

HOUSE No. 477

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey Sánchez

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 bill:

An Act to improve quality in early education centers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>

<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>

HOUSE No. 477

By Mr. Sánchez of Boston, a petition (accompanied by bill, House, No. 477) of Jeffrey Sánchez and others for legislation to improve quality in early education centers and providing better access to quality early education and care. Education.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to improve quality in early education centers.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately assure quality early education and care for children by authorizing negotiations between the Commissioner of early education and care and a providers organization selected by certain child care providers, 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. Chapter 15D of the General Laws is hereby amended by adding the
- 2 following sections:
- 3 □SECTION 17. DEFINITIONS
- 4 □The following words, as used in this section and in sections seventeen to twenty-one, inclusive,
- 5 shall have the following meanings:
- 6 □“Administrative assessment” shall mean an amount paid by the Department to the Providers
- 7 Organization for the costs of representing child care providers as provided in sections eighteen
- 8 through twenty-one of this chapter.
- 9 □“Child care center” shall mean a center as defined in Section 1A of Chapter 15D, which is
- 10 licensed by the Commonwealth, and which holds a contract with the Department for the
- 11 provision of subsidized child care services or receives a subsidy as provided by Section 2(b) of
- 12 Chapter 15D.
- 13 □“Child care providers” shall mean child care center directors and employees.
- 14 □“Child Care Standards Agreement,” or “Agreement,” shall mean the agreement negotiated

15 between the Department and the Providers Organization. The written agreement shall legally
16 bind the Commissioner and the Providers Organization.

17 □“Commissioner” shall mean the commissioner of early education and care.

18 □“Department” shall mean the Department of Early Education and Care established by Section 2
19 of Chapter 15D.

20 □“Providers Organization” shall mean the organization selected by child care providers to
21 represent them in negotiating, executing and administering a Child Care Standards Agreement
22 with the Department.

23 □SECTION 18. The commissioner shall develop and enforce quality early education standards
24 that will improve the delivery and quality of early learning and child care services at child care
25 centers defined in section 17 and sub-section (a) of section 19 of this chapter. Such standards
26 will be developed through negotiations as set forth in section twenty-one of this chapter with an
27 organization selected by child care providers. The process of developing and enforcing such
28 standards will in no way limit or intrude upon the rights of child care providers under federal
29 labor law.

30 □SECTION 19. CHILD CARE PROVIDERS AUTHORIZED TO NEGOTIATE WITH THE
31 COMMONWEALTH.

32 □(a) Sections seventeen to twenty-one, inclusive, shall apply to child care providers at child care
33 centers that receive a subsidy for at least 10 % of children attending their centers, but shall not
34 apply to child care providers at child care centers:

35 □i. Operated directly by another unit of government;

36 □ii. Operated by an individual, partnership, profit or nonprofit corporation, or other entity that
37 operates ten or more child care centers statewide;

38 □iii. Operated by a local nonprofit organization whose primary mission is to provide social
39 services, including serving children and families, and that pays membership' dues or assessments
40 to either: (A) A national organization, exempt from income tax under section 501(c)(3) of the
41 internal revenue code, with more than three million dollars in membership dues and assessments
42 annually, as reported to the internal revenue service; or (B) a regional council that is affiliated
43 with a national organization, exempt from income tax under section 501(c)(3) of the internal
44 revenue code, with more than two hundred affiliates;

45 □iv. A private corporation or public agency designated as a community action agency by the
46 Director of the Community Services Administration and established pursuant to the Economic
47 Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds received from
48 Federal, State, local, or private funding entities to assess, design, operate, finance, and oversee
49 antipoverty programs; or

50 □v. Funded by the Head Start program administered by the Department of Health and Human
51 Services (HHS) pursuant to 42 USC 9801 et seq.

52 □(b) Child care providers who are employed at a child care center and are not covered by
53 paragraph (a) of this Section may agree to be represented by the Providers Organization and
54 bound by the Child Care Standards Agreement if they meet all of the following conditions:

- 55 □i. The child care center receives a subsidy for at least 10% of children attending that center;
56 □ii. A majority of child care providers at that child care center authorize representation by the
57 Providers Organization; and
58 □iii. The owner, executive director, or chief executive officer of the child care center authorizes
59 representation by the Providers Organization.

60 □SECTION 20. CHILD CARE PROVIDERS' RIGHT TO SELECT AN ORGANIZATION TO
61 NEGOTIATE WITH THE COMMISSIONER OVER SPECIFIED SUBJECTS.

62 □(a) Child care providers shall have the right to form, join and participate in the activities of an
63 organization of their own choosing for the purpose of representation and negotiations with the
64 Commissioner over those subjects specified in sub-section (a) of section twenty-one.

65 □(b) The Commissioner or his or her designee is authorized to engage on behalf of the
66 Commonwealth in negotiations with the Providers Organization and agree to terms of a Child
67 Care Standards Agreement pursuant to section twenty-one of this chapter.

68 □(c) Every child care center to which sections seventeen to twenty-one applies shall provide to
69 the Commissioner a list of the names of all currently employed child care providers with
70 additional information for each including home address, telephone numbers, workplace
71 addresses and job titles. Such lists shall be provided in the manner requested by the
72 Commissioner within thirty days of enactment, and annually thereafter by January 30. Except as
73 provided in sub-section (d) of this section, the list shall not be a public record.

74 □(d) The Commissioner shall, upon request and written certification that the list and
75 accompanying information shall be used solely for the purpose of seeking to represent or
76 continuing representation of child care providers, provide to an organization a list of all current
77 child care providers who are authorized to select a representative under section 19. Such list shall
78 contain such information including name, home address, telephone numbers, workplace
79 addresses and job titles for each child care provider.

80 □(e) The Commissioner shall recognize as a Providers Organization an organization designated
81 by the child care providers in accordance with the following process:

82 □i. The Commissioner shall extend recognition to an organization identified by a showing of
83 written majority support by the child care providers authorized to select a representative under
84 this section. A showing of majority support shall be verified by a neutral third-party, agreed upon
85 by the organization and the Commissioner, who shall conduct a confidential inspection of the
86 showing of majority support to determine whether the organization has such support and shall
87 report the results to the Commissioner, organization and child care providers; or

88 □ii. The Commissioner, upon receipt of an organization's petition that thirty percent of child
89 care providers in the Commonwealth wish to be represented by that organization, or upon receipt
90 of a petition filed by or on behalf of forty-five percent of the child care providers in the
91 Commonwealth alleging that the recognized Providers Organization no longer represents a
92 majority of the child care providers, shall direct an election by secret ballot or shall use any other
93 suitable method provided the opportunity for a private vote is preserved to determine whether, or
94 by which organization, the child care providers desire to be represented for purposes of sections

95 seventeen through twenty-one. Said election shall be conducted by an experienced, neutral third
96 party selected by the Providers Organization from a list of five neutral third parties prepared by
97 the Commissioner. The Commissioner shall certify the organization that
98 □receives a majority of the votes cast in such election as the recognized Providers Organization.
99 The decision and determinations of the neutral shall be final and binding.

100 □iii. In any election conducted pursuant to subsection ii, the commissioner and the department
101 shall not seek to influence the vote of any child care providers. Recognition pursuant to this
102 section shall remain in effect until a majority of child care providers chooses another Providers
103 Organization or no Providers Organization in accordance with subsection ii. Only one
104 organization at any time may be recognized as the representative of child care providers for the
105 purposes of sections seventeen through twenty-one. .

106 □(g) No election shall be conducted when a valid election has been held in the preceding twelve
107 months or a Child Care Standards Agreement is in effect.

108 □SECTION 21. NEGOTIATION OF A CHILD CARE STANDARDS AGREEMENT

109 □(a) Negotiations between the Commissioner and the Providers Organization shall be limited to
110 matters related to the Commonwealth's role in workforce development as described in Sections 2
111 and 5 of Chapter 15D, including: (i) professional development and training; (ii) conditions
112 affecting recruitment and retention; (iii) quality ratings by the Department; (iv) career
113 development payments made by the Commonwealth to compensate professionals for increases in
114 educational attainment and incentives for advancement; (v) improving access for child care
115 providers to retirement, health and
116 □welfare benefits; (vi) the manner and rate of subsidy and reimbursement by the Department;
117 (vii); an administrative assessment; and (viii) dispute resolution procedures related to (i) through
118 (vii).

119 □(b) The parties shall seek to reach a Child Care Standards Agreement through good faith
120 negotiations based on the interests of both parties. If after a reasonable period of negotiations the
121 parties are unable to reach an Agreement, the parties shall engage, and share the costs of, a third
122 party facilitator or mediator to assist them in further interest-based negotiations. The parties may
123 engage such a facilitator or mediator at any earlier stage of negotiations. A facilitator or mediator
124 shall be empowered to order the parties to exchange information that is reasonably necessary and
125 relevant to negotiations and to require specific representatives authorized to enter into a Child
126 Care Standards Agreement to be present during negotiations. If after a reasonable period of
127 facilitated or mediated negotiations the parties are unable to reach an Agreement, the facilitator
128 or mediator shall issue a written report indicating the subjects upon which Agreement was
129 reached and recommendations for a complete Agreement with a rationale. If the full report is not
130 mutually agreeable to the parties, the mediator or facilitator shall determine a schedule for
131 resumed negotiations, provided that the parties may mutually agree at any time to adopt such
132 recommendations as to which there is Agreement and limit further negotiation to the issues
133 remaining in dispute. The mediator or facilitator shall have the authority to request information
134 from the parties regarding their respective positions on any matter in dispute.

135 (c) The funds required to finance the costs of the Child Care Standards Agreement shall not be
136 diverted from funding for child care assistance, including line items for Temporary Assistance
137 for Needy Families (TANF)-Related Child Care, Supportive Child Care, and Low-Income Child
138 Care.

139 (d) A Child Care Standards Agreement reached between the Commissioner and the Providers
140 Organization shall not exceed a term of three years, provided however that the parties may
141 mutually agree to modify or extend an Agreement or any portion(s) thereof for a period of time
142 in excess of the Agreement's duration. The Agreement shall be reduced to writing and executed
143 by the parties.

144 (e) The Commissioner shall submit to the General Court within thirty days after the date on
145 which the Agreement is executed by the parties, a request for an appropriation necessary to fund
146 the items associated with matters identified in subsection (a) above contained therein; provided,
147 that if the General Court is not in session at that time, such request shall be submitted at the next
148 session thereof. If the General Court rejects the request for an appropriation necessary to fund the
149 cost items, such cost items shall be returned to the parties for further negotiations.

150 (f) The Commissioner shall take all necessary steps to fund, implement, and enforce the terms
151 of the Agreement. If an Agreement contains a conflict between matters which are within the
152 scope of negotiations pursuant this section and any rules, regulations or policies of the
153 department, the terms of the Child Care Standards Agreement shall prevail.

154 (g) This section does not create or modify:

155 (i) The parents' or legal guardians' right to choose and terminate the services of any child care
156 center that provides care for their child or children;

157 (ii) The child care center's right to choose, direct, and terminate the services of a caregiver that
158 it employs;

159 (iii) The rights of employers and employees under the National Labor Relations Act, 29 U.S.C.
160 §§ 151, et seq.;

161 (iv) The Secretary of the Executive Office of Health and Human Services and the
162 Commissioner's right to adopt requirements pursuant to chapter 15D except that such
163 requirements shall not diminish the minimum standards established under a Child Care Standards
164 Agreement;

165 (v) The General Court's right to make programmatic modifications to the delivery of
166 Commonwealth services through child care subsidy programs, including standards of eligibility
167 of parents, legal guardians, and child care centers participating in child care subsidy programs,
168 and the nature of services provided.

169 (g) In enacting this section, the General Court intends to provide state action immunity under
170 federal and state antitrust laws for the joint activities of child care providers and the organization
171 they select to represent them for purposes of this chapter.

172 SECTION 2. This act applies only to the relationship, as defined above in Sections 20 and 21,
173 between the department of Early Education and Care and child care providers. If any part of this
174 act is found to be in conflict with federal requirements that are a prescribed condition to the

175 allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the
176 extent of the conflict and with respect to the agencies directly affected, and any such finding
177 does not affect the operation of the remainder of this act in its application to the agencies
178 concerned. Standards adopted under this act must meet federal requirements that are a necessary
179 condition to the receipt of federal funds by the Commonwealth.

180 SECTION 3. If any part of this Act is found to be unlawful, that part shall be severed and the
181 remaining provisions given full force and effect.

182 SECTION 4. This act may be known and cited as the Access to Quality Early Education and
183 Care Act.

184