

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred Senate Bill No. 102 entitled “An act relating to expanding
4 employment protections and collective bargaining rights” respectfully reports
5 that it has considered the same and recommends that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

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

9 **§ 495o.** EMPLOYEES’ EXERCISE OF CONSTITUTIONAL RIGHTS

10 (a) Except as otherwise provided in subsections (b) and (c) of this section,
11 an employer shall not discriminate against, discipline, discharge, or threaten to
12 discipline or discharge an employee for any of the following reasons:

13 (1) the employee’s exercise of a right guaranteed by the First
14 Amendment of the U.S. Constitution or Chapter I, Article 3, 13, or 20 of the
15 Vermont Constitution, provided that the employee’s exercise of that right does
16 not substantially or materially interfere with the employee’s job performance
17 or the working relationship between the employee and the employer;

18 (2) the employee’s refusal to attend an employer-sponsored meeting that
19 has the primary purpose of communicating the employer’s opinion regarding a
20 religious matter or a political matter, regardless of whether the meeting is with
21 the employer or an agent, representative, or designee of the employer; or

1 (3) the employee’s refusal to listen to speech or view communications
2 whose primary purpose is to communicate the employer’s opinion concerning
3 a religious matter or a political matter.

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

5 (1) an employer or the employer’s agent from communicating
6 information to an employee:

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

9 (B) that is necessary for the employee to perform the employee’s job
10 functions or duties;

11 (2) an institution of higher education or an agent of an institution of
12 higher education from communicating with an employee regarding an
13 academic program, symposium, or course at the institution; or

14 (3) casual conversations between employees or between an employee
15 and the employer or the employer’s agent, provided that the employee is not
16 required to participate in the conversation.

17 (c) Nothing in this section shall be construed to prohibit an employer that is
18 a religious or denominational institution or organization, or any organization
19 operated for charitable or educational purposes, that is operated, supervised, or
20 controlled by or in connection with a religious organization, from
21 communicating with its employees regarding the employer’s opinion on

1 religious matters or from requiring the employees to listen to or view
2 communications from the employer or the employer’s agent regarding the
3 employer’s opinion on religious matters.

4 (d)(1) The penalty and enforcement provisions of section 495b of this
5 subchapter shall apply to this section.

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

8 (e) As used in this section:

9 (1) “Political matters” means matters relating to elections for political
10 office; political parties; legislative proposals; proposals to change rules or
11 regulations; and the decision to join or support any political party or political,
12 civic, community, fraternal, or labor organization.

13 (2) “Religious matters” means matters relating to religious affiliation
14 and practice and the decision to join or support any religious or denominational
15 organization or institution.

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

17 § 1502. DEFINITIONS

18 As used in this chapter:

19 * * *

20 (6) “Employee” includes any employee, and is not limited to the
21 employees of a particular employer unless this chapter explicitly states

1 otherwise, and includes any individual whose work has ceased as a
2 consequence of, or in connection with, any current labor dispute or because of
3 any unfair labor practice and who has not obtained any other regular and
4 substantially equivalent employment, but does not include an individual;

5 (A) ~~employed as an agricultural laborer;~~

6 (B) ~~employed by his or her~~ the individual's parent or spouse;

7 (C) ~~employed in the domestic service of any family or person at his~~
8 ~~or her home;~~

9 (D) ~~(B)~~ having the status of an independent contractor;

10 (E) ~~(C)~~ employed as a supervisor;

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

13 (G) ~~(E)~~ employed by any other person who is not an employer as
14 defined in subdivision (7) of this section.

15 * * *

16 **Sec. 3.** 3 V.S.A. § 941 is amended to read:

17 § 941. UNIT DETERMINATION, CERTIFICATION, AND
18 REPRESENTATION

19 * * *

20 (e)(1) Whenever, on the basis of a petition pursuant to subdivision (d)(1) of
21 this section or a hearing pursuant to subdivision (d)(2) of this section, the

1 Board finds substantial interest among employees in forming a bargaining unit
2 or being represented for purposes of collective bargaining, a secret ballot
3 election shall be conducted by the Board not more than 23 business days after
4 the petition is filed with the Board except as otherwise provided pursuant to
5 subdivision (4) of this subsection and subdivision (g)(4) of this section.

6 * * *

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

15 * * *

16 (4)(A) Notwithstanding any other provision of this subsection (g), if the
17 Board determines that a petition to be represented for collective bargaining
18 filed pursuant to subsection (c) of this section, which identifies a proposed
19 exclusive representative of the employees in the bargaining unit, bears the
20 signatures of at least 50 percent plus one of the employees in a bargaining unit
21 deemed appropriate by the Board pursuant to this section, the Board shall

1 certify the person or labor organization as the exclusive representative of the
2 bargaining unit.

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

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

13 * * *

14 **Sec. 4.** 16 V.S.A. § 1992 is amended to read:

15 § 1992. REFERENDUM PROCEDURE FOR REPRESENTATION

16 (a)(1) An organization purporting to represent a majority of all of the
17 teachers or administrators employed by the school board may be recognized by
18 the school board without the necessity of a referendum upon the submission of
19 a petition bearing the valid signatures of a majority of the teachers or
20 administrators employed by that school board. ~~Within 15 calendar days after~~
21 ~~receiving the petition, the school board shall notify the teachers or~~

1 ~~administrators of the school district in writing of its intention to either require~~
2 ~~or waive a secret ballot referendum. If the school board gives notice of its~~
3 ~~intention to waive a referendum and recognize an organization, 10 percent of~~
4 ~~the teachers or administrators employed by the school board may submit a~~
5 ~~petition within 15 calendar days thereafter, objecting to the granting of~~
6 ~~recognition without a referendum, in which event a secret ballot referendum~~
7 ~~shall be held in the district for the purpose of choosing an exclusive~~
8 ~~representative as provided pursuant to the provisions of this section. The~~
9 ~~school board and the organization purporting to represent a majority of the~~
10 ~~teachers or administrators shall, within 10 business days after the petition is~~
11 ~~submitted, agree on an impartial third party to examine the petition and~~
12 ~~determine whether a majority of the teachers or administrators support the~~
13 ~~organization. If the parties fail to agree on an impartial third party within~~
14 ~~10 business days, the Vermont Labor Relations Board shall examine the~~
15 ~~petition and determine whether a majority of the teachers or administrators~~
16 ~~support the organization. If the impartial party or the Board determines that a~~
17 ~~majority of the teachers or administrators support the organization, it shall~~
18 ~~certify the organization as the exclusive representative of the teachers or~~
19 ~~administrators.~~

20 * * *

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

7 (c)(1)(A) A secret ballot referendum shall be held not more than 21
8 calendar days after 20 percent of the teachers or administrators employed by
9 the school board present a petition requesting a referendum on the matter of
10 representation, except during a period of prior ~~recognition~~ certification, as
11 provided pursuant to subsection (b) of this section.

12 * * *

13 **Sec. 5.** 21 V.S.A. § 1581 is amended to read:

14 § 1581. PETITIONS FOR ELECTION; FILING, INVESTIGATIONS,
15 HEARINGS, DETERMINATIONS

16 * * *

17 (b)(1) The Board shall investigate the petition and if it has reasonable cause
18 to believe that a question of representation exists shall provide for an
19 appropriate hearing before the Board itself, a Board member ~~thereof~~, or its
20 agents appointed for that purpose upon due notice. Written notice of the

1 hearing shall be mailed by certified mail to the parties named in the petition
2 not less than seven days before the hearing.

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

7 (3)(A) If the Board finds upon the record of the hearing that a petition to
8 be represented for collective bargaining filed pursuant to subdivision (a)(1)(A)
9 of this section, which identifies a proposed bargaining representative, bears the
10 signatures of at least 50 percent plus one of the employees in the bargaining
11 unit, the Board shall certify the individual or labor organization identified as
12 the bargaining representative.

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

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

19 * * *

20 **Sec. 6.** 21 V.S.A. § 1584 is amended to read:

21 § 1584. PETITIONS AND ELECTION TO RESCIND

1 bears the signatures of at least 50 percent plus one of the employees in the
2 bargaining unit, the Board shall certify the individual or labor organization
3 identified as the bargaining agent.

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

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

10 **Sec. 8.** EFFECTIVE DATE

11 This act shall take effect on July 1, 2023.

12

13

14

15 (Committee vote: _____)

16

17

Senator _____

18

FOR THE COMMITTEE