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Introduced by Representatives Larson of Burlington, Ancel of Calais,  
Andrews of Rutland City, Bissonnette of Winooski, Burke of  
Brattleboro, Buxton of Royalton, Cheney of Norwich, Christie  
of Hartford, Clarkson of Woodstock, Consejo of Sheldon,  
Copeland-Hanzas of Bradford, Davis of Washington, Deen of  
Westminster, Edwards of Brattleboro, Fisher of Lincoln,  
Font-Russell of Rutland City, Frank of Underhill, French of  
Randolph, Grad of Moretown, Hebert of Vernon, Hooper of  
Montpelier, Jerman of Essex, Kitzmiller of Montpelier, Klein of  
East Montpelier, Lanpher of Vergennes, Lorber of Burlington,  
Macaig of Williston, Marek of Newfane, Martin of Wolcott,  
Masland of Thetford, McCullough of Williston, Mitchell of  
Barnard, Mook of Bennington, Moran of Wardsboro, Morrissey  
of Bennington, Mrowicki of Putney, Nuovo of Middlebury,  
Partridge of Windham, Pearson of Burlington, Poirier of Barre  
City, Ram of Burlington, Shand of Weathersfield, Sharpe of  
Bristol, South of St. Johnsbury, Spengler of Colchester, Stevens  
of Waterbury, Stuart of Brattleboro, Taylor of Barre City,  
Townsend of Randolph, Webb of Shelburne, Weston of  
Burlington, Wizowaty of Burlington and Young of Albany

1 Referred to Committee on

2 Date:

3 Subject: Human services; early childhood educators

4 Statement of purpose: This bill proposes to improve the quality of child care

5 and early learning programs for Vermont's children and families by

6 establishing a new model of collaboration between the state and child care

7 providers that recognizes the critical importance of early childhood educators

8 in the delivery of high-quality early childhood education.

9 An act relating to early childhood educators

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 instruction that young children receive is one of the most critical  
14 aspects of child care.

15 (2) Vermont families currently need affordable high-quality child care.

16 (3) The early education a child receives before school age, particularly  
17 before the age of three, has a profound effect on future mental, psychological,  
18 and academic success. High-quality early education lays the vital groundwork  
19 for the success of Vermont children.

1           (4) The early education workforce faces an assortment of challenges,  
2           such as low wages, lack of benefits, and insufficient continuing education  
3           opportunities. These obstacles prevent the development of a stable early  
4           education workforce, and as a result the availability of high-quality early child  
5           care in Vermont continues to suffer.

6           (5) Whether center-based or family-based, all early childhood educators  
7           should have the opportunity to work collectively with the state to improve the  
8           standards in their profession, enhance educational training courses, increase  
9           child-care subsidy assistance, and ensure the constant improvement of early  
10          learning in Vermont.

11          (6) The matters subject to chapter 36 of Title 33 are within the purview  
12          of the state and within the community of interest of all child-care providers  
13          participating in or eligible to participate in the subsidy system.

14          (7) Child-care providers do not forfeit their rights under the National  
15          Labor Relations Act (29 U.S.C. § 151, et seq.) by becoming members of an  
16          organization that represents them in their dealings with the state.

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

2 CHAPTER 36. THE EXTENSION OF LIMITED COLLECTIVE  
3 BARGAINING RIGHTS TO CHILD-CARE PROVIDERS PARTICIPATING  
4 IN OR ELIGIBLE TO PARTICIPATE IN THE VERMONT CHILD-CARE  
5 FINANCIAL ASSISTANCE PROGRAM

6 § 3601. PURPOSE

7 (a) The general assembly recognizes the right of all child-care providers  
8 participating in or eligible to participate in the subsidy system to collectively  
9 bargain with the state over matters within the state's purview in order to  
10 improve the quality of child care for Vermont families.

11 (b) The general assembly intends to create a new type of collective  
12 bargaining for child-care providers whereby they can join together to bargain  
13 with the state to improve the quality of child care for Vermont families.  
14 Unlike traditional collective bargaining, this new approach will give child-care  
15 workers the opportunity to bargain with the state over the state's support for  
16 and regulation of child-care services, a matter of common concern to both  
17 child-care center directors and workers.

18 (c) Specific terms and conditions of employment at individual child-care  
19 centers which are the subject of traditional collective bargaining between  
20 employers and employees are outside the limited scope of this act.  
21 Accordingly, traditional policy concerns over supervisors and employees being

1 organized into a common bargaining unit are inapplicable. All child-care  
2 providers will be equally able to maintain full membership in the organization  
3 that represents them in their efforts to improve the quality of child care in  
4 Vermont.

5 § 3602. DEFINITIONS

6 For purposes of this chapter:

7 (1) “Board” means the state labor relations board established in 3 V.S.A.  
8 § 921.

9 (2)(A) “Child-care provider” means a person who provides child-care  
10 services as defined by subdivision 3511(3) of this title and who receives or is  
11 eligible to receive any subsidy payments through a Vermont child-care  
12 financial assistance program, including individuals in supervisory and  
13 nonsupervisory roles providing care in or employed by:

14 (i) a licensed child-care center;

15 (ii) a licensed child-care home;

16 (iii) a registered child-care home;

17 (iv) a licensed after-school program;

18 (v) a license-exempt child-care provider home; and

19 (vi) any other category of provider eligible to participate in a

20 Vermont child-care financial program.

1           (B) “Child-care provider” does not include any person directly  
2 employed by a public school district.

3           (3) “Collective bargaining” or “bargaining collectively” means the  
4 process by which the state and the exclusive representative of child-care  
5 providers negotiate terms or conditions with the intent to arrive at an  
6 agreement which, when reached, shall be legally binding on all parties.

7           (4) “Exclusive representative” means a labor organization that has been  
8 elected or recognized and certified under this chapter and has the right under  
9 section 3607 of this title to represent child-care providers in an appropriate  
10 bargaining unit for the purpose of collective bargaining.

11           (5) “Subsidy payment” means any payment made by the state to assist in  
12 the provision of child care through the state’s child-care financial assistance  
13 programs.

14 § 3603. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING

15           (a) Child-care providers shall be considered state employees and the state  
16 shall be considered the employer solely for the purpose of collective  
17 bargaining under this chapter. The state shall not assume vicarious tort  
18 liability for any action taken by a child-care provider.

19           (b) The state, through the governor’s designee, shall meet with the  
20 exclusive representative for the purposes of entering into a written agreement  
21 that shall legally bind the state and the exclusive representative.

1        § 3604. SCOPE OF BARGAINING

2        The scope of collective bargaining under this chapter includes:

3            (1) Child-care subsidy rates and reimbursement practices, including rate  
4        variations reflecting different provider classifications and quality incentives.

5            (2) Health care, disability, retirement, and related benefits.

6            (3) Professional development and training, including financial assistance  
7        to meet training requirements and enhancement of recruitment and retention of  
8        qualified child-care providers.

9            (4) Child-to-staff ratios.

10          (5) Licensing and other fees.

11          (6) Monitoring and evaluation.

12          (7) Grievance procedures.

13          (8) Representation fees and fair share representation fees.

14          (9) Any other matters relating to the role of the state and its contractors  
15        in regulating, subsidizing, and enhancing the quality of child care within the  
16        state.

17        § 3605. BARGAINING UNIT

18          (a) Any of the following units, either in combination or separately, shall be  
19        considered an appropriate bargaining unit for the purposes of collective  
20        bargaining under this chapter:

1           (1) A statewide unit encompassing all child-care providers as defined in  
2 section 3602 of this chapter.

3           (2) A unit composed of registered home child-care providers.

4           (3) A unit composed of licensed home child-care providers.

5           (4) A unit composed of supervisors and nonsupervisory employees of  
6 licensed child-care centers.

7           (5) A unit composed of license-exempt child-care providers.

8           (b) Child-care providers may elect an exclusive representative for the  
9 purpose of collective bargaining pursuant to the procedures set forth in section  
10 3607 of this chapter.

11           (c) The exclusive representative of the child-care providers shall represent  
12 all child-care providers in the bargaining unit without regard to union  
13 membership.

14 § 3606. RIGHTS OF CHILD-CARE PROVIDERS

15           Child-care providers shall have the right to:

16           (1) Organize, form, join, or assist a union or labor organization for the  
17 purposes of collective bargaining without interference, restraint, or coercion.

18           (2) Bargain collectively through their chosen representatives.

19           (3) Engage in concerted activities for the purpose of supporting or  
20 engaging in collective bargaining.

21           (4) Pursue grievances as provided in this chapter.

1           (5) Refrain from any or all activities related to collective bargaining.

2           § 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS;

3                   HEARINGS; DETERMINATIONS

4           (a) A petition may be filed with the board in accordance with regulations  
5           prescribed by the board:

6                   (1) By a child-care provider or a group of child-care providers or by any  
7           individual or labor union acting on their behalf alleging that not less than 30  
8           percent of the child-care providers:

9                           (A) Wish to be represented for collective bargaining and that the state  
10           has declined to recognize their exclusive representative; or

11                           (B) Believe that the exclusive representative recognized by the state  
12           no longer represents a majority of child-care providers.

13                   (2) By the state alleging that one or more individuals or organizations  
14           has presented the state with a claim for recognition as the exclusive  
15           representative.

16           (b) The board shall investigate the petition, and, if it has reasonable cause  
17           to believe that a question of representation exists, shall provide for an  
18           appropriate hearing before the board itself, a member thereof, or its agents  
19           appointed for that purpose upon due notice. Written notice of the hearing shall  
20           be mailed by certified mail to the parties named in the petition not less than  
21           seven days before the hearing. If the board finds upon the record of the

1 hearing that a question of representation exists, it shall conduct an election by  
2 secret ballot and certify to the parties the results thereof.

3 (c) In determining whether a question of representation exists, the board  
4 shall apply the same regulations and rules of decision regardless of the identity  
5 of the persons filing the petition or the kind of relief sought.

6 (d) Nothing in this chapter prohibits the waiving of hearings by stipulation  
7 for a consent election in conformity with the regulations and rules of decision  
8 of the board.

9 (e) For the purposes of this chapter, representatives of child-care providers  
10 voluntarily recognized by the state through the voluntary negotiation of an  
11 agreement with the unit shall be the recognized representative of the child-care  
12 providers until such time as any other representative is recognized under the  
13 provisions of this section or until the representatives' authority is rescinded  
14 under this chapter.

15 § 3608. ELECTION; RUNOFF ELECTIONS

16 (a) If a question of representation exists, the board shall conduct a secret  
17 ballot election to determine the exclusive representative of child-care  
18 providers. The labor organization receiving a majority of votes cast shall be  
19 certified by the state as the exclusive representative of child-care providers. In  
20 any election in which none of the choices on the ballot receive a majority, a  
21 runoff shall be conducted by the board. The ballot shall provide for a selection

1 between the two choices receiving the largest and second largest number of  
2 valid votes cast in the election.

3 (b) An election shall not be directed during the term of a negotiated  
4 agreement or if in the preceding 12 months a valid election has been held.

5 § 3609. POWERS OF REPRESENTATIVES

6 The exclusive representative certified by the state shall be the exclusive  
7 representative of all the child-care providers in the unit for the purposes of  
8 collective bargaining. However, any individual child-care provider or group of  
9 providers shall have the right at any time to present grievances to the state and  
10 have such grievances adjusted without the intervention of the exclusive  
11 representative, as long as the adjustment is not inconsistent with the terms of a  
12 collective bargaining agreement then in effect and provided that the exclusive  
13 representative has been given an opportunity to be present at such an  
14 adjustment.

15 § 3610. REPRESENTATION AND FAIR SHARE REPRESENTATION

16 FEES

17 (a) Upon the certification or recognition of the bargaining unit's  
18 representative and ratification of a collective bargaining agreement, the state  
19 shall deduct the negotiated representative and fair share representation fees as  
20 agreed to in the collective bargaining agreement. These funds shall be  
21 transferred to the treasurer of the exclusive representative.

1        (b) Child-care providers, acting through the exclusive representative, shall  
2        not charge a fair share representation fee without establishing and maintaining  
3        a procedure to provide nonmembers with:

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

6            (2) an opportunity to object to the amount of the agency fee sought.  
7        Any amount objected to and reasonably in dispute shall be placed in escrow.

8        § 3611. GRIEVANCE PROCEDURES; BINDING ARBITRATION;

9            MEDIATION; FACT-FINDING; LAST BEST OFFER

10        The state and the exclusive representative shall negotiate a procedure for  
11        resolving complaints and grievances. A collective bargaining agreement may  
12        provide for binding arbitration as the final step of a grievance procedure.

13        Mediation, fact-finding, and last best offer procedures shall be conducted  
14        according to the procedures of 21 V.S.A. §§ 1731 and 1732.

15        § 3612. DUTIES

16        (a) The state and all child-care providers and their representatives shall  
17        make every reasonable effort to make and maintain agreements concerning  
18        matters allowed under this chapter and to settle all disputes arising from the  
19        agreements. All disputes between the state and child-care providers shall,  
20        upon request of either party, be considered within 15 days of the request or at  
21        such times as may be mutually agreed to and if possible settled with all

1 expedition in conference between representatives designated and authorized by  
2 the state and the interested child-care providers. This obligation does not  
3 compel either party to make any agreements or concessions.

4 (b) Every licensed home child-care provider, registered home child-care  
5 provider, licensed child-care center, and license-exempt child-care provider  
6 that receives or is eligible to receive child-care subsidies shall submit to the  
7 state a list of the names, home addresses, telephone numbers, workplace  
8 names, and job titles of their current directors and employees within 14 days of  
9 the effective date of this act and shall update the information quarterly,  
10 tracking the dates of the state fiscal year.

11 (c) The state shall provide within seven days of a request by a labor  
12 organization all available information submitted under subsection (b) of this  
13 section.

14 § 3613. PROHIBITED CONDUCT

15 (a) The state shall not:

16 (1) Interfere with, restrain, or coerce child-care providers in the exercise  
17 of their rights under this chapter or by any law, rule, or regulation.

18 (2) Discriminate against a child-care provider because of the provider's  
19 affiliation with a labor organization or because a provider has filed charges or  
20 complaint or given testimony under this chapter.

1           (3) Take negative action against a child-care provider because the  
2 provider has taken actions demonstrating the provider's support for a labor  
3 organization, including signing a petition, grievance, or affidavit.

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

6           (5) Discriminate against a child-care provider based on race, color,  
7 creed, religion, age, disability, gender, sexual orientation, gender identity, or  
8 national origin.

9           (6) Request or require a child-care provider to take an HIV-related blood  
10 test or discriminate against a child-care provider based on his or her HIV  
11 status.

12           (b) A child-care provider or the exclusive representative shall not:

13           (1) Restrain or coerce child-care providers in the exercise of the rights  
14 guaranteed them by law. However, a labor organization may prescribe its own  
15 rules with respect to the acquisition or retention of membership, provided such  
16 rules are not discriminatory.

17           (2) Cause or attempt to cause the state to discriminate against a  
18 child-care provider in violation of this section.

19           (3) Discriminate against a child-care provider with respect to whom  
20 membership in the organization has been denied or terminated on some ground

1 other than a failure to tender periodic dues and initiation fees required as a  
2 condition of acquiring or maintaining membership.

3 (4) Refuse to bargain in good faith with the state.

4 § 3614. GENERAL PROVISIONS

5 (a) Cost items agreed upon in collective bargaining between the parties  
6 shall be submitted for inclusion in the governor's budget within 10 days after  
7 the date on which an agreement is executed by the parties. If the general  
8 assembly rejects any of the cost items submitted, all the cost items shall be  
9 returned to the parties to the agreement for further bargaining. If the general  
10 assembly appropriates sufficient funds, the agreement shall become effective at  
11 the beginning of the next fiscal year. If the general assembly appropriates a  
12 different amount of funds, the terms of the agreement affected by that  
13 appropriation shall be renegotiated based on the amount of funds actually  
14 appropriated and the new agreement shall become effective at the beginning of  
15 the next fiscal year.

16 (b) The activities of child-care providers and their exclusive representatives  
17 authorized by this chapter shall be afforded state-action immunity under  
18 applicable state and federal anti-trust laws.

19 § 3615. RIGHTS UNALTERED

20 This chapter does not alter or infringe upon the rights of:

1           (1) A parent or legal guardian to select or discontinue child-care services  
2           of any child-care provider.

3           (2) A parent or legal guardian to negotiate child-care services not  
4           regulated by the state.

5           (3) A child-care center to choose, direct, or terminate the services of any  
6           child-care worker in its center.

7           (4) The general assembly and the judiciary to make modifications to the  
8           delivery of state services through child-care subsidy programs, including  
9           eligibility standards for families, legal guardians, and child-care providers  
10           participating in child-care subsidy programs and the nature of the services  
11           provided.

12           (5) Nothing in this chapter shall affect the rights and obligations of  
13           private sector employer and employees under the National Labor Relations Act  
14           (29 U.S.C. § 151 et seq.). The terms and conditions of employment at  
15           individual child-care centers, which are the subject of traditional collective  
16           bargaining between employers and employees and are governed by federal  
17           law, fall outside the limited scope of bargaining as it is defined in this chapter.

18           § 3616. SEVERABILITY

19           If any of the provisions of this act or its application is held invalid as it  
20           relates to state law or federal funding requirements, the invalidity shall not  
21           affect other provisions of this act which can be given effect without the invalid

- 1 provision or application, and to this end, the provisions of this act are
- 2 severable.