SENATE DOCKET, NO. 202 FILED ON: 1/18/2011

SENATE . . . . . No. 28

The Commonwealth of Massachusetts

PRESENTED BY:

Gale D. Candaras

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 relating to improving quality in early education and care by family child care providers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Gale D. Candaras	☐ *[District]* ☐
Angelo J. Puppolo, Jr.	*12th Hampden*
Cory Atkins	*14th Middlesex*
Jennifer E. Benson	*37th Middlesex*
William N. Brownsberger	☐ *[District]* ☐
Harriette L. Chandler	☐ *[District]* ☐
Katherine M. Clark	*Middlesex and Essex*
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Kenneth J. Donnelly	☐ *[District]* ☐
James J. Dwyer	*30th Middlesex*

James B. Eldridge	☐ *[District]* ☐
Sean Garballey	*23rd Middlesex*
John Hart, Jr.	☐ *[District]* ☐
Thomas P. Kennedy	☐ *[District]* ☐
Jason M. Lewis	*31st Middlesex*
Thomas M. McGee	*Third Essex and Middlesex*
Michael O. Moore	☐ *[District]* ☐
Marc R. Pacheco	☐ *[District]* ☐
James T. Welch	☐ *[District]* ☐
Sonia Chang-Diaz	☐ *[District]* ☐
Thomas P. Conroy	*13th Middlesex*
Cynthia S. Creem	☐ *[District]* ☐
Benjamin B. Downing	*Berkshire, Hampshire, and Franklin*
Jennifer L. Flanagan	☐ *[District]* ☐
Patricia D. Jehlen	☐ *[District]* ☐
Mark C. Montigny	☐ *[District]* ☐
Denise Provost	*27th Middlesex*
Michael F. Rush	*Suffolk and Norfolk*

Karen E. Spilka	☐ *[District]* ☐
Benjamin Swan	*11th Hampden*

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By Ms. Candaras, a petition (accompanied by bill, Senate, No. 28) of Gale D. Candaras, Angelo J. Puppolo, Jr., Cory Atkins, Jennifer E. Benson and other members of the General Court for legislation to improve quality in early education and care by family child care providers.
Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

An Act relating 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 Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith 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., 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:

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

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

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

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

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

14 “Employee organization”, an employee organization as defined in section 1 of chapter
15 150E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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