

H. B. 2155

(By Delegates Caputo and Martin)

[Introduced January 12, 2011; referred to the
Committee on Government Organization then the Judiciary.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §29-9-1, §29-9-2,
12 §29-9-3, §29-9-4, §29-9-5, §29-9-6, §29-9-7, §29-9-8, §29-9-9,
13 §29-9-10, §29-9-11, §29-9-12, §29-9-13, §29-9-14, §29-9-15,
14 §29-9-16, §29-9-17, §29-9-18, §29-9-19, §29-9-20, §29-9-21,
15 §29-9-22, §29-9-23, §29-9-24, §29-9-25, §29-9-26, §29-9-27 and
16 §29-9-28, all relating to the Public Employment Relations Act;
17 stating legislative policy and purpose; defining certain
18 terms; establishing a West Virginia Public Employment
19 Relations Board; providing for the composition of the board,
20 the terms of its members, and the qualifications of the
21 members; providing for the terms of the original appointees
22 and the method of filling vacancies; limiting eligibility of
23 board members for reappointment; requiring an oath of office
24 and establishing a method of removal of board members;

1 establishing procedural rules for meetings and requiring a
2 quorum; providing for the payment of per diem and expenses for
3 attendance by board members; providing for the organization of
4 the board, the powers and duties of the board, the employment
5 of staff and the location of offices; granting authority to
6 the board to promulgate rules; defining employee and employer
7 rights; providing for the election of exclusive
8 representatives by public employees; establishing criteria for
9 determining the appropriateness of an employer unit for
10 purposes of collective bargaining; establishing procedures for
11 representation elections and decertification of certified
12 representatives; establishing the scope of bargaining subjects
13 as to which agreement may be reached; providing for written
14 agreements; providing that all written agreements involving
15 costs are subject to appropriations by the appropriate
16 legislative or governing body; limiting the duration of
17 agreements to three years; providing for mediation and
18 arbitration to resolve impasses in bargaining; prohibiting
19 strikes by public employees; providing remedies for prohibited
20 strikes; defining prohibited practices; establishing a method
21 of payroll deductions, fair share fee payments and protections
22 for fee payors; requiring financial reports, public records
23 and lists of employee organizations and exclusive
24 representatives; and setting forth when the article shall take

1 precedence and when it shall be inoperative.

2 *Be it enacted by the Legislature of West Virginia:*

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new article, designated §29-9-1, §29-9-2, §29-
5 9-3, §29-9-4, §29-9-5, §29-9-6, §29-9-7, §29-9-8, §29-9-9, §29-9-
6 10, §29-9-11, §29-9-12, §29-9-13, §29-9-14, §29-9-15, §29-9-16,
7 §29-9-17, §29-9-18, §29-9-19, §29-9-20, §29-9-21, §29-9-22, §29-9-
8 23, §29-9-24, §29-9-25, §29-9-26, §29-9-27 and §29-9-28, all to
9 read as follows:

10 **ARTICLE 9. WEST VIRGINIA PUBLIC EMPLOYMENT RELATIONS ACT.**

11 **§29-9-1. Legislative purpose.**

12 The Legislature of the State of West Virginia declares that it
13 is the public policy of this state and the purpose of the
14 Legislature in the enactment of this article to promote orderly and
15 constructive employment relations between public employers and
16 their employees; to increase the efficiency of state and local
17 government throughout the state; and to ensure the health and
18 safety of the citizens of this state. The Legislature has
19 determined that these policies and purposes may best be
20 accomplished by: (1) Granting to public employees the right to
21 associate with others in organizing and choosing representatives
22 for the purpose of collective bargaining; (2) requiring public
23 employers to recognize, negotiate and bargain with employee
24 organizations representing public employees and to enter into

1 written agreements evidencing the result of bargaining; and (3)
2 encouraging labor peace through the establishment of standards and
3 procedures which protect the rights of the public employer, the
4 public employee and the citizens of this state.

5 **§29-9-2. Short title.**

6 This article shall be known and may be cited as the "Public
7 Employment Relations Act."

8 **§29-9-3. Definitions.**

9 The following words when used in this article have the meaning
10 ascribed to them unless the context clearly indicates a different
11 meaning:

12 (a) "Appropriate bargaining unit" means the unit of employees
13 determined to be appropriate for the purpose of collective
14 bargaining pursuant to section twelve of this article.

15 (b) "Arbitration" means the procedure by which an impartial
16 third party holds a hearing, takes testimony and renders a decision
17 which is binding upon the parties for the purpose of resolving a
18 dispute between public employees and public employers:

19 (1) "Grievance arbitration" means arbitration of disputes
20 arising over the interpretation or application of a collective
21 bargaining agreement; and

22 (2) "Interest arbitration" means arbitration of disputes
23 arising during the course of contract negotiations resulting in
24 incorporation of the arbitrator's decision into the collective

1 bargaining agreement.

2 (c) "Board" means the Public Employment Relations Board
3 created pursuant to section four of this article.

4 (d) "Certification" means official recognition by the Public
5 Employment Relations Board that the employee organization is the
6 exclusive representative for all the employees in an appropriate
7 bargaining unit for the purpose of collective bargaining.

8 (e) "Collective bargaining" means the performance of the
9 mutual obligations of the public employer and the exclusive
10 representative to meet at reasonable times and places, to confer
11 and negotiate in good faith with the intent of reaching agreement,
12 and to execute a written agreement with respect to wages, hours and
13 other terms and conditions of employment: *Provided*, That neither
14 party shall be required to make a concession or be compelled to
15 agree to a proposal put forth by the other party.

16 (f) "Confidential employee" means an employee, who in the
17 regular course of his or her duties, assists and acts in a
18 confidential capacity to persons who formulate, determine and
19 effectuate management policies with regard to labor relations. The
20 personal secretary to a managerial employee shall be considered to
21 be a confidential employee.

22 (g) "Employee" or "public employee" means any person, other
23 than elected officials, employed by a public employer.

24 (h) "Employee organization" means an organization of employees

1 which exists for the purpose of representing public employees in
2 dealing with public employers concerning grievances, labor
3 disputes, wages, hours and other terms and conditions of employment
4 of public employees.

5 (I) "Exclusive representative" means the employee organization
6 which has the right as certified by the board to be the collective
7 bargaining agent of all employees in an appropriate bargaining
8 unit.

9 (j) "Impasse" means the point in the process of negotiations
10 between public employees and public employers at which either party
11 determines that no further progress toward resolving differences
12 and concluding a collective bargaining agreement can be made.

13 (k) "Managerial employee" means an employee who, as a primary
14 function, formulates policy on behalf of the public employer or who
15 responsibly directs the implementation of policy. Any person who
16 fills a statutorily created position within or related to a public
17 employer as a commissioner, deputy commissioner, assistant
18 commissioner, director, chancellor, chief, executive director,
19 superintendent, deputy superintendent, manager, city manager or
20 county manager is considered a management employee.

21 (l) "Mediation" means assistance by an impartial third party
22 to resolve an impasse in the form of interpretation, suggestion or
23 advice in reconciling an impasse between the public employer and
24 the exclusive representative regarding wages, hours and other terms

1 and conditions of employment.

2 (m) "Professional employee" means an employee whose work is
3 predominantly intellectual and varied in character and whose work
4 involves the consistent exercise of discretion and judgment in its
5 performance and requires knowledge of an advanced nature in a
6 field of learning customarily requiring specialized study at an
7 institution of higher education or its equivalent. The work of a
8 professional employee is of such character that the output or
9 result accomplished cannot be standardized in relation to a given
10 period of time.

11 (n) "Public employer" means the State of West Virginia, its
12 institutions, agencies and governmental subdivisions; the Higher
13 Education Policy Commission; county boards of education; public and
14 quasi-public corporations; town, city, county, city-and-county and
15 municipal corporations; and authorities, boards or commissions or
16 combinations thereof whether or not incorporated or chartered.

17 (o) "Supervisory employee" means an employee who devotes a
18 substantial amount of work time to supervisory duties, who
19 customarily and regularly directs the work of two or more other
20 employees and who has the authority in the interest of the employer
21 to hire, promote or discipline other employees or to recommend
22 actions effectively but does not include individuals who perform
23 merely routine, incidental or clerical duties or who occasionally
24 assume supervisory or directory roles or whose duties are

1 substantially similar to those of their subordinates and does not
2 include lead employees, employees who participate in peer review or
3 occasional employee evaluation programs.

4 **§29-9-4. West Virginia Public Employment Relations Board created.**

5 There is hereby created a state agency to be known as the West
6 Virginia Public Employment Relations Board.

7 **§29-9-5. Composition of board; terms of members; qualifications of**
8 **members.**

9 The board shall consist of three members, one of whom shall be
10 representative of public employers, one of whom shall be
11 representative of public employees and one of whom shall be
12 representative of the public. All members shall be citizens of the
13 state appointed by the Governor, by and with the advice and consent
14 of the Senate. The members shall be appointed to terms of four
15 years.

16 Public employers and employee organizations representing
17 public employees may submit to the Governor the names of persons
18 who represent their interests as prospective members of the board
19 and the Governor shall first consider these persons in selecting
20 the members of the board who are representative of public employers
21 and public employees.

22 A person may not at the same time serve as a member of the
23 board and be a holder of any public office or public employment
24 under the federal government or under the government of this state

1 or any of its political subdivisions, or an appointee or employee
2 of the board. Not more than two members of the board shall be
3 members of the same political party.

4 **§29-9-6. Original term of members; vacancies; eligibility for**
5 **reappointment; oath of office; removal from office.**

6 The Governor shall appoint the three members of the board as
7 soon after the effective date of this article as is practicable.

8 The original terms of office of members begin on July 1, 2011. The
9 Governor shall appoint a member, by and with the advice and consent
10 of the Senate, to fill any vacancy among the members of the board.

11 The member appointed to fill the vacancy shall serve for the
12 unexpired term of the vacating member.

13 All members of the board appointed by the Governor are
14 eligible for reappointment. The Governor shall consult with
15 constituent groups of employees and employers at the expiration of
16 the term of a representative on the board recommended by the group
17 for appointment. A person who has served as a member during all or
18 any part of the two consecutive terms is ineligible to serve as a
19 member for a period of three years immediately following the second
20 of the two consecutive terms. Before exercising any authority or
21 performing any duties as a member of the board, each member shall
22 qualify by taking and subscribing to the oath of office prescribed
23 by section five, article IV of the state Constitution.

24 A member of the board appointed by the Governor may not be

1 removed from office by the Governor except for official misconduct,
2 incompetence, neglect of duty or gross immorality and only in the
3 manner prescribed by law for the removal of state elective
4 officers.

5 **§29-9-7. Meetings; quorum; per diem and expenses of members.**

6 The board shall hold at least six meetings in every fiscal
7 year beginning July 1 and ending the following June 30. One
8 meeting known as the annual meeting, shall be held in July, or as
9 soon thereafter as practicable, in the year 2011, and in June of
10 each subsequent year. The five additional required meetings in
11 each fiscal year, shall be held on dates and at places as the board
12 may prescribe. In addition to the statutorily required meetings,
13 the board may, upon its own resolution or at the call of the
14 chairperson of the board meet at other times.

15 The three members of the board, consisting of the chairperson,
16 a member representative of the public employers and a member
17 representative of the public employees, shall constitute a quorum.
18 A majority vote of the quorum is necessary to pass upon matters
19 before the board. The Governor shall appoint an acting member of
20 the board during a temporary absence from the state or during the
21 illness of any regular member. An acting member, during his or her
22 term of service, has the same powers and duties as the regular
23 member and shall meet the same requirements for selection.

24 The members of the board shall be paid \$100 per diem for

1 actual time spent in the performance of duties under this article,
2 and shall be reimbursed for actual and necessary expenses incident
3 to the performance of their duties. The foregoing per diem and
4 reimbursement for actual and necessary expenses shall be paid from
5 appropriations made by the Legislature to the board.

6 **§29-9-8. Organization of board; staff; offices.**

7 At its first annual meeting in July, or as soon thereafter as
8 practicable, in the year 2011, and annually thereafter, the board
9 shall elect a chairperson and other officers from its membership as
10 the board may consider necessary. The chairperson and officers
11 shall serve for a one-year term commencing on July 1, following the
12 annual meeting and ending on June 30 the following year.

13 The board shall employ an executive officer and any
14 professional, administrative, clerical and other employees,
15 including, but not limited to, mediators and hearing officers, as
16 may be necessary to assist the board in the performance of its
17 duties and responsibilities. The board shall prescribe the duties
18 and fix the compensation and emoluments of board employees in
19 accordance with law and practice. Employees of the board shall
20 serve under the direction and control of the board or its
21 designated representatives. The board shall provide suitable
22 offices for the executive officer and his or her staff in or near
23 the state Capitol Complex in Charleston, West Virginia.

24 **§29-9-9. Powers and duties of the board.**

1 (a) The board may from time to time to make, amend and rescind
2 rules as may be necessary to carry out the provisions of this
3 article. Any rules shall be filed in the office of the Secretary
4 of State within thirty days of adoption by the board. The
5 provisions of section one, article three, chapter twenty-nine-a of
6 this code apply to the board.

7 (b) The board shall hold hearings and make inquiries necessary
8 to carry out its functions and duties and may conduct studies on
9 problems pertaining to employee-employer relations, including
10 methods by which labor management cooperation may be improved. The
11 board shall request from public employers and labor organizations
12 the information and data necessary to carry out its functions and
13 duties.

14 (c) The board may issue subpoenas requiring, upon reasonable
15 notice, the attendance and testimony of witnesses and the
16 production of any evidence, including books, records,
17 correspondence or documents relating to any matter at issue. The
18 board may prescribe the form of the subpoena, but it shall adhere
19 insofar as practicable to the form used in civil actions in the
20 circuit court. The board may administer oaths and affirmations,
21 examine witnesses and receive evidence.

22 (d) The board may hire personnel or contract with third
23 parties as it considers necessary to assist it in carrying out its
24 functions.

1 (e) The board may enforce provisions of this article through
2 the imposition of appropriate administrative remedies.

3 (f) Any party aggrieved by any decision or order of the board,
4 may, within ten days from the date of the decision or order apply
5 for judicial review in the circuit court in the county in which the
6 board maintains its principal office.

7 **§29-9-10. Employee rights.**

8 (a) Public employees may organize, form, join or assist in
9 employee organizations and to engage in concerted activities for
10 the purpose of collective bargaining or other mutual aid and
11 protection and to bargain collectively through representatives of
12 their own free choice without interference, restraint or coercion.
13 Employees also have the right to refrain from these activities,
14 except to the extent that the rights may be effected by agreements
15 between the public employer and a labor organization which is the
16 exclusive bargaining representative requiring, as a condition of
17 employment, the payment of a service fee in lieu of, and in an
18 amount not greater than, dues which are payable by members of the
19 labor organization, to cover such costs as collective bargaining
20 and contract administration as provided in section twenty-two of
21 this article.

22 (b) Nothing in this article may prevent an employee from
23 presenting a grievance to the employer and having the grievance
24 heard and settled without the intervention of an employee

1 organization: Provided, That the exclusive bargaining
2 representative is afforded the opportunity to be present and to
3 present its views on the matter: Provided, however, That any
4 settlement made may not be inconsistent with the terms of the
5 agreement in effect between the employer and the exclusive
6 bargaining representative.

7 **§29-9-11. Representatives and elections.**

8 (a) When a majority of the public employees in an appropriate
9 bargaining unit select a representative for the purpose of
10 bargaining collectively, the representative shall be the exclusive
11 representative of all the employees in the unit for the purpose of
12 collective bargaining. Where exclusive recognition has previously
13 been granted or where prior to January 1, 2012, a signed agreement
14 is in effect the board may not alter the terms of the agreement nor
15 the appropriate unit previously agreed to.

16 The employer must continue to recognize and bargain with the
17 exclusive representative of the bargaining units that existed prior
18 to January 1, 2012, and the exclusive representative of the
19 bargaining units and employees in the bargaining units are accorded
20 the full rights under this article.

21 (b) Employee organizations recognized by a public employer as
22 the exclusive representative or so designated in accordance with
23 the provisions of this article are responsible for representing the
24 interests of all public employees in the bargaining unit. This

1 article may not be construed to limit an exclusive representative's
2 right to exercise its discretion to refuse to process grievances of
3 employees that are not meritorious or for other proper reason.

4 **§29-9-12. Unit determination.**

5 (a) Upon the receipt of a petition for representation filed
6 pursuant to section thirteen of this article, the board shall
7 determine the appropriate bargaining unit for collective
8 bargaining. In determining the appropriate bargaining unit, the
9 board shall consider:

10 (1) The community of interest in the proposed bargaining unit,
11 including employee skills, functions, common supervision, wages,
12 hours and other working conditions;

13 (2) The effect of over-fragmentation;

14 (3) The efficiency of operations of the public employer;

15 (4) The history of collective bargaining;

16 (5) The desires of employees; and

17 (6) With respect to education employees, the requirements of
18 section ten, article III and section one, article XII of the state
19 Constitution: *Provided*, That this article may not prohibit the
20 board from recognizing multiunit bargaining: *Provided, however,*
21 That this article may not prohibit coalition bargaining under which
22 a coalition of public employers or a coalition of employee
23 organizations engage in collective bargaining.

24 (b) The board may not decide that any unit is appropriate if

1 the unit includes both professional and nonprofessional employees,
2 unless members of a majority of each group of employees vote for
3 inclusion in the combined unit.

4 (c) The board may not permit supervisory employees to be
5 included with any other public employees, but shall permit them to
6 form their own separate homogenous units: *Provided*, That in units
7 of police and firefighters all employees below the rank of chief
8 shall be eligible for inclusion in the unit.

9 (d) The board may not permit confidential employees or
10 managerial employees to be included in any bargaining unit.

11 (e) The appropriate units for employees of Constitutionally
12 recognized elected officials at the state level, shall be separate
13 and distinct from any other bargaining unit.

14 **§29-9-13. Representation election; procedures.**

15 (a) Whenever, an employee or group of employees or any
16 individual or employee organization acting on behalf of an employee
17 or group of employees files a petition with the board containing
18 the signatures of thirty percent of the employees in a unit to be
19 represented for collective bargaining by a designated
20 representative, the board shall either order an election to be held
21 by secret ballot and certify the results, or it may at its
22 discretion, investigate, including holding a hearing, to determine
23 the validity of the matters contained in the petition before
24 determining whether or not an order should be issued: *Provided*,

1 That the board shall determine the validity of the employee
2 signatures and once determined valid, the determination may not be
3 challenged by the employer. Employee signatures shall remain
4 confidential at all times.

5 (b) Representation elections shall be supervised by the board
6 and shall be conducted by secret ballot at times and places
7 selected by the board, subject to the following:

8 (1) Within seven days after the board issues its order
9 determining the appropriate bargaining unit and directing that an
10 election be conducted, the public employer shall submit to the
11 employee organization or organizations whose name shall appear on
12 the election ballot, the complete names and addresses of those
13 employees who are determined by the board to be eligible to
14 participate in the election;

15 (2) The election shall be conducted on or near the place of
16 employment at a time convenient to all employees;

17 (3) The board shall give no less than ten days' notice of the
18 time and place of the election;

19 (4) The board shall establish rules concerning the conduct of
20 representation elections, including, but not limited to,
21 regulations which would guarantee the secrecy of the ballot;

22 (5) Once an employee organization has filed a valid petition
23 with the board calling for a representation election, other labor
24 organizations may seek to be placed on the ballot. An employee

1 organization shall file a petition containing the signatures of not
2 less than ten percent of the public employees in the appropriate
3 bargaining unit no later than ten days after the board and the
4 public employer post a written notice that the petition containing
5 not less than thirty percent of the employees has been filed. The
6 ballot shall contain the names of any employee organization
7 submitting a petition or cards containing signatures of at least
8 ten percent of the public employees in the appropriate unit. The
9 ballot shall also contain a provision allowing an employee to mark
10 "no representation";

11 (6) An employee organization shall be certified if it receives
12 a majority of the valid ballots cast;

13 (7) In an election where none of the choices on the ballot
14 receive a majority, a runoff election shall be conducted within
15 thirty days after the result of the election is certified by the
16 board. The ballot for the runoff election shall include a
17 provision for the selection between only the two choices or parties
18 receiving the highest number of ballots cast in the previous
19 election;

20 (8) The board shall direct an election not later than one
21 hundred twenty days after the date the petition was filed:

22 Provided, That the board may extend the time for holding an
23 election by an additional sixty days if, upon motion by a party to
24 the representation proceeding, or upon the board's own motion, the

1 board finds good cause has been shown for extending the election
2 date: *Provided, however,* That this section may not prohibit the
3 board, in its discretion, from extending the time for holding an
4 election for up to sixty days, where the purpose for such extension
5 is to permit resolution by the board of an unfair labor practice
6 charge filed by one of the parties to a representational proceeding
7 against the other based upon conduct which may have a tendency to
8 interfere with a fair and free election, where the party filing the
9 charge has not filed a request to proceed with the election.
10 Unfair labor practice charges shall be addressed by the board in an
11 expedited manner. It is the purpose of this section to ensure a
12 prompt and fair representation election. The board may permit mail
13 ballots when employees would otherwise not reasonably be able to
14 cast a ballot or for other reasonable cause. The board shall have
15 the final determination on any controversy concerning the
16 eligibility of an employee vote;

17 (9) The board shall certify the results of an election within
18 five working days after the final tally of votes if the employee
19 organization received a majority of the valid ballots cast in an
20 election conducted pursuant to this section.

21 (c) An election may not be conducted if an election or runoff
22 election has been conducted in the twelve-month period immediately
23 preceding the proposed representation election.

24 (d) An election may not be directed by the board in any

1 bargaining unit where there is in force a valid collective
2 bargaining agreement. The board however, may process an election
3 petition filed between ninety and one hundred twenty days prior to
4 the expiration of the date of an agreement. For the purposes of
5 this section, extensions of agreements may not affect the
6 expiration date of the original agreement.

7 (e) This section does not prohibit the waiving of a hearing by
8 stipulation of the parties for the purpose of a consent election or
9 an election in a bargaining unit agreed upon by the parties so long
10 as the stipulations or agreed bargaining unit is approved by the
11 board.

12 (f) A labor organization designated by the board as the
13 representative of the majority of public employees in an
14 appropriate unit in accordance with the procedures herein is the
15 exclusive representative for the employees of the unit.

16 (g) A public employee or a group of employees may file a
17 petition for decertification of a certified representative if the
18 decertification petition bears the signature of at least thirty
19 percent of the employees in the bargaining unit.

20 **§29-9-14. Duty to bargain; scope of bargaining.**

21 A public employer and the exclusive representative have the
22 authority and the duty to bargain collectively as set forth in this
23 section.

24 (a) The duty to bargain shall include an obligation to

1 negotiate over any matter with respect to wages, hours and terms
2 and conditions of employment and other issues agreed to by the
3 parties. Collective bargaining shall take place between public
4 employees and recognized employee organizations and shall result in
5 execution of a written contract incorporating any agreement reached
6 on wages, hours, working conditions and other terms and conditions
7 of employment and other matters agreed to by the parties. Under
8 the duty to bargain collectively the employer and the exclusive
9 representative shall meet at reasonable times, including meeting in
10 advance of the budget-making process and to negotiate in good
11 faith.

12 (b) Public employers may not be required to bargain over
13 matters of inherent managerial policy, which shall include the
14 following:

15 (1) The establishment of the functions and programs of the
16 public employer;

17 (2) Standards for services provided by the public employer;

18 (3) Organizational structure of the public employer;

19 (4) The ability to recruit, hire and retain employees, direct
20 the work of employees and discipline and discharge employees for
21 just cause; and

22 (5) The preparation and administration of the public
23 employer's budget: *Provided, That the impact of the exercise of*
24 these management rights on public employees shall be a proper

1 subject of collective bargaining.

2 **§29-9-15. Impasses; mediation.**

3 If the parties reach an impasse over the wages, hours, working
4 conditions or other terms and conditions of employment, either
5 party shall promptly notify the board in writing of the impasse.

6 The board shall assist in the resolution of this impasse by
7 promptly selecting an impartial person experienced in labor
8 relations disputes to serve as a mediator. The mediator shall meet
9 immediately with parties or their representatives, either jointly
10 or separately, and shall take other appropriate steps in order to
11 encourage the parties to reach a mutually acceptable agreement.

12 The mediator shall have the power to control the agenda and issue
13 subpoenas requiring the attendance of parties. All expenses of
14 mediation shall be borne by the board.

15 **§29-9-16. Impasses; arbitration.**

16 (a) If the mediator is unable to effect settlement of the
17 impasse within twenty days from the first day of mediation in
18 accordance with the provisions of the preceding section, either
19 party may, by written notification to the other party and to the
20 board, submit the remaining impasse issues to binding interest
21 arbitration.

22 (b) Unless the parties have mutually agreed to retain the
23 mediator as arbitrator, or have agreed upon another individual, the
24 board shall submit five names of potential arbitrators to the

1 parties. Each party shall alternately strike a name until one
2 arbitrator remains. The name of potential arbitrators shall be
3 submitted by the board from a list provided by the American
4 Arbitration Association or the Federal Mediation and Conciliation
5 Service.

6 (c) Each party shall submit a final offer on each separate
7 item remaining at impasse to the arbitrator and the other party.
8 The arbitrator, following the procedures prescribed in subsection
9 (d) of this section, shall determine that either the final offer of
10 the employer or the final offer of the employee representative on
11 each separate issue shall be incorporated into the final collective
12 bargaining agreement: *Provided*, That the arbitrator may not amend
13 the offer of either party on any issue. During the binding
14 arbitration process the parties may continue to engage in
15 negotiations.

16 (d) The arbitrator shall, within ten days of appointment, meet
17 with the parties or their representatives, either jointly or
18 separately, and shall investigate and hold hearings, and take other
19 appropriate steps in accordance with procedures prescribed by the
20 board.

21 The arbitrator shall have the power to issue subpoenas
22 requiring the attendance and testimony of the parties, their
23 representatives and other relevant witnesses and the production of
24 any evidence considered appropriate by the arbitrator in conducting

1 hearings, investigations or inquiries.

2 (e) In reaching a decision regarding resolution of the impasse
3 issues, the arbitrator shall take into consideration the following
4 factors:

5 (1) Comparison of the wages, hours and terms and conditions of
6 employment of the employees involved in the arbitration proceeding
7 with the wages, hours and terms and conditions of employment of
8 employees performing similar services in public and private
9 employment;

10 (2) The ability of the public employer to pay for the items to
11 be included in the contract;

12 (3) The interests and welfare of the public;

13 (4) A review and analysis of the specific nature and type of
14 the employment of the employees involved in the arbitration
15 proceeding including such factors as the hazards of employment,
16 physical qualifications, educational qualifications and job
17 training and skills;

18 (5) The terms of collective bargaining agreements negotiated
19 between the parties in the past, or of other previously existing
20 arrangements or practices providing for compensation and fringe
21 benefits and other matters, including, but not limited to,
22 provisions for salary, insurance and retirement benefits, medical
23 and hospitalization benefits, paid time off and job security; and

24 (6) The average consumer prices for goods and services,

1 commonly known as cost-of-living.

2 (f) Not later than thirty days following appointment, the
3 arbitrator shall transmit a decision to the board and to the
4 parties. The parties shall execute an agreement embodying the
5 decision of the arbitrator as to all impasse issues, as well as
6 those items mutually agreed upon.

7 (g) The expenses of arbitration shall be borne equally by each
8 party.

9 (h) The public employer and labor organization may negotiate
10 and reach an agreement on impasse procedures other than the
11 procedures provided in this section, except that the final stage of
12 any impasse procedure agreed to by the parties must include the
13 binding interest arbitration provided in this section. Any agreed
14 upon impasse procedures may be utilized by the parties: *Provided,*
15 That the submission of agreed cost items to the State Legislature
16 or other legislative body is within the time limits provided for in
17 sections fifteen, sixteen and seventeen of this article.

18 **§29-9-17. Written agreements; appropriations.**

19 (a) Any collective bargaining agreement between the employer
20 and the exclusive representative shall be reduced to writing and
21 shall be subject to appropriate ratification or other necessary
22 approval by both parties. Upon ratification or other necessary
23 approval, the agreement shall be fully executed by the parties and
24 shall be effective.

1 (b) All cost items in a collective bargaining agreement shall
2 be subject to the approval by the appropriate legislative or
3 governing bodies. The employer shall submit to the appropriate
4 legislative or governing body within ten days of the date on which
5 an agreement is ratified, all cost items contained in the
6 agreement. Because effective and orderly operation of government
7 is essential to the public, it is declared to be in the public
8 interest that in the course of collective bargaining, the public
9 employer and the exclusive representative shall make every
10 reasonable effort to conclude negotiations, and include provisions
11 for an effective date, a reopening date and an expiration date, at
12 a time to coincide, as nearly as possible, with the period during
13 which the appropriate legislative body may act upon the operating
14 budget of the employer: *Provided*, That in negotiations between
15 employees of the state and a state employer, the parties will begin
16 collective bargaining no later than one hundred thirty days prior
17 to the beginning of the state legislative session and shall make
18 every effort to complete negotiations, including impasse
19 procedures, ten days prior to the beginning of the state
20 legislative session.

21 If the State Legislature or other legislative body, rejects
22 any of the cost items submitted to them, all cost items submitted
23 shall be returned, within five days of rejection, to the parties
24 for further negotiations. The parties shall then resubmit the

1 renegotiated cost items to the State Legislature, or other
2 legislative body for approval. The employer shall fully support
3 the passage of any negotiated cost items by every reasonable means
4 before the State Legislature or other legislative body. All cost
5 items submitted to the State Legislature, or other legislative
6 body, under this section shall become effective, and shall be
7 considered approved, unless rejected by formal action of the body,
8 within twenty-one days of submission. If the appropriate
9 legislative body is not in session at the time a negotiated
10 agreement has been reached by both parties, or a final and binding
11 arbitration decision has been rendered in accordance with section
12 sixteen of this article, the cost items shall be submitted to the
13 State Legislature or other appropriate legislative body within
14 fourteen days after it next convenes.

15 This section may not be construed to permit a public employer
16 to reject cost items in an agreement that has been approved by the
17 State Legislature or other legislative body. The public employer
18 and the exclusive representative shall execute a separate agreement
19 including all no-cost items to which the parties have agreed which
20 shall be effective immediately.

21 (c) An agreement between a public employer and an exclusive
22 representative entered into pursuant to this article, governs the
23 wages, hours and terms and conditions of public employment covered
24 by the agreement. If there is a conflict between the collective

1 bargaining agreement and any rules implemented by a public employer
2 or its representative, the terms of the agreement shall prevail.

3 (d) The circuit court for the county in which the principal
4 offices of the board are located may review an award of the
5 interest arbitrator or an award of an arbitrator in a grievance
6 arbitration, but only for reasons that the arbitrator was without
7 or exceeded his or her jurisdiction; the order is not supported by
8 competent, material and substantial evidence on the whole record;
9 or the order was procured by fraud, collusion or other similar and
10 unlawful means. The pendency of a proceeding for review shall not
11 automatically stay the order of the arbitration panel.

12 **§29-9-18. Strikes prohibited.**

13 Strikes by public employees are prohibited at any time.

14 **§29-9-19. Remedies for prohibited strikes.**

15 If a strike of public employees occurs which would be
16 prohibited under the provisions of section eighteen of this
17 article, the public employer may institute an action in the circuit
18 court of the jurisdiction where the strike occurs for appropriate
19 equitable relief. If the strike involves state employees, the
20 public employer may institute an action in the circuit court of the
21 jurisdiction where the strike occurs or in the Supreme Court of
22 Appeals for the appropriate equitable relief.

23 Upon a finding of contempt, the labor organization conducting
24 the strike shall be fined an amount reasonable and necessary to end

1 the strike.

2 **§29-9-20. Prohibited practices.**

3 (a) It is a prohibited practice for a public employer or its
4 designated representative to:

5 (1) Interfere, restrain or coerce any employee in the exercise
6 of any right guaranteed under this article;

7 (2) Dominate, interfere or assist in the formation, existence
8 or administration of any employee organization, or to give monetary
9 or other support to the organization;

10 (3) Discriminate in regard to hiring, tenure, term or
11 conditions of employment to encourage membership in any employee
12 organization;

13 (4) Discharge or otherwise discriminate against an employee
14 because he or she has signed or filed an affidavit, petition or
15 complaint or given any information or testimony under this article,
16 or because he or she has formed, joined or chosen to be represented
17 by any employee organization, or because of participation in a
18 safety or health walkout;

19 (5) Refuse to bargain collectively in good faith with the
20 exclusive representative as required in section fourteen of this
21 article;

22 (6) Refuse to participate in good faith in the mediation and
23 arbitration procedures set forth in sections fifteen and sixteen of
24 this article;

1 (7) Unilaterally change wages, hours or other terms and
2 conditions of employment;

3 (8) Refuse or fail to comply with any provision of this
4 article; or

5 (9) Refuse to supply to any interested party budgetary
6 information regarding the receipts and disbursements of any public
7 body or refuse to supply any other information necessary to the
8 preparation and conduct of negotiations or the processing of
9 grievances.

10 (b) It is a prohibited practice for a public employee
11 organization or its designated agent to:

12 (1) Refuse to bargain collectively in good faith with the
13 public employer if it is an exclusive representative, as required
14 in section fourteen of this article;

15 (2) Refuse to participate in good faith in the mediation and
16 arbitration procedures set forth in sections fifteen and sixteen of
17 this article; or

18 (3) Refuse or fail to comply with any provisions of this
19 article.

20 **§29-9-21. Prohibited practices; hearings and remedies.**

21 (a) A public employer, public employee or exclusive
22 representative may file a written complaint with the board. The
23 complaint shall state that a prohibited practice, as defined in
24 section nineteen or twenty of this article, has been committed and

1 that relief from the prohibited practice is requested. The
2 complaint shall be filed within six months of the alleged
3 prohibited practice. Upon receipt of a written complaint the board
4 or its agents shall:

5 (1) Cause to be served, upon the person or entity alleged to
6 have committed the prohibited practice, a copy of the complaint;

7 (2) Investigate the complaint to determine if a hearing on the
8 prohibited practice allegation is warranted. If the investigation
9 reveals that no issue of law or fact exists, the board may either
10 grant the relief or dismiss the complaint: *Provided*, That a party
11 shall be provided the opportunity to voluntarily withdraw a
12 complaint prior to a dismissal;

13 (3) If the investigation reveals that an issue of fact or law
14 exists, a board hearing on the matter shall be held within twenty
15 days after a notice of the complaint has been received by the
16 charged party.

17 (b) In conducting the hearing, the board or its agent, is
18 authorized to:

19 (1) Subpoena witnesses and documents in accordance with
20 section one, article five, chapter twenty-nine-a of this code;

21 (2) Administer oaths and affirmations;

22 (3) Hold conferences for the settlement or simplification of
23 the issues by consent of the parties;

24 (4) Regulate the course of the hearing;

1 (5) Exclude immaterial, irrelevant or repetitious evidence;

2 and

3 (6) Sequester witnesses.

4 (c) Where the board finds that any person or entity charged in
5 the complaint has engaged in or is engaging in prohibited practices
6 charged in the complaint, the board shall:

7 (1) State its findings and conclusions in writing;

8 (2) Issue and cause to be served on the person or entity
9 engaged in prohibited practices, which the board shall order be
10 posted at prominent work place locations, an order to cease and
11 desist from the prohibited practice;

12 (3) Award back pay with reasonable interest;

13 (4) Award representation costs, as determined by the board, to
14 the prevailing party if it is concluded that any defense was made
15 frivolously or in bad faith; and

16 (5) Take all necessary affirmative action, including, but not
17 limited to, the reinstatement of employees with pay, as is
18 considered fair and equitable in accordance with the provisions of
19 this article.

20 (d) Where the board finds that the person or entity charged in
21 the complaint has not engaged or is not engaging in a prohibited
22 practice, the board shall issue an order dismissing the complaint
23 and may award representation costs to the prevailing party if it is
24 concluded that the complaint was made frivolously or in bad faith.

1 The decision of the board shall be final upon the parties and shall
2 be enforceable in circuit court by any of them. In addition, the
3 board may petition the circuit court in the county in which the
4 principal offices of the board are located to enforce its orders
5 and to grant other appropriate relief including, but not limited
6 to, injunctive and other equitable relief.

7 **§29-9-22. Payroll deductions.**

8 (a) The employer, upon receiving from the exclusive
9 representative a written statement which certifies the amount of
10 initiation fees and monthly dues uniformly applied to all members
11 of the exclusive representative, shall deduct the fees and monthly
12 dues from the wages due to the employees from the employer. The
13 deductions shall apply to all employees of the bargaining unit,
14 whether as dues for members of the applicable exclusive bargaining
15 representative or as a fair share payment for nonmembers.
16 Membership in the exclusive representative is not required of any
17 bargaining unit employee.

18 (b) Deductions, authorized by members of the exclusive
19 representative, or fair share payment required to be deducted from
20 the wages of nonmembers, shall be made at times mutually agreed
21 upon by the employer and the exclusive representative in amounts
22 prorated in equal installments. The amounts so deducted shall be
23 forwarded by the employer to the exclusive representatives.

24 Nothing in the foregoing shall be construed to prevent the parties

1 from agreeing to allow for lump sum payment of dues or agreeing to
2 another arrangement.

3 (c) The wage deduction permitted by this section shall be paid
4 to the employee organization chosen as the exclusive representative
5 of an appropriate bargaining unit. Payments terminate when an
6 employee organization ceases to function as the exclusive
7 representative of the appropriate bargaining unit.

8 (d) In addition to any deduction made and forwarded to the
9 exclusive representative under subsections (a) and (b) of this
10 section, the employer shall, upon written authorization by an
11 employee, deduct from the payroll of the amount of group insurance
12 premiums, and other charges for employee organization benefits and
13 plans administered by the exclusive representative and shall remit
14 the amount designated by the employee to the exclusive
15 representative.

16 (e) The employer shall continue all payroll assignments
17 authorized by an employee prior to the effective date of this
18 article and all assignments authorized under subsection (d) of this
19 section until the employee notifies the employer to discontinue his
20 or her assignments or until the employee organization ceases to be
21 the exclusive representative of the appropriate bargaining unit.

22 **§29-9-23. Financial reports to employees.**

23 Every employee organization shall keep an adequate record of
24 its financial transactions and shall make available annually to the

1 employees who are members of the organization, within sixty days
2 after the end of its fiscal year, a detailed written financial
3 report in the form of a balance sheet and an operating statement,
4 certified as to accuracy by a certified public accountant. If
5 there is a failure of compliance with this section, any employee
6 within the organization may petition the Public Employment
7 Relations Board for an order compelling compliance. The board may
8 enforce its order by instituting suit in the circuit court having
9 jurisdiction in this matter.

10 **§29-9-24. Public records and proceedings.**

11 The complaints, orders and testimony relating to a proceeding
12 instituted by the Public Employment Relations Board are public
13 records and shall be made available for inspection or copying.
14 However, meetings of the public employer and employee organization
15 held for the purpose of engaging in collective bargaining are not
16 open to the public and the parties by mutual agreement may declare
17 the meetings closed to all individuals, except the representatives
18 of the parties or other individuals specifically approved by the
19 parties.

20 **§29-9-25. List of employee organizations and exclusive**
21 **representatives.**

22 The Public Employment Relations Board shall maintain a list of
23 employee organizations. To be recognized and included in the list,
24 an organization must file a written statement with the board

1 setting forth its name, the name and address of its secretary or
2 other officer to whom notices may be sent, the date of its
3 organization and its affiliation, if any, with other organizations.
4 No other qualifications for inclusion on the list may be required,
5 but every employee organization shall notify the board promptly of
6 any change of name or of the name and address of its affiliates.

7 The list shall clearly indicate which organizations are
8 exclusive representatives of appropriate bargaining units, the
9 effective date of their certification, and the effective date and
10 expiration date of any agreement reached between a public employer
11 and the exclusive representative. Copies of the list shall be made
12 available to interested parties upon request.

13 **§29-9-26. Article takes precedence; when.**

14 (a) If there is a conflict between the provisions of this
15 article and any other law, executive order or administrative
16 regulation, this article shall prevail and control. All existing
17 rules adopted by the employer which are not contrary to this
18 article, shall remain applicable. Except as otherwise expressly
19 provided herein, nothing contained in this article shall deny or
20 otherwise abridge any rights, privileges or benefits granted by law
21 to employees.

22 (b) Except as otherwise expressly provided herein, nothing in
23 this article shall be construed to annul, modify or preclude the
24 renewal or continuation of any lawful agreement entered into prior

1 to the effective date of this article between a public employee and
2 an employee organization covering wages, hours, terms and
3 conditions for employment.

4 **§29-9-27. Article inoperative; when.**

5 If any provision of this article prevents the receipt by the
6 state or any county of any federal grant-in-aid or other federal
7 allotment of money, the provisions shall, insofar as the fund is
8 jeopardized, be considered to be inoperative.

9 **§29-9-28. Liberal construction.**

10 This article shall be construed liberally for the
11 accomplishment of the purpose of promoting orderly and constructive
12 relationships between all public employees and their employers and
13 for the promotion of the rights of public employees to organize and
14 otherwise engage in activities for their mutual aid and protection.

NOTE: The purpose of this bill is to provide for the Public Employment Relations Act, designed to require public employers to recognize and engage in collective bargaining with labor unions representing public employees.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.