HOUSE DOCKET, NO. 467 FILED ON: 1/14/2011

# HOUSE . . . . . No. 541

## The Commonwealth of Massachusetts

PRESENTED BY:

***Tom Sannicandro***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to improving quality in early education and care by family child care providers .

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Tom Sannicandro* | *7th Middlesex* |
| *James J. O'Day* | *14th Worcester* |
| *Jason M. Lewis* | *31st Middlesex* |
| *James B. Eldridge* | ☐ *[District]* ☐ |
| *William Smitty Pignatelli* | *4th Berkshire* |
| *Timothy J. Toomey, Jr.* | *26th Middlesex* |
| *Elizabeth A. Malia* | *11th Suffolk* |
| *Chris Walsh* | *6th Middlesex* |
| *William N. Brownsberger* | ☐ *[District]* ☐ |
| *James Arciero* | *2nd Middlesex* |
| *Stephen Kulik* | *1st Franklin* |
| *Denise Provost* | *27th Middlesex* |
| *Geraldine M. Creedon* | *11th Plymouth* |
| *Michael D. Brady* | *9th Plymouth* |

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| *Denise Andrews* | *2nd Franklin* |
| *Benjamin Swan* | *11th Hampden* |
| *Thomas J. Calter* | *12th Plymouth* |
| *Byron Rushing* | *9th Suffolk* |
| *Colleen M. Garry* | *36th Middlesex* |
| *Sean Garballey* | *23rd Middlesex* |
| *Antonio F. D. Cabral* | *13th Bristol* |
| *Carlos Henriquez* | *5th Suffolk* |
| *Kevin G. Honan* | *17th Suffolk* |
| *Brian M. Ashe* | *2nd Hampden* |
| *Thomas P. Conroy* | *13th Middlesex* |
| *Ellen Story* | *3rd Hampshire* |
| *John D. Keenan* | *7th Essex* |
| *Michael J. Finn* | *6th Hampden* |
| *Louis L. Kafka* | *8th Norfolk* |
| *Christine E. Canavan* | *10th Plymouth* |
| *Angelo J. Puppolo, Jr.* | *12th Hampden* |
| *Marcos A. Devers* | *16th Essex* |
| *Gailanne M. Cariddi* | *1st Berkshire* |
| *Cleon H. Turner* | *1st Barnstable* |
| *Kay Khan* | *11th Middlesex* |
| *David M. Torrisi* | *14th Essex* |
| *William M. Straus* | *10th Bristol* |
| *Linda Dorcena Forry* | *12th Suffolk* |
| *Jonathan Hecht* | *29th Middlesex* |
| *James E. Vallee* | *10th Norfolk* |
| *Nick Collins* | *4th Suffolk* |
| *Michael F. Kane* | *5th Hampden* |
| *Russell E. Holmes* | *6th Suffolk* |
| *Linda Campbell* | *15th Essex* |
| *Paul Brodeur* | *32nd Middlesex* |
| *David B. Sullivan* | *6th Bristol* |
| *Christopher N. Speranzo* | *3rd Berkshire* |
| *Thomas P. Kennedy* | ☐ *[District]* ☐ |
| *Alice K. Wolf* | *25th Middlesex* |
| *Carl M. Sciortino, Jr.* | *34th Middlesex* |
| *John P. Fresolo* | *16th Worcester* |

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|---|---|
| *Paul J. Donato* | *35th Middlesex* |
| *John W. Scibak* | *2nd Hampshire* |
| *Joyce A. Spiliotis* | *12th Essex* |
| *Ruth B. Balser* | *12th Middlesex* |
| *Geraldo Alicea* | *6th Worcester* |
| *Jennifer E. Benson* | *37th Middlesex* |
| *Frank I. Smizik* | *15th Norfolk* |
| *Peter V. Kocot* | *1st Hampshire* |
| *Martin J. Walsh* | *13th Suffolk* |
| *Christopher G. Fallon* | *33rd Middlesex* |
| *Cory Atkins* | *14th Middlesex* |
| *Thomas M. Stanley* | *9th Middlesex* |
| *Anne M. Gobi* | *5th Worcester* |
| *Jeffrey Sánchez* | *15th Suffolk* |
| *Aaron Michlewitz* | *3rd Suffolk* |

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# HOUSE . . . . . No. 541

By Mr. Sannicandro of Ashland, a petition (accompanied by bill, House, No. 541) of Tom Sannicandro and others for legislation to include family child care providers under certain collective bargaining laws governing public employees. Children, Families and Persons with Disabilities.

## The Commonwealth of Massachusetts

An Act relative to improving quality in early education and care by family child care providers .

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is to establish a system for improving the quality of family child care services in the commonwealth and to provide collective bargaining rights for providers of such services, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 2 of chapter 15D of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph: -

(u) subject to appropriation and notwithstanding any general or special law to the contrary, assure quality early education and care provided to children through family child care providers by working cooperatively with family child care providers to build upon the existing system and continuously improve the delivery of high quality early education and care services for eligible low income families through providers who have the requisite skills and training.

SECTION 2. Said chapter 15D is hereby further amended by adding the following section:-

Section 17. (a) As used in this section the following terms shall have the following meanings:-

“Division”, the division of labor relations established by section 9O of chapter 23.

“Employee organization”, an employee organization as defined in section 1 of chapter 150E.

15 “Family child care services”, child care services provided for less than 24 hours per day
16 in the residence of the provider on behalf of low-income and other at risk children, for which
17 payment from the commonwealth is made pursuant to a rate structure for voucher and contracted
18 payments.

19 “Family child care provider”, a person who provides family child care services on behalf
20 of low-income and other at risk children and receives payment from the commonwealth for such
21 services pursuant to a rate structure for voucher and contracted payments.

22 (b) Family child care providers shall be considered public employees, as defined by and
23 solely for the purposes of, chapter 150E and section 17J of chapter 180. Said chapter 150E,
24 including subsection (c) of section 7, shall apply to family child care providers except to the
25 extent that chapter 150E is inconsistent with this section, in which case this section shall control.
26 In addition, family child care providers shall be treated as state employees solely for the purposes
27 of sections 17A and 17G of chapter 180. Family child care providers shall not be considered
28 public employees or state employees for any purpose other than those set forth in this paragraph.
29 The department, acting through the commissioner, shall be the employer, solely for the purposes
30 of said chapter 150E and sections 17A, 17G and 17J of said chapter 180 and deductions under
31 said sections 17A, 17G and 17J may be made by any entity authorized by the commonwealth to
32 compensate family child care providers pursuant to a rate structure for voucher and contracted
33 payments. Family child care providers shall not be eligible for benefits through the group
34 insurance commission, the state board of retirement or the state employee workers' compensation
35 program.

36 (c) Family child care providers who are employees of the commonwealth under this
37 section are not, for that reason, public employees or employees of the commonwealth for any
38 other purpose. Nothing in this chapter shall alter the obligations of the commonwealth or the
39 parent or legal guardian of the child receiving family child care services to provide their share of
40 social security, federal and state unemployment taxes, Medicare and workers’ compensation
41 insurance under the Federal Insurance Contributions Act, federal and state unemployment law,
42 the Massachusetts Workers’ Compensation Act or vicarious liability in tort.

43 (d) Consistent with section 9A of chapter 150E, no family child care provider shall
44 engage in a strike and no family child care provider shall induce, encourage or condone any
45 strike, work stoppage, slowdown or withholding of services by any family child care provider.

46 (e) The only appropriate bargaining unit for family child care providers shall consist of
47 all family child care providers in the commonwealth who are on the most current list provided by
48 the commissioner, regardless of the number of hours of care such family child care providers
49 have worked.

50 (f) An employee organization seeking to represent family child care providers shall file
51 with the division in accordance with the provisions of section 4 of chapter 150E.

52 (g) The mandatory subjects as to which the department and an employee organization
53 certified by the division as the bargaining representative of family child care providers shall
54 bargain shall include developing and encouraging greater education and training opportunities
55 for family child care providers, improvement of recruitment and retention of qualified providers
56 and reimbursement and payment procedures. Nothing in this legislation shall inhibit the parties
57 from discussing other permissive subjects of bargaining, including without limitation the rate
58 structure for family child care providers.

59 (h) In addition to the mandatory subjects set forth in clause (g), the department and an
60 employee organization certified by the division as the bargaining representative of family child
61 care providers shall bargain about the rate structure for voucher and contracted payments for
62 family child care services on behalf of low-income and other at risk children.

63 (i) Nothing in this section shall modify any right of a parent or legal guardian to choose,
64 terminate the services of, or otherwise supervise a family child care provider.

65 (j) Nothing in this section shall alter or abridge the department's statutory rights and
66 responsibilities to visit, inspect and monitor facilities, or to suspend, revoke, sanction, assess
67 fines or take any other action against a provider's license in furtherance of this chapter, inclusive
68 of sections 6 to 10, and in furtherance of the department's regulations promulgated in this regard.
69 The collective bargaining process and the grievance procedures described in chapter 150E,
70 including section 8 of chapter 150E, shall not apply to the department's statutory and regulatory
71 licensing, monitoring and enforcement functions.

72 (k) Collective bargaining and related activity by providers, as authorized pursuant to this
73 section, shall qualify for the state action exemption to the federal anti-trust laws.

74 SECTION 3. The first paragraph of subsection (c) of section 7 of chapter 150E of the
75 General Laws, as amended by section 100 of chapter 25 of the acts of 2009, is hereby further
76 amended by inserting after the word "council" the following words:- , the department of early
77 education and care with regard to bargaining with family child care providers.

78 SECTION 4. The first sentence of section 17G of chapter 180, as amended by section 1
79 of chapter 45 of the acts of 2009, is hereby further amended by inserting after the words
80 "workforce council", added by said section 1 of said chapter 45, the following words:- or a
81 collective bargaining agreement with the department of early education and care covering family
82 child care providers.

83 SECTION 5. Clause (h) of section 17 of chapter 15D of the General Laws, as set forth in
84 section 2 of this act, shall take effect on July 1, 2012.