

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: S.316
Agency/ Dept: AHS/DCF

Name of Bill: An Act relating to child care providers
Author of Bill Review: Reeva Murphy

Date of Bill Review: 5/19/2014

Status of Bill: (check one):

Upon Introduction As passed by 1st body As passed by both bodies

Recommended Position: N/A

Support Oppose Remain Neutral Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *The bill is intended to extend collective bargaining rights to child care providers in dealing with the state of Vermont. The bill creates an opportunity for CC providers providing services in their homes, including Licensed Family CC Homes, Registered Family CC Homes and Legally Exempt CC Providers receiving child care subsidy payments on behalf of eligible children and families. The bill does not require providers to organize, it allows it. The fiscal and other impacts discussed in this analysis assume that, if the bill passes, unionization occurs.*

The bargaining unit, in the bill as passed, is limited to licensed home child care providers, registered home child care providers and legally exempt child care providers who have an agreement with DCF to accept child care subsidies. This limitation to only those providers who agree to accept CC subsidies was added as an amendment in the Senate Appropriations Committee. Concerns specific to this amended language are described below.

The proposed scope of collective bargaining in the bill as passed by the Senate is limited to: child care subsidy reimbursement rates and payment procedures, excluding quality standards and payment schedules associated with VT STARS; the collection of dues and disbursement to the exclusive representative; agency fees and disbursement to the exclusive representative; and procedures for resolving grievances related to the collective bargaining agreement as mandatory subjects of bargaining. The parties may also negotiate on any mutually agreed matters not in conflict with state or federal law.

There was discussion in Senate Appropriations about agency fees and who would be or could potentially be subject to these if the bill passed and unionization occurs. The Attorney General's office submitted a legal brief describing a case before the US Supreme Court between some home health workers who do not want to join a union and the State of Illinois questioning the constitutionality of charging agency fees as a condition for accepting public funds. The outcome of that case could make an agency fees discussion, a mandatory subject of bargaining in this bill, moot. Thus, this part of the bill was exempted from going into effect until February 15, 2015 – after the Supreme Court ruling is known.

A number of specific provisions relate to interaction with the state labor relations board and the establishment of an exclusive representative of child care providers.

There is a specific provision stating that the State's cost of negotiating shall be borne by the State out of existing appropriations made to it for administrative expenditures by the General Assembly.

The underlying issue addressed by the bill and raised by the child care providers supporting the bill is the inadequacy of child care subsidy rates to support a viable child care business and particularly the quality of care known to benefit children's development. The AFT, and the providers who consider themselves part of the Early Educators United organizing effort supported by the AFT, believe that collective bargaining with the state will result in increases

in subsidy rates and expanded professional development investments that will increase the quality of care for Vermont children, particularly young children, many of whom spend many hours each week in child care settings.

Concerns specific to limiting the bargaining unit to only those providers with a signed agreement to accept CC subsidies(p 8 – 9, 3606 (a) of official version):

As described in #6 below, the CC provider community is not in full agreement on the benefits of organizing to support collective bargaining with the state. If all impacted Family CC providers are included in the bargaining unit then a fair vote may be taken to ascertain what a true majority of CC providers prefers in regard to unionization. If the bargaining unit is constricted, providers who don't support unionization may simply opt out of accepting CC subsidies rather than participating in a vote. (Since this language passed in the Senate bill, CDD has received several emails and phone calls from high quality providers asking how to opt out) In Vermont this may be the beginning of two child care systems – one for children with high needs supported by subsidies and one for private pay families – a socio-economic segregation that could have negative impacts on children, families and programs.

Later risk of legal action against the state may be greater if some providers are not included in establishing a majority who want to organize. Given the US Supreme Court case described above, the very constitutionality of the bill may be questioned if it creates conditions that limit receipt of public funds in a benefit program for families to only those providers who are in a union, regardless of the agency fee issue. Keeping that limitation out of the bill seems advisable on that basis alone.

There is a significant under-supply of regulated CC in Vermont communities. Right now, 82% of registered home providers accept CC subsidies because these support neighbors in their communities who need CC and can't afford to pay, because CDD/DCF is a reliable payer (our rates may be lower than what the provider charges a private pay family but we pay routinely and on time as long as the provider submits attendance), and because CDD/DCF provides other kinds of supports and services to providers who accept families with children who have high needs. These same providers could just as easily fill their programs with private pay families – most high quality providers have long waiting lists and can fill any opening quickly. Those who oppose unionization and do not want to join a union or pay dues or agency fees to an exclusive representative – and there appears to be a significant and growing group of these – will simply stop providing services to subsidized families which means that subsidized families - Reach Up families, families who are the working poor, foster families, families who access early care and education services to mitigate high stress conditions for their children - will have less access to high quality care. In small rural communities where there may only be a few regulated providers and transportation is a constant challenge, this may mean no access at all.

If the union does form and is successful in negotiating significant increases in subsidy that offset union dues or agency fees, we may regain access for subsidized families over time. However, given our inability to gain significant increases in the past, despite a supportive and forward thinking administration, this is a big risk to take when the unintended consequence may be a reversal of the significant progress we have made in moving high needs children into high quality care.

Would a change in language to a more inclusive bargaining unit make a difference in access? It could. It would at least move the issue down the field until after a union was formed and negotiations begun. The issue of access is one CDD/DCF would bring into the discussion. If providers opposing unionization see legislation that gives them an immediate and easy opt out, they may opt out as soon as it passes. If they see legislation that includes everyone, they are more likely to stay in the discussion and continue to accept subsidized children until some determination is made about dues and agency fees. This will give us time to work on solutions that preserve access for subsidized families.

2. **Is there a need for this bill?** Yes. These providers are independent small businesses, primarily sole proprietors, who would not be able to organize and collectively bargain under fair trade laws and regulations unless extended this right specifically by law.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?** There will be a number of costs associated with passage of this bill if the providers vote to organize and collectively bargain. Costs associated with negotiations include the cost of a representative for the Administration in negotiations – Commissioner Kate Duffy estimates this between \$250,000 - \$500,000 annually when negotiations are in play.

Please return this bill review as a Microsoft Word or PDF document to laura.gray@state.vt.us

Additional DOA and AHS legal staff, staff from HR and CC subsidy program experts from CDD will all need to dedicate significant time to informing the negotiations. Other states involved in establishing child care unions substantiate this and report many requests for data so additional IT staff time related to extracting and analyzing provider data will be needed. In CDD alone we estimate at least 1.5 staff working FT on this issue for a minimum of 8–12 months (doesn't include pressure on IT staff). In CDD, we would have to request temporary staff to back up the loss of these Subject Matter Experts for the duration of the effort.

The fiscal note provided by the JFO focused on increases to CC Financial Assistance appropriations if rate increases were negotiated – an increase to the results of the 2012 CC Market Rates Survey would cost approximately \$9.6 million. A new Market Rate Survey will be conducted in October 2014 and additional increases in market rates are anticipated.

Once an agreement is reached the law requires the Governor to request an appropriation sufficient to fund the agreement in the next operating budget. Experience from the unionization of home health workers last year indicates that the earliest state budget negotiations may affect is SFY 2015. Given that CC subsidies are somewhat more complicated than home health payments, and given the experience of other states where negotiations with CC unions leading to a contract have been measured by years not months, it is more likely that SFY2017 will be the first budget impacted by the outcome of negotiations. Whenever it hits, other investments in the Governor's budget may be reduced to support increased investments in CC subsidies in a balanced budget. This may impact other programs in DCF or AHS. If the General Assembly appropriates a different amount of funds than requested, the agreement must then be renegotiated which will effectively increase negotiation costs.

The amendment inserted by the Senate Appropriations Committee adds to administrative and programmatic implications of this bill. The CDD collects Provider Rate Agreements which providers update at least every two years or whenever they change rates. These agreements include a report of provider rates and an agreement to accept subsidized children. Providers must submit these to receive any type of payment from the CDD/DCF Bright Futures Information System (BFIS) and 90% of all regulated CC providers have current rate agreements on file. These agreements provide the data needed to produce accurate bi-annual CC Market Rate Reports which is required by the federal government as part of the Child Care and Development Block Grant. If providers decide to stop accepting subsidized children to avoid joining the union, CDD will have to develop separate processes in BFIS for union and non-union providers in order to meet federal requirements and conduct other business with providers who don't accept subsidy. This will result in both programmatic and IT changes and associated costs. An 11th hour amendment inserted on p.6, line 6 of the official version [3603.(f) regarding agency fees based on the proportionate amount of subsidies a provider receives is potentially very expensive. A flat fee would not be too difficult to pay out of our Bright Futures Information System to the exclusive bargaining agent. A changing fee, factored on how many children are enrolled at any given time would take substantial IT programming changes in the system.

4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** *Human Resources will have to stay apprised of the labor implications of this bill and will have to devote expert staff to informing negotiations. If any legal challenges arise from providers who oppose unionization and limiting subsidy payments to union members, the Attorney General's Office would have to allocate resources to deal with these. The AG's Office may have supported the SAC amendment to limit the bargaining unit believing that including providers not accepting subsidies might carry a higher possibility of legal challenge to consequences of the bill and any subsequent organizing, negotiation and fees. The unintended consequence of limited access to child care for subsidized families was not discussed with DCF. Since I only heard rumor of AG support for the amendment just before final passage, there was no opportunity to reach out to them regarding our concerns.*
5. **What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example, public, municipalities, organizations, business, regulated entities, etc) If a representative for Early Educators United were successful in negotiating significant rate increases in the CC subsidy program, families receiving subsidies would benefit greatly from reduced co-payment obligations. CC providers would have increased revenue to support quality and more qualified individuals may consider opening*

Please return this bill review as a Microsoft Word or PDF document to laura.gray@state.vt.us

small child care business in their communities which would increase the supply of available child care for all families.

On the other hand, if no significant increases result from collective bargaining, families using CC subsidies to help pay for CC may find themselves with limited choices because providers who do not want to join a union will not accept them into care.

From another perspective, some early learning and development programs and providers are concerned that increased investments in CC subsidies for family child care homes may come at the expense of other investments in early care and education and that the union negotiations will create an unbalanced system in early care and education. Family child care providers who are opposed to unionization believe that the administration and legislature can increase rates in the CC FAP without levying union dues or agency fees on them as small businesses struggling to sustain themselves on very narrow profit margins.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? *There are a number of child care providers, both those who would be included in this bargaining unit as described and also a few child care centers who are not included in the bill as written, who fully support this move toward collective bargaining. They think it will strengthen their individual voices and move the State to increase subsidy rates and low-cost/no-cost professional development opportunities for providers. Supporters of the bill and advocates believe that an exclusive bargaining representative will be able to negotiate sufficient increases in subsidy to offset any dues or agency fees charged to providers for representation.*

Other supporters include Vermont Voices for Children, the Vermont Workers Center and other labor advocates.

6.2 Who else is likely to oppose the proposal and why? *An apparently equal number of family child care providers who would potentially be included in this bargaining unit oppose unionization. They believe themselves to be independent businesses and want to stay that way. Their businesses operate with little or no profit margins and they feel that dues or agency fees would present a financial burden on their businesses.*

The majority of licensed center based providers, who are not included in the bargaining unit or bill, oppose the bill. They don't like the idea of one group of providers at the table negotiating with the state over subsidy rates paid to many other providers not at the table.

Opponents of the bill believe that if there is a will in the Administration and Legislature to increase investments in the CC subsidy program and professional development system, it is within the power of state government and lawmakers to do this in proposing the state budget and appropriating funds. If the will to find the resources to do this is not there, they don't believe that organizing and collective bargaining will make a difference.

7. Rationale for recommendation: *Justify recommendation stated above. The findings of S.316 that identify the critical importance of early learning and development and the importance of high quality services to children's future success are accurate and compelling*

Child Care providers should have the right to organize and bargain collectively with the state regarding reimbursement rates and services provided to child care providers if they choose to do so. This is a seriously under resourced and undercompensated workforce.

These providers have the ability to weigh the costs and benefits of collective bargaining as it pertains to things that matter to them – professionalism, respect, the quality of services provided to children and families in Vermont and the sustainability of early education as a career choice that enables them to support their own families and remain in a profession they are deeply committed to. If they do decide to organize and bargain collectively, providers will negotiate not only in their own best interests but also in the best interests of children and families they serve.

The Administration has previously requested appropriations to increase investments in CC subsidies which were not supported by the legislature. The influence of organized labor advocating for these investments may be an asset in future efforts to increase subsidies for children and families.

8. **Specific modifications that would be needed to recommend support of this bill:** *NA at this time*
Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.

Secretary/Commissioner has reviewed this document:  Date: 5/27/14