home;~~ [Repealed.]

15 (D) having the status of an independent contractor;

16 (E) employed as a supervisor;

17 (F) employed by an employer subject to the Railway Labor Act ~~as~~
18 ~~amended from time to time;~~ or

19 (G) employed by any other person who is not an employer as defined
20 in subdivision (7) of this section.

21 * * *

1 Sec. 3. AGRICULTURAL WORKER LABOR AND EMPLOYMENT

2 LAWS; STUDY COMMITTEE; REPORT

3 (a) Creation. There is created the Agricultural Worker Labor and
4 Employment Laws Study Committee to examine the application of Vermont's
5 labor relations and employment laws to agricultural workers in Vermont and to
6 identify potential legislative action to provide additional coverage to
7 agricultural workers under those laws.

8 (b) Membership. The Committee shall be composed of the following
9 members:

10 (1) four current members of the House, not all from the same political
11 party, appointed by the Speaker of the House, of whom two shall be members
12 of the Committee on Agriculture, Food Resiliency, and Forestry and two shall
13 be members of the Committee on General and Housing; and

14 (2) four current members of the Senate, not all from the same political
15 party, appointed by the Committee on Committees, of whom two shall be
16 members of the Committee on Agriculture and two shall be members of the
17 Committee on Economic Development, Housing and General Affairs.

18 (c) Powers and duties. The Committee shall study how Vermont's
19 employment and labor relations laws apply to Vermont agricultural workers
20 and identify potential legislative action to provide additional coverage to
21 agricultural workers under those laws. In particular, the Committee shall:

1 (1) identify existing employment rights for agricultural workers under
2 Vermont and federal law;

3 (2) identify Vermont and federal employment and collective bargaining
4 laws that do not apply to some or all Vermont agricultural workers;

5 (3) identify laws in other states that provide employment or collective
6 bargaining rights to agricultural workers that Vermont agricultural workers do
7 not have;

8 (4) paying particular attention to states with agricultural economies
9 similar to Vermont's, examine the structure of collective bargaining rights for
10 agricultural workers in other states that provide such rights, including
11 coverage, certification of exclusive bargaining representatives, subjects for
12 bargaining, procedures for resolving bargaining impasse, unfair labor practices,
13 and costs related to organizing and contract negotiation for both employers and
14 labor organizations;

15 (5) examine the structure of Vermont's existing labor relations laws,
16 including coverage, certification of exclusive bargaining representatives,
17 subjects for bargaining, procedures for resolving bargaining impasse, unfair
18 labor practices, and costs related to organizing and contract negotiation for
19 both employers and labor organizations;

20 (6) examine the capacity of the Vermont Labor Relations Board to
21 administer collective bargaining in Vermont's agricultural sector;

1 (7) develop a framework for agricultural collective bargaining in
2 Vermont; and

3 (8) identify other potential changes to Vermont’s employment laws to
4 provide additional rights and protections to agricultural workers.

5 (d) Assistance. The Committee shall have the administrative assistance of
6 the Office of Legislative Operations, the fiscal assistance of the Joint Fiscal
7 Office, and the legal assistance of the Office of Legislative Counsel.

8 (e) Report.

9 (1) On or before December 15, 2024, the Committee shall submit a
10 written report to the General Assembly with its findings and recommendations
11 for legislative action.

12 (2) The report shall include a proposal for permitting agricultural
13 workers to collectively bargain. The proposal shall specifically address:

14 (A) whether to provide for collective bargaining by agricultural
15 workers under the State Labor Relations Act or in a separate agricultural
16 workers’ labor relations act;

17 (B) the minimum size of agricultural employer to be covered;

18 (C) whether, and if so how, to differentiate between covered
19 employers based on their size;

20 (D) the minimum number of employees who may form a bargaining
21 unit;

1 (E) how to address seasonal, migratory, and temporary workers;

2 (F) procedures for selecting and certifying an exclusive

3 representative for a bargaining unit;

4 (G) mandatory subjects for bargaining;

5 (H) procedures for resolving bargaining impasses, including whether

6 to permit strikes or contract imposition;

7 (I) unfair labor practices;

8 (J) the role, if any, of the Vermont Labor Relations Board in

9 administering the proposed law;

10 (K) whether to provide State resources to assist parties during the

11 process of determining a bargaining unit, certifying an exclusive representative

12 for a bargaining unit, negotiating a contract, and resolving a bargaining

13 impasse; and

14 (L) any other issues the Committee deems to be appropriate.

15 (3) The report shall also include a recommendation for any other

16 legislative action to amend Vermont's employment laws in relation to

17 agricultural workers that the Committee deems to be appropriate.

18 (f) Meetings.

19 (1) The Chair of the House Committee on Agriculture, Food Resiliency,

20 and Forestry shall call the first meeting of the Committee to occur on or before

21 September 6, 2024.

1 (2) The Committee shall select a chair from among its members at the
2 first meeting.

3 (3) A majority of the membership shall constitute a quorum.

4 (4) The Committee shall cease to exist on December 31, 2024.

5 (g) Compensation and reimbursement. For attendance at meetings during
6 adjournment of the General Assembly, a legislative member of the Committee
7 shall be entitled to per diem compensation and reimbursement of expenses
8 pursuant to 2 V.S.A. § 23 for not more than six meetings. These payments
9 shall be made from monies appropriated to the General Assembly.

10 Sec. 4. 3 V.S.A. § 941 is amended to read:

11 § 941. UNIT DETERMINATION, CERTIFICATION, AND

12 REPRESENTATION

13 * * *

14 (e)(1) Whenever, on the basis of a petition pursuant to subdivision (d)(1) of
15 this section or a hearing pursuant to subdivision (d)(2) of this section, the
16 Board finds substantial interest among employees in forming a bargaining unit
17 or being represented for purposes of collective bargaining, a secret ballot
18 election shall be conducted by the Board not more than 23 business days after
19 the petition is filed with the Board except as otherwise provided pursuant to
20 subdivision (4) of this subsection and subdivision (g)(4) of this section.

21 * * *

1 (g)(1) In determining the representation of State employees in a collective
2 bargaining unit, the Board shall conduct a secret ballot of the employees within
3 the time period set forth in subdivision (e)(1) of this section, unless the time to
4 conduct the election is extended pursuant to subdivision (e)(4) of this section,
5 and certify the results to the interested parties and to the State employer. The
6 original ballot shall be so prepared as to permit a vote against representation by
7 anyone named on the ballot. No representative will be certified with less than
8 a majority of the votes cast by employees in the bargaining unit.

9 * * *

10 (4)(A) Notwithstanding any other provision of this subsection (g), if the
11 Board determines that a petition to be represented for collective bargaining
12 filed pursuant to subsection (c) of this section, which identifies a proposed
13 exclusive representative of the employees in the bargaining unit, bears the
14 signatures of at least 50 percent plus one of the employees in a bargaining unit
15 deemed appropriate by the Board pursuant to this section, the Board shall
16 certify the person or labor organization as the exclusive representative of the
17 bargaining unit.

18 (B) Certification of a collective bargaining representative shall only
19 be available pursuant to this subdivision (g)(4) when no other person or labor
20 organization is currently certified or recognized as the exclusive representative
21 of the employees in the bargaining unit.

1 (h) A representative chosen ~~by secret ballot~~ for the purposes of collective
2 bargaining by a majority of the votes cast by secret ballot or certified pursuant
3 to subdivision (g)(4) of this section shall be the exclusive representative of all
4 the employees in ~~such~~ the bargaining unit for a minimum of one year. ~~Such~~
5 The representative shall be eligible for reelection or for recertification pursuant
6 to subdivision (g)(4) of this section.

7 * * *

8 Sec. 5. 16 V.S.A. § 1992 is amended to read:

9 § 1992. REFERENDUM PROCEDURE FOR REPRESENTATION

10 (a)(1) An organization purporting to represent a majority of all of the
11 teachers or administrators employed by the school board may be recognized by
12 the school board without the necessity of a referendum upon the submission of
13 a petition bearing the valid signatures of a majority of the teachers or
14 administrators employed by that school board. ~~Within 15 calendar days after~~
15 ~~receiving the petition, the school board shall notify the teachers or~~
16 ~~administrators of the school district in writing of its intention to either require~~
17 ~~or waive a secret ballot referendum. If the school board gives notice of its~~
18 ~~intention to waive a referendum and recognize an organization, 10 percent of~~
19 ~~the teachers or administrators employed by the school board may submit a~~
20 ~~petition within 15 calendar days thereafter, objecting to the granting of~~
21 ~~recognition without a referendum, in which event a secret ballot referendum~~

1 ~~shall be held in the district for the purpose of choosing an exclusive~~
2 ~~representative as provided pursuant to the provisions of this section~~ The
3 school board and the organization purporting to represent a majority of the
4 teachers or administrators shall, within 10 business days after the petition is
5 submitted, agree on an impartial third party to examine the petition and
6 determine whether a majority of the teachers or administrators support the
7 organization. If the parties fail to agree on an impartial third party within
8 10 business days, the Vermont Labor Relations Board shall examine the
9 petition and determine whether a majority of the teachers or administrators
10 support the organization. If the impartial party or the Board determines that a
11 majority of the teachers or administrators support the organization, it shall
12 certify the organization as the exclusive representative of the teachers or
13 administrators.

14 * * *

15 (b) ~~Recognition granted to~~ Certification of a negotiating unit as exclusive
16 representative shall be valid and not subject to challenge by referendum
17 petition or otherwise for the remainder of the fiscal year in which ~~recognition~~
18 ~~is granted~~ the certification occurs and for an additional period of 12 months
19 after final adoption of the budget for the succeeding fiscal year and shall
20 continue thereafter until a new referendum is called for.

21 (c)(1)(A) A secret ballot referendum shall be held not more than 21

1 calendar days after 20 percent of the teachers or administrators employed by
2 the school board present a petition requesting a referendum on the matter of
3 representation, except during a period of prior ~~recognition~~ certification, as
4 provided pursuant to subsection (b) of this section.

5 * * *

6 Sec. 6. 21 V.S.A. § 1581 is amended to read:

7 § 1581. PETITIONS FOR ELECTION; FILING, INVESTIGATIONS,
8 HEARINGS, DETERMINATIONS

9 * * *

10 (b)(1) The Board shall investigate the petition and if it has reasonable cause
11 to believe that a question of representation exists shall provide for an
12 appropriate hearing before the Board itself, a Board member ~~thereof~~, or its
13 agents appointed for that purpose upon due notice. Written notice of the
14 hearing shall be mailed by certified mail to the parties named in the petition
15 not less than seven days before the hearing.

16 (2) If the Board finds upon the record of the hearing that a question of
17 representation exists, it shall conduct an election by secret ballot marked at the
18 place of election and certify to the parties, in writing, the results ~~thereof~~ of the
19 election.

20 (3)(A) If the Board finds upon the record of the hearing that a petition to
21 be represented for collective bargaining filed pursuant to subdivision (a)(1)(A)

1 of this section, which identifies a proposed bargaining representative, bears the
2 signatures of at least 50 percent plus one of the employees in the bargaining
3 unit, the Board shall certify the individual or labor organization identified as
4 the bargaining representative.

5 (B) Certification of a representative shall only be available pursuant
6 to this subdivision (B) when no other individual or labor organization is
7 currently certified or recognized as the bargaining representative.

8 (c) In determining whether or not a question of representation exists, ~~the~~
9 Board shall apply the same regulations and rules of decision regardless of the
10 identity of the persons filing the petition or the kind of relief sought.

11 * * *

12 Sec. 7. 21 V.S.A. § 1584 is amended to read:

13 § 1584. PETITIONS AND ELECTION TO RESCIND

14 REPRESENTATIVE'S AUTHORITY

15 * * *

16 (b) No election ~~may~~ shall be conducted under this section in a bargaining
17 unit or a subdivision within which in the preceding 12 months a valid election
18 or certification of a representative pursuant to this subchapter has been held
19 occurred.

1 Sec. 8. 21 V.S.A. § 1724 is amended to read:

2 § 1724. CERTIFICATION PROCEDURE

3 * * *

4 (e)(1) ~~In~~ Except as otherwise provided pursuant to subsection (h) of this
5 section, in determining the representation of municipal employees in a
6 collective bargaining unit, the Board shall conduct an election by secret ballot
7 of the employees and certify the results to the interested parties and to the
8 employer. The election shall be held not more than 23 business days after the
9 petition is filed with the Board except as otherwise provided pursuant to
10 subdivision (4) of this subsection.

11 * * *

12 (h)(1) Notwithstanding subsections (e)–(g) of this section, if following its
13 investigation pursuant to subsection (b) of this section the Board determines
14 that a petition to be represented for collective bargaining filed pursuant to
15 subsection (a) of this section, which identifies a proposed bargaining agent,
16 bears the signatures of at least 50 percent plus one of the employees in the
17 bargaining unit, the Board shall certify the individual or labor organization
18 identified as the bargaining agent.

19 (2) Certification of a bargaining agent shall only be available pursuant to
20 this subsection when no other individual or labor organization is currently
21 certified or recognized as the agent of the employees in the bargaining unit.

1 (i) No election ~~may~~ shall be conducted under this section in a bargaining
2 unit or a subdivision within which in the preceding 12 months a valid election
3 has been held.

4 Sec. 9. EFFECTIVE DATE

5 This act shall take effect on July 1, 2024.