Introduced by Representatives Sweaney of Windsor, Davis of Washington, 
McFaun of Barre Town, and Poirier of Barre City 

Referred to Committee on 

Subject: Labor; unions; fair-share fees 

Statement of purpose of bill as introduced: This bill proposes to require that employees in bargaining units organized under state law who exercise their rights not to join a labor organization required to provide them certain services shall pay to that labor organization a fair-share fee, representing that portion of the labor organization’s membership fees which are attributable to those services.

An act relating to fair-share fees 

It is hereby enacted by the General Assembly of the State of Vermont: 

* * * Fair-Share Fees * * *

Sec. 1. POLICY 

It is the policy of the State of Vermont that employees in bargaining units organized under state law who exercise their rights not to join a labor organization that has a duty to represent them shall pay a fair-share fee.
representing that portion of the labor organization’s membership fees attributable only to those services related to its duty of fair representation.

Sec. 2. FINDINGS

The General Assembly finds:

(1) The right of employees to organize and form a labor organization to engage in collective bargaining is fundamental to both a free society and the generation and maintenance of a strong middle class.

(2) The State has long favored the right of employees to organize for the purpose of bargaining collectively with their employer.

(3) Vermont law recognizes that a labor organization democratically selected by bargaining unit employees is the exclusive representative of all the employees within the bargaining unit.

(4) A labor organization engages in both “chargeable” and “nonchargeable” activities on behalf of bargaining unit members. In this section, “chargeable” activities are generally those related to negotiating and ensuring the enforcement of collective bargaining agreements on behalf of the bargaining unit as a whole and for every employee within it. “Nonchargeable” activities are generally those related to political activities and lobbying.

(5) With respect to “chargeable activities,” a labor organization must represent all the employees within its bargaining unit. It may not discriminate between members of the labor organization who pay membership fees and
those who exercise their rights not to become members. This is called “the
duty of fair representation.” This duty does not extend to “nonchargeable”
activities.

(6) The “chargeable” activities undertaken by labor organizations on
behalf of all bargaining unit employees are in the interest of the public good.

(7) The fair-share fee is the portion of the labor organization’s
membership fees attributable to its chargeable activities.

(8) It is the policy of the State to require employees in bargaining units
organized under state law who do not become members of the labor
organization representing the unit to pay a “fair-share fee” for the chargeable
activities undertaken on their behalf.

(9) Current Vermont law prohibits a labor organization from charging
the fair-share fee unless the employer of the bargaining unit’s members agrees
to permit it.

(10) As an employer, the State has agreed to permit the fair-share fee for
members of its employee bargaining units. The University of Vermont and the
Vermont State Colleges have as well. Virtually all private sector employers
whose Vermont employees are in bargaining units permit the fair-share fee.

Most municipalities have also agreed to permit the fair-share fee. However, a
significant majority of school districts have not agreed to permit the
fair-share fee.
(11) It is inconsistent with state policy to continue to permit employers, merely by not agreeing to fair-share fee provisions in collective bargaining agreements, to enable their bargaining unit employees who are not members of the labor organization to avoid paying their fair share of the organization’s representation.

(12) Allowing employers to withhold consent to fair-share fees has resulted in a patchwork of collective bargaining agreements, some of which include fair-share provisions and some of which do not.

(13) By enacting a fair-share fee law, the State will allow employees not to join the labor organizations representing them but will ensure equitable treatment across bargaining units organized under state law. It will balance the duty of fair representation with the duty to pay a fair-share fee.

**State Employees**

Sec. 3. 3 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

For the purposes of As used in this chapter:

* * *

(19) “Collective bargaining service fee” means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization which is the exclusive bargaining agent for the bargaining unit of the employee. The
collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization, and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization, and shall be used to defray the costs incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the state “Fair-share fee” means the portion of an employee organization’s dues attributable to activities stemming from its duty to represent all employees in a collective bargaining unit without regard to membership in the employee organization, to be paid by those employees in a collective bargaining unit who are not members of the employee organization. It includes the cost of all activities germane to collective bargaining, administering and enforcing collective bargaining agreements, representing employees in their employment relations with the State, professional development, and the employee organization’s governance and administration. It does not include the cost of any political activities, lobbying over matters that are not germane to either collective bargaining or employer-employee relations, or community service activities undertaken by the employee organization.
Sec. 4. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in subsection (b) subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) No A state employee may not strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee’s collective bargaining unit shall pay the fair-share fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.
Sec. 5. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include but are not limited to:

* * *

(9) Rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial probationary status including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant’s race, color, creed, sex or national origin; and

(10) A collective bargaining service fee the manner in which to enforce an employee’s obligation to pay the fair-share fee.

* * *
Sec. 6. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

* * *

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice. Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated, the unit representative shall represent nonmember employees in grievance proceedings without charge.

Sec. 7. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *
(10) To charge a collective bargaining fee negotiated pursuant to section 904 of this title the fair-share fee unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee fair-share fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee fair-share fee.

* * * Judiciary Employees * * *

Sec. 8. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

For the purposes of As used in this chapter:

* * *

(4) “Collective bargaining service fee,” means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, and that fee is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization; shall be deducted in the same manner as dues are deducted from the salary or wages of members.
of the employee organization; and shall be used to defray the costs incurred by
the employee organization in fulfilling its duty to represent the employees in
their employment relations with the employer “Fair-share fee” means the
portion of an employee organization’s dues attributable to activities stemming
from its duty to represent all employees in a collective bargaining unit without
regard to membership in the employee organization, to be paid by those
employees in a collective bargaining unit who are not members of the
employee organization. It includes the cost of all activities germane to
collective bargaining, administering and enforcing collective bargaining
agreements, representing employees in their employment relations with the
State, professional development, and the employee organization’s governance
and administration. It does not include the cost of any political activities,
lobbying over matters that are not germane to either collective bargaining or
employer-employee relations, or community service activities undertaken by
the employee organization.

* * *

Sec. 9. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or
assist employee organizations; to bargain collectively through their chosen
representatives; to engage in concerted activities of collective bargaining or
other mutual aid or protection; to refrain from any or all those activities, except
as provided in subsection (b) and (c) of this section; and to
appeal grievances as provided in this chapter.

(b) An employee may not strike or recognize a picket line of an
employee organization while performing the employee’s official duties.

(c) An employee who exercises the right not to join the employee
organization representing the employee’s certified unit pursuant to
section 1021 of this title shall pay a fair-share fee to the representative of the
bargaining unit in the same manner as employees who pay membership fees to
the representative.

(d) The employer and employees and the employee’s representative shall
exert every reasonable effort to make and maintain agreements concerning
matters allowable under section 1013 of this title and to settle all disputes,
whether arising out of the application of those agreements or growing out of
any dispute between the employer and the employees.

Sec. 10. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees
are subject to collective bargaining, to the extent those matters are not
prescribed or controlled by law, including:

* * *
(10) A collective bargaining service fee the manner in which to enforce
an employee’s obligation to pay the fair-share fee.

Sec. 11. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its
agents:

* * *

(10) To charge a negotiated collective bargaining the fair-share fee
unless the employee organization has established and maintained a procedure
to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major
categories of expenses and divides them into chargeable and nonchargeable
expenses;

(B) An opportunity to object to the amount of the fair-share fee
requested and to place in escrow any amount reasonably in dispute; and

(C) Prompt arbitration by the board to resolve any objection
over the amount of the collective bargaining fee fair-share fee.
Sec. 12. 3 V.S.A. § 1041 is amended to read:

§ 1041. GRIEVANCES; APPLICANTS AND EXCLUDED PERSONNEL

    * * *

    (c) Any dispute concerning the amount of a collective bargaining service

the fair-share fee may be grieved to the board in accordance with the rules of

the board.

    * * * Teachers * * *

Sec. 13. 16 V.S.A. § 1981 is amended to read:

§ 1981. DEFINITIONS

As used in this chapter unless the context requires otherwise:

    * * *

(7) “Agency fee” means a fee for representation in collective bargaining,

not exceeding teachers’ or administrators’ organization dues, payable to the

organization which is the exclusive bargaining agent for teachers or

administrators in a bargaining unit, from individuals who are not members of

the organization “Fair-share fee” means the portion of an employee

organization’s dues attributable to activities stemming from its duty to

represent all employees in a negotiating unit without regard to membership in

the employee organization, to be paid by those employees in a collective

bargaining unit who are not members of the employee organization. It

includes the cost of all activities germane to collective bargaining.
administering and enforcing collective bargaining agreements, representing employees in their employment relations with their employer, professional development, and the employee organization’s governance and administration. It does not include the cost of any political activities, lobbying over matters that are not germane to either collective bargaining or employer-employee relations, or community service activities undertaken by the employee organization.

* * *

Sec. 14. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers’ organization of their choosing. However, teachers may be required to pay an agency fee. However, teachers who choose not to join the teachers’ organization, recognized as the exclusive representative pursuant to an agreement negotiated under section 1992 of this chapter, shall pay the fair-share fee in the same manner as teachers who choose to join the teachers’ organization pay membership fees.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators’ organization or as a separate unit of any teachers’ organization of their choosing. However, subject to the
provisions of subsection (d) of this section, administrators other than the superintendent and assistant superintendent may be required to pay an agency fee who choose not to join the administrators’ organization, recognized as the exclusive representative pursuant to an agreement negotiated under section 1992 of this chapter, shall pay the fair-share fee in the same manner as administrators who choose to join the administrators’ organization pay membership fees.

(c) Neither the school board nor any employee of the school board serving in any capacity, nor any other person or organization shall not interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

(d) A teachers’ or administrators’ organization shall not charge the fair-share fee unless it has established and maintained a procedure to provide nonmembers with:

1. an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;
2. an opportunity to object to the amount of the fair-share fee sought, and to place in escrow any amount reasonably in dispute;
3. prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers’ or administrators’ organization or
pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the fair-share fee.

Sec. 15. 16 V.S.A. § 2004 is amended to read:

§ 2004. AGENDA

The school board, through its negotiations council, shall, upon request, negotiate with representatives of the teachers’ or administrators’ organization negotiations council on matters of salary, related economic conditions of employment, an agency service fee the manner in which it will enforce an employee’s obligation to pay the fair-share fee, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with the statutes and laws of the state State of Vermont.

* * * Certain Private Sector Employees * * *

Sec. 16. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

As used in this chapter, the following words shall have the following meaning:

* * *

(14) “Fair-share fee” means the portion of an employee organization’s dues attributable to activities stemming from its duty to represent all employees in a collective bargaining unit without regard to membership in the
employee organization, to be paid by those employees in a collective
bargaining unit who are not members of the employee organization. It
includes the cost of all activities germane to collective bargaining,
administering and enforcing collective bargaining agreements, representing
employees in their employment relations with their employer, professional
development, and the employee organization’s governance and administration.
It does not include the cost of any political activities, lobbying over matters
that are not germane to either collective bargaining or employer-employee
relations, or community service activities undertaken by the employee
organization.

Sec. 17. 21 V.S.A. § 1503 is amended to read:

§ 1503. RIGHTS OF EMPLOYEES; MUTUAL DUTY TO BARGAIN

(a) Employees shall have the right to self-organization; to form, join, or
assist labor organizations; to bargain collectively through representatives of
their own choice, and to engage in concerted activities for the purpose of
collective bargaining or other mutual aid or protection, and shall also have the
right to refrain from any or all such activities, except to the extent that such
right may be affected by an agreement requiring membership in a labor
organization as a condition of employment as authorized in section subsection
1621(a) of this title. An employee who exercises the right not to join the labor
organization representing the employee’s certified unit pursuant to section
1581 of this title, shall, subject to subsection (b) of this section, pay the
fair-share fee to the representative of the bargaining unit in the same manner as
employees who pay membership fees to the representative.

(b) A labor organization shall not charge the fair-share fee unless it has
established and maintained a procedure to provide nonmembers with:

   (1) an audited financial statement that identifies the major categories
of expenses and divides them into chargeable and nonchargeable expenses;

   (2) an opportunity to object to the amount of the fair-share fee
sought, and to place in escrow any amount reasonably in dispute;

   (3) prompt arbitration by an arbitrator selected jointly by the
objecting fee payer and the teachers’ or administrators’ organization or
pursuant to the rules of the American Arbitration Association to resolve any
objection over the amount of the fair-share fee.

Sec. 18. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

   * * *

(6) Nothing in this chapter or any other statute of this state shall
preclude an employer from making an agreement with a labor organization
(not established, maintained or assisted by any action defined in this
subsection (a) as an unfair labor practice) to require the fair-share fee to be
paid as a condition of employment, or to require as a condition of employment
membership in such labor organization on or after the 30th day following the
beginning of such employment or the effective date of such agreement,
whichever is the later, (i) if such labor organization is the representative of the
employees as provided in section 1583 of this chapter, in the appropriate
collective bargaining unit covered by such agreement when made and (ii)
unless following an election held as provided in section 1584 of this chapter
within one year preceding the effective date of such agreement, the board
Board shall have certified that at least a majority of the employees eligible to
vote in such election have voted to rescind the authority of such labor
organization to make
such an agreement. No An employer shall not justify any discrimination
against an employee for nonmembership in a labor organization:
(A) if the employer has reasonable grounds for believing that
membership was not available to the employee on the same terms and
conditions generally applicable to other members; or
(B) if the employer has reasonable grounds for believing that
membership was denied or terminated for reasons other than the failure of the
employee to tender the periodic dues and the initiation fees uniformly required
as a condition of acquiring or retaining membership.

* * *

* * *
(b) It shall be an unfair labor practice for a labor organization or its agents:

* * *

(5) To require employees covered by a fair-share requirement or other union security agreement authorized under subsection (a) of this section to pay, as a condition precedent to becoming a member of such organization, a fee in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected.

* * *

** Municipal Employees **

Sec. 19. 21 V.S.A. § 1722 is amended to read:

§ 1722. DEFINITIONS

For the purposes of As used in this chapter:

(1) “Agency service fee” means a fee for representation in collective bargaining not exceeding employee organization dues, payable to an employee organization which is the exclusive bargaining agent for employees in a bargaining unit from individuals who are not members of the employee organization. “Fair-share fee” means the portion of an employee organization’s dues attributable to activities stemming from its duty to represent all
employees in a collective bargaining unit without regard to membership in the employee organization, to be paid by those employees in a collective bargaining unit who are not members of the employee organization. It includes the cost of all activities germane to collective bargaining, administering and enforcing collective bargaining agreements, representing employees in their employment relations with their employer, professional development, and the employee organization’s governance and administration. It does not include the cost of any political activities, lobbying over matters that are not germane to either collective bargaining or employer-employee relations, or community service activities undertaken by the employee organization.

* * *

Sec. 20. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(8) Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent to require an agency service fee. A municipal employer and the exclusive bargaining agent may agree to require the fair-share fee to be paid as a condition of employment, or to require as a condition of employment
membership in such employee organization on or after the 30th day following
the beginning of such employment or the effective date of such agreement,
whichever is the later. A municipal employer shall not discharge or
discriminate against any employee for nonpayment of an agency service fee
the fair-share fee or for nonmembership in an employee organization:

(A) if the employer has reasonable grounds for believing that
membership was not available to the employee on the same terms and
conditions generally applicable to other members; or

(B) if the employer has reasonable grounds for believing that
membership was denied or terminated for reasons other than the failure of the
employee to tender the periodic dues and the initiation fees uniformly required
as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its
agents:

* * *

(6) To require employees covered by an agency service fee agreement
the fair-share fee requirement or other union security agreement authorized
under subsection (a) of this section to pay an initiation fee which the board
finds excessive or discriminatory under all the circumstances, including the
practices and customs of employee organizations representing municipal
employees, and the wages paid to the employees affected.
* * *

(12) to charge the fair-share fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute; and

(C) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the labor organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee.

Sec. 21. 21 V.S.A. § 1734 is amended to read:

§ 1734. MISCELLANEOUS

(a) Municipal employees and exclusive bargaining agents are authorized to negotiate provisions in a collective bargaining agreement calling for:

(1) Payroll deduction of employee organization dues and initiation fees, or an agency service fee;

(2) Binding arbitration of grievances involving the interpretation or application of a written collective bargaining agreement. The cost of arbitration shall be shared equally by the parties.
(d) In the absence of an agreement requiring an employee to be a member of the employee organization, an employee choosing not to be a member of the employee organization shall pay the fair-share fee in the same manner as employees who choose to join the employee organization pay dues.

* * * Effective Dates * * *

Sec. 22. EFFECTIVE DATES

(a) Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 (relating to state and judiciary employees) of this act shall take effect on July 2, 2013 and apply to new successor collective bargaining agreements subject to the provisions of 3 V.S.A. chapters 27 and 28.

(b) Secs. 13, 14, 15, 16, 17, 18, 19, 20, and 21 (relating to teachers, municipal employees, and certain private employers) of this act shall take effect on June 30, 2013 and apply to employees subject to 16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay a fair-share fee under this act for any period prior to July 1, 2013 unless an existing collective bargaining agreement requires payment of the fee. In the event that no collective bargaining agreement is in effect on June 30, 2013, Secs. 5, 6, and 7 of this act
shall take effect on June 30, 2013 and apply to employees subject to

16 V.S.A. chapter 57 and 21 V.S.A. chapters 19 and 22 on July 1, 2013.

(c) This section and Secs. 1 and 2 of this act shall take effect on passage.