

H. B. 2675

(By Delegates Caputo and Rodighiero)

[Introduced January 20, 2011; referred to the
Committee on Education.]

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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 school employment
17 relations act; stating legislative policy and purpose;
18 defining certain terms; establishing a West Virginia public
19 school employment relations board; providing for the
20 composition of the board, the terms of its members, and the
21 qualifications of the members; providing for the terms of the
22 original appointees and the method of filling vacancies;
23 limiting eligibility of board members for reappointment;
24 requiring an oath of office and establishing a method of

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

1 setting forth when the article shall take precedence and when
2 it shall be inoperative.

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

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

11 **ARTICLE 9. WEST VIRGINIA PUBLIC SCHOOL EMPLOYMENT RELATIONS ACT.**

12 **§29-9-1. Legislative purpose.**

13 The Legislature of the State of West Virginia declares that it
14 is the public policy of this state and the purpose of the
15 Legislature in the enactment of this article to promote orderly and
16 constructive employment relations between public school employers
17 and their employees; to increase the efficiency of state and local
18 government throughout the state; and to ensure the health and
19 safety of the citizens of this state. The Legislature has
20 determined that these policies and purposes may best be
21 accomplished by:

22 (1) Granting to public school employees the right to associate
23 with others in organizing and choosing representatives for the
24 purpose of collective bargaining;

1 (2) Requiring public school employers to recognize, negotiate
2 and bargain with employee organizations representing public school
3 employees and to enter into written agreements evidencing the
4 result of bargaining; and

5 (3) Encouraging labor peace through the establishment of
6 standards and procedures which protect the rights of the public
7 school employer, the public school employee and the citizens of
8 this state.

9 **§29-9-2. Short title.**

10 This article shall be known and may be cited as the "Public
11 School Employment Relations Act."

12 **§29-9-3. Definitions.**

13 The following words when used in this article have the meaning
14 ascribed to them unless the context clearly indicates a different
15 meaning:

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

19 (b) "Arbitration" means the procedure by which an impartial
20 third party holds a hearing, takes testimony and renders a decision
21 which is binding upon the parties for the purpose of resolving a
22 dispute between public school employees and public school
23 employers.

24 (1) "Grievance arbitration" means arbitration of disputes

1 arising over the interpretation or application of a collective
2 bargaining agreement; and

3 (2) "Interest arbitration" means arbitration of disputes
4 arising during the course of contract negotiations resulting in
5 incorporation of the arbitrator's decision into the collective
6 bargaining agreement.

7 (c) "Board" means the Public School Employment Relations Board
8 created pursuant to section four of this article.

9 (d) "Certification" means official recognition by the Public
10 School Employment Relations Board that the employee organization is
11 the exclusive representative for all the employees in an
12 appropriate bargaining unit for the purpose of collective
13 bargaining.

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

22 (f) "Confidential employee" means an employee, who in the
23 regular course of his or her duties, assists and acts in a
24 confidential capacity to persons who formulate, determine and

1 effectuate management policies with regard to labor relations. The
2 personal secretary to a managerial employee shall be considered to
3 be a confidential employee.

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

6 (h) "Employee organization" means an organization of employees
7 which exists for the purpose of representing public school
8 employees in dealing with public school employers concerning
9 grievances, labor disputes, wages, hours and other terms and
10 conditions of employment of public school employees.

11 (i) "Exclusive representative" means the employee organization
12 which has the right as certified by the board to be the collective
13 bargaining agent of all employees in an appropriate bargaining
14 unit.

15 (j) "Impasse" means the point in the process of negotiations
16 between public school employees and public school employers at
17 which either party determines that no further progress toward
18 resolving differences and concluding a collective bargaining
19 agreement can be made.

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

1 (l) "Public school employer" means county boards of education,
 2 multicounty vocational centers, public institutions of higher
 3 education and the state Board of Education.

4 (m) "Supervisory employee" means an employee who devotes a
 5 substantial amount of work time to supervisory duties, who
 6 customarily and regularly directs the work of two or more other
 7 employees and who has the authority in the interest of the employer
 8 to hire, promote, discipline, or evaluate other employees or to
 9 recommend such actions effectively but does not include individuals
 10 who perform merely routine, incidental or clerical duties or who
 11 occasionally assume supervisory or directory roles or whose duties
 12 are substantially similar to those of their subordinates and does
 13 not include lead employees, mentor teacher, or employees who
 14 participate in peer review or occasional employee evaluation
 15 programs.

16 **§29-9-4. West Virginia Public School Employment Relations Board**
 17 **created.**

18 There is hereby created a state agency to be known as the West
 19 Virginia Public School Employment Relations Board.

20 **§29-9-5. Composition of board; terms of members; qualifications of**
 21 **members.**

22 The board shall consist of three members, one of whom shall be
 23 representative of public school employers, one of whom shall be
 24 representative of public school employees and one of whom shall be

1 representative of the general public. All members shall be
2 citizens of the state, appointed by the Governor, by and with the
3 advice and consent of the Senate. The members shall be appointed
4 to terms of four years.

5 Public school employers and employee organizations
6 representing public school employees may submit to the Governor the
7 names of persons who represent their interests as prospective
8 members of the board and the Governor shall first consider such
9 persons in selecting the members of the board who are
10 representative of public school employers and public school
11 employees.

12 A person may not at the same time serve as a member of the
13 board and be a holder of any public office or public employment
14 under the federal government or under the government of this state
15 or any of its political subdivisions, or an appointee or employee
16 of the board. Not more than two members of the board may be
17 members of the same political party.

18 **§29-9-6. Original term of members; vacancies; eligibility for**
19 **reappointment; oath of office; removal from office.**

20 The Governor shall appoint the three members of the board as
21 soon after the effective date of this article as is practicable.
22 The original terms of office of members begin on July 1, 2011.

23 The Governor shall appoint a member by and with the advice and
24 consent of the Senate to fill any vacancy among the members of the

1 board. The member appointed to fill the vacancy shall serve for
2 the unexpired term of the vacating member. All members of the
3 board appointed by the Governor shall be eligible for
4 reappointment. The Governor shall consult with constituent groups
5 of employees and employers at the expiration of the term of a
6 representative on the board recommended by the group for
7 appointment. A person who has served as a member during all or any
8 part of the two consecutive terms shall be ineligible to serve as
9 a member for a period of three years immediately following the
10 second of the two consecutive terms.

11 Before exercising any authority or performing any duties as a
12 member of the board, each member shall qualify by taking and
13 subscribing to the oath of office prescribed by section five,
14 article four of the state Constitution. A member of the board
15 appointed by the Governor may not be removed from office by the
16 Governor except for official misconduct, incompetence, neglect of
17 duty or gross immorality and only in the manner prescribed by law
18 for the removal of state elective officers.

19 **§29-9-7. Meetings; quorum; per diem and expenses of members.**

20 The board shall hold at least six meetings in every fiscal
21 year beginning July 1 and ending the following June 30. One
22 meeting, known as the annual meeting, shall be held in July, or as
23 soon thereafter as practicable, in the year 2011 and in June of
24 each subsequent year. The five additional required meetings in

1 each fiscal year, shall be held on dates and at places as the board
2 may prescribe. In addition to the statutorily required meetings,
3 the board may, upon its own resolution or at the call of the
4 chairperson of the board meet at other times.

5 The three members of the board, consisting of the chairperson,
6 a member representative of the public school employers, and a
7 member representative of the public school employees, shall
8 constitute a quorum. A majority vote of the quorum is necessary to
9 pass upon matters before the board. The Governor shall appoint an
10 acting member of the board during a temporary absence from the
11 state or during the illness of any regular member. An acting
12 member, during his or her term of service, has the same powers and
13 duties as the regular member and shall meet the same requirements
14 for selection.

15 The members of the board shall be paid \$200 per diem for
16 actual time spent in the performance of duties under this article,
17 and shall be reimbursed for actual and necessary expenses incident
18 to the performance of their duties. The foregoing per diem and
19 reimbursement for actual and necessary expenses shall be paid from
20 appropriations made by the Legislature to the board.

21 **§29-9-8. Organization of board; staff; offices.**

22 At its first annual meeting in July, or as soon thereafter as
23 practicable, in the year 2011 and annually thereafter, the board
24 shall elect a chairperson and other officers from its membership as

1 the board may deem necessary. The chairperson and officers shall
2 serve for a one-year term commencing on July 1, following the
3 annual meeting and ending on June 30 the following year.

4 The board shall employ an executive officer and such
5 professional, administrative, clerical and other employees,
6 including, but not limited to, mediators and hearing officers, as
7 may be necessary to assist the board in the performance of its
8 duties and responsibilities. The board shall prescribe the duties
9 and fix the compensation and emoluments of board employees in
10 accordance with law and practice. Employees of the board shall
11 serve under the direction and control of the board or its
12 designated representatives. The board shall provide suitable
13 offices or the executive officer and his or her staff in or near
14 the state Capitol Complex in Charleston, West Virginia.

15 **§29-9-9. Powers and duties of the board.**

16 (a) The board may propose rules for legislative approval in
17 accordance with the provisions of article three, chapter twenty-
18 nine-a of this code.

19 (b) The board shall hold hearings and make inquiries
20 necessary to carry out its functions and duties and may conduct
21 studies on problems pertaining to employee-employer relations,
22 including methods by which labor management cooperation may be
23 improved. The board shall request from public employers and labor

1 organizations the information and data necessary to carry out its
2 functions and duties.

3 (c) The board may issue subpoenas requiring, upon reasonable
4 notice, the attendance and testimony of witnesses and the
5 production of any evidence, including books, records,
6 correspondence or documents relating to any matter at issue. The
7 board may prescribe the form of the subpoena, but it shall adhere
8 insofar as practicable to the form used in civil actions in the
9 circuit court. The board may administer oaths and affirmations,
10 examine witnesses and receive evidence.

11 (d) The board may hire personnel or contract with third
12 parties as it deems necessary to assist it in carrying out its
13 functions.

14 (e) The board has the power to enforce provisions of this
15 article through the imposition of appropriate administrative
16 remedies.

17 (f) Any party aggrieved by any decision or order of the
18 board, may, within ten days from the date of such decision or order
19 apply for judicial review in the circuit court in the county in
20 which the board maintains its principal office.

21 **§29-9-10. Employee rights.**

22 (a) Public school employees may organize, form, join or
23 assist in employee organizations and to engage in concerted
24 activities for the purpose of collective bargaining or other mutual

1 aid and protection and to bargain collectively through
2 representatives of their own free choice without interference,
3 restraint or coercion. Employees also may refrain from these
4 activities, except to the extent that such rights may be effected
5 by agreements between the public school employer and a labor
6 organization which is the exclusive bargaining representative
7 requiring, as a condition of employment, the payment of a service
8 fee in lieu of, and in an amount not greater than, dues which are
9 payable by members of the labor organization, to cover such costs
10 as collective bargaining and contract administration as provided in
11 section twenty-two.

12 (b) This article may not prevent an employee from presenting
13 a grievance to the employer and having the grievance heard and
14 settled without the intervention of an employee organization:
15 Provided, That the exclusive bargaining representative is afforded
16 the opportunity to be present and to present its views on the
17 matter: Provided, however, That any settlement made may not be
18 inconsistent with the terms of the agreement in effect between the
19 employer and the exclusive bargaining representative.

20 **§29-9-11. Representatives and elections.**

21 (a) When a majority of the public school employees in an
22 appropriate bargaining unit select a representative for the purpose
23 of bargaining collectively, the representative shall be the
24 exclusive representative of all the employees in the unit for the

1 purpose of collective bargaining. Where exclusive recognition has
2 previously been granted or where prior to January 1, 2012, a signed
3 agreement is in effect, the board may not alter the terms of the
4 agreement nor the appropriate unit previously agreed to. The
5 employer must continue to recognize and bargain with the exclusive
6 representative of such bargaining units that existed prior to
7 January 1, 2012, and the exclusive representative of such
8 bargaining units and employees in such bargaining units are
9 accorded the full rights under this article.

10 (b) Employee organizations recognized by a public school
11 employer as the exclusive representative or so designated in
12 accordance with the provisions of this article are responsible for
13 representing the interests of all public school employees in the
14 bargaining unit. Nothing herein may be construed to limit an
15 exclusive representative's right to exercise its discretion to
16 refuse to process grievances of employees that are not meritorious
17 or for other proper reason.

18 **§29-9-12. Unit determination.**

19 (a) Upon the receipt of a petition for representation filed
20 pursuant to section thirteen, the board shall determine the
21 appropriate bargaining unit for collective bargaining. In
22 determining the appropriate bargaining unit, the board shall
23 consider the:

24 (1) Community of interest in the proposed bargaining unit,

1 including employee skills, functions, common supervision, wages,
2 hours and other working conditions;

3 (2) Effect of over-fragmentation;

4 (3) Efficiency of operations of the public school employer;

5 (4) History of collective bargaining;

6 (5) Desires of employees; and

7 (6) Requirements of article three, section ten and article

8 twelve, section one of the state Constitution: *Provided, That*

9 nothing herein shall prohibit the board from recognizing multiunit

10 bargaining: *Provided, however, That nothing herein may prohibit*

11 coalition bargaining under which a coalition of public school

12 employers or a coalition of employee organizations engage in

13 collective bargaining.

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

15 the unit includes both professional and nonprofessional employees,

16 unless members of a majority of each group of employees votes for

17 inclusion in the combined unit.

18 (c) The board may not permit supervisory employees to be

19 included with any other public school employees, but shall permit

20 them to form their own separate homogeneous units.

21 (d) The board may not permit confidential employees or

22 managerial employees to be included in any bargaining unit.

23 **§29-9-13. Representation election; procedures.**

24 (a) Whenever an employee or group of employees or any

1 individual or employee organization acting on behalf of an employee
2 or group of employees files a petition with the board containing
3 the signatures of thirty percent of the employees in a unit to be
4 represented for collective bargaining by a designated
5 representative, the board shall either order an election to be held
6 by secret ballot and certify the results, or it may at its
7 discretion, investigate, including holding a hearing, to determine
8 the validity of the matters contained in the petition before
9 determining whether or not an order should be issued: *Provided,*
10 That the board shall determine the validity of the employee
11 signatures and once determined valid, the determination shall not
12 be challenged by the employer. Employee signatures shall remain
13 confidential at all times.

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

17 (1) Within seven days after the board issues its order
18 determining the appropriate bargaining unit and directing that an
19 election be conducted, the public school employer shall submit to
20 the employee organization or organizations whose name shall appear
21 on the election ballot, the complete names and addresses of those
22 employees who are determined by the board to be eligible to
23 participate in the election;

24 (2) The election shall be conducted on or near the place of

1 employment at a time convenient to all employees;

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

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

7 (5) Once an employee organization has filed a valid petition
8 with the board calling for a representation election, other labor
9 organizations may seek to be placed on the ballot. Such an
10 employee organization shall file a petition containing the
11 signatures of not less than ten percent of the public school
12 employees in the appropriate bargaining unit no later than ten days
13 after the board and the public school employer post a written
14 notice that the petition containing not less than thirty percent of
15 the employees has been filed. The ballot shall contain the names
16 of any employee organization submitting a petition or cards
17 containing signatures of at least ten percent of the public school
18 employees in the appropriate unit. The ballot shall also contain
19 a provision allowing an employee to mark "no representation."

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

22 (7) In an election where none of the choices on the ballot
23 receive a majority, a run-off election shall be conducted within
24 thirty days after the result of the election is certified by the

1 board. The ballot for the run-off election shall include a
2 provision for the selection between only the two choices or parties
3 receiving the highest number of ballots cast in the previous
4 election.

5 (8) The board shall direct an election not later than one
6 hundred twenty days after the date the petition was filed:
7 Provided, The board may extend the time for holding an election by
8 an additional sixty days if, upon motion by a party to the
9 representation proceeding, or upon the board's own motion, the
10 board finds good cause has been shown for extending the election
11 date: Provided, however, That nothing in this section may prohibit
12 the board, in its discretion, from extending the time for holding
13 an election for up to sixty days, where the purpose for such
14 extension is to permit resolution by the board of an unfair labor
15 practice charge filed by one of the parties to a representational
16 proceeding against the other based upon conduct which may have a
17 tendency to interfere with a fair and free election, where the
18 party filing the charge has not filed a request to proceed with the
19 election. The unfair labor practice charges shall be addressed by
20 the board in an expedited manner. It is the purpose of this
21 section to ensure a prompt and fair representation election.

22 (9) Mail ballots are not favored, except, the board may permit
23 mail ballots when employees would otherwise not reasonably be able
24 to cast a ballot or for other reasonable cause. The board has the

1 final determination on any controversy concerning the eligibility
2 of an employee vote.

3 (10) The board shall certify the results of an election within
4 five working days after the final tally of votes if the employee
5 organization received a majority of the valid ballots cast in an
6 election conducted pursuant to this section.

7 (c) An election may not be conducted if an election or run-off
8 election has been conducted in the twelve-month period immediately
9 preceding the proposed representation election.

10 (d) An election may not be directed by the board in any
11 bargaining unit where there is in force a valid collective
12 bargaining agreement. The board, however, may process an election
13 petition filed between one hundred twenty and ninety days prior to
14 the expiration of the date of an agreement. For the purposes of
15 this section, extensions of agreements may not affect the
16 expiration date of the original agreement.

17 (e) This section does not prohibit the waiving of a hearing by
18 stipulation of the parties for the purpose of a consent election or
19 an election in a bargaining unit agreed upon by the parties so long
20 as such stipulations or agreed bargaining unit is approved by the
21 board.

22 (f) A labor organization designated by the board as the
23 representative of the majority of public school employees in an
24 appropriate unit in accordance with the procedures herein is the

1 exclusive representative for the employees of such unit.

2 (g) A public school employee or a group of employees may file
3 a petition for decertification of a certified representative if the
4 decertification petition bears the signature of at least thirty
5 percent of the employees in the bargaining unit.

6 **§29-9-14. Duty to bargain; scope of bargaining.**

7 A public school employer and the exclusive representative may
8 bargain collectively as set forth in this section.

9 (a) The duty to bargain includes an obligation to negotiate
10 over any matter with respect to wages, hours and terms and
11 conditions of employment and other issues agreed to by the parties.
12 Collective bargaining shall take place between public school
13 employers and recognized employee organizations and shall result in
14 execution of a written contract incorporating any agreement
15 reached on wages, hours, working conditions and other terms and
16 conditions of employment and other matters agreed to by the
17 parties. Under the duty to bargain collectively the employer and
18 the exclusive representative shall meet at reasonable times,
19 including meeting in advance of the budget-making process and to
20 negotiate in good faith.

21 (b) Public school employers may not be required to bargain
22 over matters of inherent managerial policy, which shall include the
23 following:

24 (1) The establishment of the functions and programs of the

1 public school employer;

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

4 (3) Organizational structure of the public school employer;

5 (4) The preparation and administration of the public school
6 employer's budget: *Provided*, That the impact of the exercise of
7 these management rights on public school employees shall be a
8 proper subject of collective bargaining.

9 **§29-9-15. Impasses; mediation.**

10 If the parties reach an impasse over the wages, hours, working
11 conditions or other terms and conditions of employment, either
12 party shall promptly notify the board in writing of the impasse.
13 The board shall assist in the resolution of this impasse by
14 promptly selecting an impartial person experienced in labor
15 relations disputes to serve as a mediator. The mediator shall meet
16 immediately with parties or their representatives, either jointly
17 or separately, and shall take other appropriate steps in order to
18 encourage the parties to reach a mutually acceptable agreement.
19 The mediator shall have the power to control the agenda and issue
20 subpoenas requiring the attendance of parties. All expenses of
21 mediation shall be borne by the board.

22 **§29-9-16. Impasses; arbitration.**

23 (a) If the mediator is unable to effect settlement of the
24 impasse within twenty days from the first day of mediation in

1 accordance with the provisions of the preceding section, either
2 party may, by written certification to the other party and to the
3 board, submit the remaining impasse issues to binding interest
4 arbitration.

5 (b) Unless the parties have mutually agreed to retain the
6 mediator as arbitrator, or have agreed upon another individual, the
7 board shall submit five names of potential arbitrators to the
8 parties. Each party shall alternately strike a name until one
9 arbitrator remains. The names of potential arbitrators shall be
10 submitted by the board from lists provided by the American
11 Arbitration Association or the Federal Mediation and Conciliation
12 Service.

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

23 (d) The arbitrator shall, within ten days of appointment, meet
24 with the parties or their representatives, either jointly or

1 separately, and shall investigate and hold hearings, and take other
2 appropriate steps in accordance with procedures prescribed by the
3 board. The arbitrator shall have the power to issue subpoenas
4 requiring the attendance and testimony of the parties, their
5 representatives and other relevant witnesses and the production of
6 any evidence deemed appropriate by the arbitrator in conducting
7 hearings, investigations or inquiries.

8 (e) In reaching a decision regarding resolution of the
9 impasses issues, the arbitrator shall take into consideration the
10 following factors:

11 (1) Comparison of the wages, hours and terms and conditions of
12 employment of the employees involved in the arbitration proceeding
13 with the wages, hours and terms and conditions of employment of
14 employees performing similar services in public employment;

15 (2) The ability of the public school employer to pay for the
16 items to be included in the contract;

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

18 (4) A review and analysis of the specific nature and type of
19 the employment of the employees involved in the arbitration
20 proceeding including such factors as the hazards of employment;
21 physical qualifications; educational qualifications; and job
22 training and skills;

23 (5) The terms of collective bargaining agreements negotiated
24 between the parties in the past, or of other previously existing

1 arrangements or practices providing for compensation and fringe
2 benefits and other matters, including, but not limited to,
3 provisions for salary, insurance and retirement benefits, medical
4 and hospitalization benefits, paid time off and job security; and

5 (6) The average consumer prices for goods and services,
6 commonly known as cost of living.

7 (f) Not later than thirty days following appointment, the
8 arbitrator shall transmit a decision to the board and to the
9 parties. The parties shall execute an agreement embodying the
10 decision of the arbitrator as to all impasse issues, as well as
11 those items mutually agreed upon.

12 (g) The expenses of arbitration shall be borne equally by each
13 party.

14 (h) The public school employer and labor organization may
15 negotiate and reach an agreement on impasse procedures other than
16 the procedures provided in this section, except that the final
17 stage of any impasse procedure agreed to by the parties must
18 include the binding interest arbitration provided in this section.
19 Such agreed upon impasse procedures may be utilized by the parties.

20 **§29-9-17. Written agreements; appropriations.**

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

1 approval, the agreement shall be fully executed by the parties and
2 shall be effective.

3 (b) An agreement between a public school employer and an
4 exclusive representative entered into pursuant to this article,
5 governs the wages, hours and terms and conditions of public school
6 employment covered by the agreement. If there is a conflict
7 between the collective bargaining agreement and any rules or
8 regulations implemented by a public school employer or its
9 representative, the terms of the agreement shall prevail.

10 (c) The circuit court for the county in which the principal
11 offices of the board are located may review an award of the
12 interest arbitrator or an award of an arbitrator in a grievance
13 arbitration, but only for reasons that the arbitrator was without
14 or exceeded his or her jurisdiction; the order is not supported by
15 competent, material and substantial evidence on the whole record;
16 or the order was procured by fraud, collusion or other similar and
17 unlawful means. The pendency of a proceeding for review may not
18 automatically stay the order of the arbitration panel.

19 **§29-9-18. Strikes prohibited.**

20 Strikes by public school employees are prohibited at any time.

21 **§29-9-19. Remedies for prohibited strikes.**

22 If a strike of public school employees occurs which would be
23 prohibited under the provisions of section eighteen of this
24 article, the public school employer may institute an action in the

1 circuit court of the jurisdiction where the strike occurs for
2 appropriate equitable relief.

3 **§29-9-20. Prohibited practices.**

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

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

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

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

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

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

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

1 this article;

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

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

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

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

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

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

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

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

22 (a) A public school employer, public school employee, or
23 exclusive representative may file a written complaint with the
24 board. The complaint shall state that a prohibited practice as

1 defined in section twenty of this article has been committed and
2 that relief from the prohibited practice is requested. The
3 complaint shall be filed within six months of the alleged
4 prohibited practice. Upon receipt of a written complaint the board
5 or its agent shall:

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

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

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

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

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

22 (2) Administer oaths and affirmations;

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

1 (4) Regulate the course of the hearing;

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

3 and

4 (6) Sequester witnesses.

5 (c) Where the board finds that any person or entity charged in

6 the complaint has engaged in or is engaging in prohibited practices

7 charged in the complaint, the board shall:

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

9 (2) Issue and cause to be served on the person or entity

10 engaged in prohibited practices, which the board shall order be

11 posted at prominent workplace locations, an order to cease and

12 desist from the prohibited practice;

13 (3) Award back pay with reasonable interest;

14 (4) Award representation costs, as determined by the board, to

15 the prevailing party if it is concluded that any defense was made

16 frivolously or in bad faith; and

17 (5) Take all necessary affirmative action, including, but not

18 limited to, the reinstatement of employees with pay, as is deemed

19 fair and equitable in accordance with the provisions of this

20 article.

21 (d) Where the board finds that the person or entity charged in

22 the complaint has not engaged or is not engaging in a prohibited

23 practice the board shall issue an order dismissing the complaint

24 and may award representation costs to the prevailing party if it is

1 concluded that the complaint was made frivolously or in bad faith.

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

8 **§29-9-22. Payroll deductions.**

9 (a) Payroll deduction of dues and fair share fees shall be a
10 mandatory subject of bargaining. The employer, upon receiving from
11 the exclusive representative a written statement which certifies
12 the amount of initiation fees and monthly dues and in accord with
13 the negotiated agreement, shall deduct the fees and monthly dues
14 from the wages due to the employees from the employer. The
15 deductions, which shall be made in accordance with the applicable
16 law, shall apply to all employees of the bargaining unit, whether
17 as dues for members of the applicable exclusive bargaining
18 representative or as a fair share fee for nonmembers. Membership
19 in the employee organization may not be required as a condition of
20 employment.

21 (b) A collective bargaining agreement may contain a provision
22 that requires as a condition of employment, that the employees in
23 the bargaining unit who are not members of the labor organization
24 pay to the labor organization a fair share fee: *Provided, That,*

1 the exclusive representative shall, as a condition of receiving
2 such fair share fee, establish and implement, if due, a rebate
3 procedure for nonmembers, issue a sufficient fair share fee notice
4 to nonmembers, establish a challenge procedure for objecting
5 nonmembers which includes a prompt resolution by a neutral third
6 party and otherwise conform to existing law. Nonmembers may not be
7 charged for any political or ideological activities of an employee
8 organization.

9 **§29-9-23. Public records and proceedings.**

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

19 **§29-9-24. List of employee organizations and exclusive**
20 **representatives.**

21 The public employment relations board shall maintain a list of
22 employee organizations. To be recognized and included in the list,
23 an organization must file a written statement with the board
24 setting forth its name, the name and address of its secretary or

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

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

12 **§29-9-25. Article takes precedence; when.**

13 (a) In case of conflict between the provisions of this
14 article and any other law, executive order or administrative
15 regulation, this article shall prevail and control. All existing
16 rules and regulations adopted by the employer which are not
17 contrary to this article, shall remain applicable. Nothing
18 contained in this article or in any agreement reached pursuant to
19 this article shall deny or otherwise abridge any rights, privileges
20 or benefits granted by law to public school employees. If there is
21 a conflict between the provisions of any agreement and the
22 provisions of chapters eighteen-a and eighteen-b of the Code of
23 West Virginia, the provision of the code shall prevail. The issues
24 provided in chapters eighteen-a and eighteen-b of the Code of West

1 Virginia may be the subject of bargaining only to the extent that
2 the rights, benefits or protections granted to employees therein
3 may be enhanced by agreement of the parties.

4 (b) Except as otherwise expressly provided herein, nothing in
5 this article shall be construed to annually modify or preclude the
6 renewal or continuation of any lawful agreement entered into prior
7 to the effective date of this article between a public school
8 employer and an employee organization covering wages, hours, terms
9 and conditions of employment.

10 **§29-9-26. Article inoperative; when.**

11 If any provision of this article prevents the receipt by the
12 state or any county of any federal grant-in-aid or other federal
13 allotment of money, the provision shall, insofar as the fund is
14 jeopardized, be deemed to be inoperative.

15 **§29-9-27. Liberal construction.**

16 This article shall be construed liberally and for the
17 accomplishment of the purpose of promoting orderly and constructive
18 relationships between all public school employees and their
19 employers and for the promotion of the rights of public school
20 employees to organize and otherwise engage in activities for their
21 mutual aid and protection.

22 **§29-9-28. Severability.**

23 The provisions of this article are hereby declared to be
24 severable. Should any of the provisions of sections one through

1 twenty-nine of this article be declared unconstitutional or in
2 conflict with some other provision of law, the remaining provisions
3 of this article shall continue to be the law of the state in regard
4 to public school employment relations.

NOTE: The purpose of this bill is to create an orderly process for collective bargaining between school employers and public school employees.

This article is new; therefore, it has been completely underscored.