

HOUSE No. 2401

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 adoption 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>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>

HOUSE No. 2401

By Mr. Sánchez of Boston, a petition (accompanied by bill, House, No. 2401) of Jeffrey Sánchez and others for legislation to improve quality in early education centers and providing better access to quality early education and care. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 477 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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,
5 inclusive, shall have the following meanings:

6 “Administrative assessment” shall mean an amount paid by the Department to the
7 Providers Organization for the costs of representing child care providers as provided in sections
8 eighteen through twenty-one of this chapter.

9 “Child care center” shall mean a center as defined in Section 1A of Chapter 15D, which
10 is 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
15 negotiated between the Department and the Providers Organization. The written agreement shall
16 legally 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
19 Section 2 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
24 standards that will improve the delivery and quality of early learning and child care services at
25 child care centers defined in section 17 and sub-section (a) of section 19 of this chapter. Such
26 standards will be developed through negotiations as set forth in section twenty-one of this

27 chapter with an organization selected by child care providers. The process of developing and
28 enforcing such standards will in no way limit or intrude upon the rights of child care providers
29 under federal labor law.

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

32 (a) Sections seventeen to twenty-one, inclusive, shall apply to child care providers at
33 child care centers that receive a subsidy for at least 10 % of children attending their centers, but
34 shall not 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
37 that 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
46 the Director of the Community Services Administration and established pursuant to the
47 Economic Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds

48 received from Federal, State, local, or private funding entities to assess, design, operate, finance,
49 and oversee antipoverty programs; or

50 v. Funded by the Head Start program administered by the Department of Health and
51 Human 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
56 center;

57 ii. A majority of child care providers at that child care center authorize representation by
58 the Providers Organization; and

59 iii. The owner, executive director, or chief executive officer of the child care center
60 authorizes representation by the Providers Organization.

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

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

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

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

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

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

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

88 showing of majority support to determine whether the organization has such support and shall
89 report the results to the Commissioner, organization and child care providers; or

90 ii. The Commissioner, upon receipt of an organization's petition that thirty percent of
91 child care providers in the Commonwealth wish to be represented by that organization, or upon
92 receipt of a petition filed by or on behalf of forty-five percent of the child care providers in the
93 Commonwealth alleging that the recognized Providers Organization no longer represents a
94 majority of the child care providers, shall direct an election by secret ballot or shall use any other
95 suitable method provided the opportunity for a private vote is preserved to determine whether, or
96 by which organization, the child care providers desire to be represented for purposes of sections
97 seventeen through twenty-one. Said election shall be conducted by an experienced, neutral third
98 party selected by the Providers Organization from a list of five neutral third parties prepared by
99 the Commissioner. The Commissioner shall certify the organization that

100 receives a majority of the votes cast in such election as the recognized Providers
101 Organization. The decision and determinations of the neutral shall be final and binding.

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

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

110 SECTION 21. NEGOTIATION OF A CHILD CARE STANDARDS AGREEMENT

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

121 (b) The parties shall seek to reach a Child Care Standards Agreement through good faith
122 negotiations based on the interests of both parties. If after a reasonable period of negotiations the
123 parties are unable to reach an Agreement, the parties shall engage, and share the costs of, a third
124 party facilitator or mediator to assist them in further interest-based negotiations. The parties may
125 engage such a facilitator or mediator at any earlier stage of negotiations. A facilitator or mediator
126 shall be empowered to order the parties to exchange information that is reasonably necessary and
127 relevant to negotiations and to require specific representatives authorized to enter into a Child
128 Care Standards Agreement to be present during negotiations. If after a reasonable period of
129 facilitated or mediated negotiations the parties are unable to reach an Agreement, the facilitator
130 or mediator shall issue a written report indicating the subjects upon which Agreement was
131 reached and recommendations for a complete Agreement with a rationale. If the full report is not

132 mutually agreeable to the parties, the mediator or facilitator shall determine a schedule for
133 resumed negotiations, provided that the parties may mutually agree at any time to adopt such
134 recommendations as to which there is Agreement and limit further negotiation to the issues
135 remaining in dispute. The mediator or facilitator shall have the authority to request information
136 from the parties regarding their respective positions on any matter in dispute.

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

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

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

152 (f) The Commissioner shall take all necessary steps to fund, implement, and enforce the
153 terms of the Agreement. If an Agreement contains a conflict between matters which are within

154 the scope of negotiations pursuant this section and any rules, regulations or policies of the
155 department, the terms of the Child Care Standards Agreement shall prevail.

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

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

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

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

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

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

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

174 SECTION 2. This act applies only to the relationship, as defined above in Sections 20
175 and 21, between the department of Early Education and Care and child care providers. If any part
176 of this act is found to be in conflict with federal requirements that are a prescribed condition to
177 the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to
178 the extent of the conflict and with respect to the agencies directly affected, and any such finding
179 does not affect the operation of the remainder of this act in its application to the agencies
180 concerned. Standards adopted under this act must meet federal requirements that are a necessary
181 condition to the receipt of federal funds by the Commonwealth.

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

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